

**DEPARTMENT OF LABOR****Pension and Welfare Benefits Administration**

[Application No. D-10304, et al.]

**Proposed Exemptions; MBNA America Bank, National Association (MBNA)**

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of Proposed Exemptions.

**SUMMARY:** This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

**Written Comments and Hearing Requests**

Unless otherwise stated in the Notice of Proposed Exemption, all interested persons are invited to submit written comments, and with respect to exemptions involving the fiduciary prohibitions of section 406(b) of the Act, requests for hearing within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

**ADDRESSES:** All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N-5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N-5507, 200 Constitution Avenue, NW., Washington, DC 20210.

**Notice to Interested Persons**

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice

shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

**SUPPLEMENTARY INFORMATION:** The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

MBNA America Bank, National Association (MBNA), Located in Newark, Delaware, (Application No. D-10304)

**Proposed Exemption**

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

*Section I—Transactions*

A. Effective as of the date this proposed exemption is granted, the restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the trust, the sponsor or an underwriter and an employee benefit plan subject to the Act or section 4975 of the Code (a plan) when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in

the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to Section I.A.(1) or (2).

Notwithstanding the foregoing, Section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate on behalf of an Excluded Plan, as defined in Section III.K. below, by any person who has discretionary authority or renders investment advice with respect to the assets of the Excluded Plan that are invested in certificates.<sup>1</sup>

B. Effective as of the date this proposed exemption is granted, the restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(E) of the Code, shall not apply to:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the trust, the sponsor or an underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to receivables contained in the trust constituting 0.5 percent or less of the fair market value of the obligations or receivables contained in the aggregate undivided interest in the trust allocated to the certificates of the relevant series, or (b) an affiliate of a person described in (a); if

(i) The plan is not an Excluded Plan;

(ii) Solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group, as defined in Section III.L., and at least 50 percent of the aggregate undivided interest in the trust allocated to the certificates of a series is acquired by persons independent of the Restricted Group;

(iii) A plan's investment in each class of certificates of a series does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition;

(iv) Immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with

<sup>1</sup> Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3-21(c).

respect to which the person has discretionary authority or renders investment advice is invested in certificates representing the aggregate undivided interest in a trust allocated to the certificates of a series and containing receivables sold or serviced by the same entity;<sup>2</sup> and

(v) Immediately after the acquisition of the certificates, not more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice is invested in certificates representing an interest in the trust, or trusts containing receivables sold or serviced by the same entity. For purposes of paragraphs B.(1)(iv) and B.(1)(v) only, an entity shall not be considered to service receivables contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that conditions set forth in Section I. B.(1)(i), (iii) through (v) are met; and

(3) The continued holding of certificates acquired by a plan pursuant to Section I.B.(1) or (2).

C. Effective as of the date that the proposed exemption is granted, the restrictions of sections 406(a), 406(b) and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust, including reassigning receivables to the sponsor, removing from the trust receivables in accounts previously designated to the trust, changing the underlying terms of accounts designated to the trust, adding new receivables to the trust, designating new accounts to the trust, the retention of a retained interest by the sponsor in the receivables, the exercise of the right to cause the commencement of amortization of the principal amount of the certificates, or the use of any eligible swap transactions, provided that:

(1) Such transactions are carried out in accordance with the terms of a binding pooling and servicing agreement;

(2) The pooling and servicing agreement is provided to, or described

<sup>2</sup>For purposes of this proposed exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase certificates issued by the trust;<sup>3</sup>

(3) The addition of new receivables or designation of new accounts, or the removal of receivables in previously-designated accounts, meets the terms and conditions for such additions, designations or removals as are described in the prospectus or private placement memorandum of such certificates, which terms and conditions have been approved by Standard & Poor's Ratings Services, Moody's Investors Service, Inc., Duff & Phelps Credit Rating Co., or Fitch Investors Service, L.P., or their successors (collectively, the Rating Agencies), and does not result in the certificates receiving a lower credit rating from the Rating Agencies than the then current rating of the certificates; and

(4) The series of which the certificates are a part will be subject to an "Economic Pay Out Event" (as defined in Section III.X.), which is set forth in the pooling and servicing agreement and described in the prospectus or private placement memorandum associated with the series, the occurrence of which will cause any revolving period, scheduled amortization period or scheduled accumulation period applicable to the certificates to end, and principal collections to be applied to monthly payments of principal to, or the accumulation of principal for the benefit of, the certificateholders of such series until the earlier of payment in full of the outstanding principal amount of the certificates of such series or the series termination date specified in the prospectus or private placement memorandum.

Notwithstanding the foregoing, Section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act, or from the taxes imposed under section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(E) or (F) of the Code, for the receipt of a fee by the servicer of the trust, in connection with the servicing of the receivables and the operation of

<sup>3</sup>In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions. For purposes of this proposed exemption, all references to "prospectus" include any related supplement thereto, and any documents incorporated by reference therein, pursuant to which certificates are offered to investors.

the trust, from a person other than the trustee or sponsor, unless such fee constitutes a "qualified administrative fee" as defined in Section III.U. below.

D. Effective as of the date that the proposed exemption is granted, the restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by sections 4975(a) and (b) of the Code, by reason of sections 4975(c)(1)(A) through (D) of the Code, shall not apply to any transaction to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider as described in section 3(14)(F), (G), (H) or (I) of the Act or section 4975(e)(2)(F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

#### Section II—General Conditions

A. The relief provided under Section I is available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as such terms would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating at the time of such acquisition that is either: (i) in one of the two highest generic rating categories from any one of the Rating Agencies; or (ii) for certificates with a duration of one year or less, the highest short-term generic rating category from any one of the Rating Agencies; provided that, notwithstanding such ratings, this exemption (if granted) shall apply to a particular class of certificates only if such class (an Exempt Class) is part of a series in which credit support is provided to the Exempt Class through a senior-subordinated series structure or other form of third-party credit support which, at a minimum, represents five (5) percent of the outstanding principal balance of certificates issued for the Exempt Class, so that an investor in the Exempt Class will not bear the initial risk of loss;

(4) The trustee is not an affiliate of any other member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of a

pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the consideration received by the sponsor as a consequence of the assignment of receivables (or interests therein) to the trust, to the extent allocable to the series of certificates purchased by a plan, represents not more than the fair market value of such receivables (or interests); and the sum of all payments made to and retained by the servicer, to the extent allocable to the series of certificates purchased by a plan, represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith;

(6) The plan investing in such certificates is an "accredited investor" as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission (SEC) under the Securities Act of 1933;

(7) The trustee of the trust is a substantial financial institution or trust company experienced in trust activities and is familiar with its duties, responsibilities, and liabilities as a fiduciary under the Act (i.e. ERISA). The trustee, as the legal owner of, or holder of a perfected security interest in, the receivables in the trust, enforces all the rights created in favor of certificateholders of such trust, including plans;

(8) Prior to the issuance by the trust of any new series, confirmation is received from the Rating Agencies that such issuance will not result in the reduction or withdrawal of the then current rating of the certificates held by any plan pursuant to this exemption;

(9) To protect against fraud, chargebacks or other dilution of the receivables in the trust, the pooling and servicing agreement and the Rating Agencies require the sponsor to maintain a seller interest of not less than 2 percent of the principal balance of the receivables contained in the trust;

(10) Each receivable added to a trust is an eligible receivable, based on criteria of the relevant Rating Agency(ies) and as specified in the pooling and servicing agreement. The pooling and servicing agreement requires that any change in the terms of the cardholder agreements must be

made applicable to the comparable segment of accounts owned or serviced by the sponsor which are part of the same program or have the same or substantially similar characteristics;

(11) The pooling and servicing agreement limits the number of the sponsor's newly originated accounts to be designated to the trust, unless the Rating Agencies otherwise consent in writing, to the following: (i) With respect to any three-month period, 15 percent of the number of existing accounts designated to the trust as of the first day of such period, and (ii) with respect to any twelve-month period, 20 percent of the number of existing accounts designated to the trust as of the first day of such twelve-month period;

(12) The pooling and servicing agreement requires the sponsor to deliver an opinion of counsel semi-annually confirming the validity and perfection of each transfer of newly originated accounts to the trust if such opinion is not delivered with respect to each interim addition;

(13) The pooling and servicing agreement requires the sponsor and the trustee to receive confirmation from a Rating Agency that no Ratings Effect (i) will result from a proposed transfer of newly originated accounts to the trust, or (ii) will have resulted from the transfer of all newly originated accounts added to the trust during the preceding three-month period (beginning at quarterly intervals specified in the pooling and servicing agreement and ending in the calendar month prior to the date such confirmation is issued), provided that a Rating Agency confirmation shall not be required under clause (ii) for any three-month period in which any additions of newly originated accounts occurred only after receipt of prior Rating Agency confirmation pursuant to clause (i);

(14) If a particular series of certificates held by any plan involves a Ratings Dependent or Non-Ratings Dependent Swap entered into by the trust, then each particular swap transaction relating to such certificates:

(a) Shall be an Eligible Swap;

(b) Shall be with an Eligible Swap Counterparty;

(c) In the case of a Ratings Dependent Swap, shall include as an early payout event, as specified in the pooling and servicing agreement, the withdrawal or reduction by any Rating Agency of the swap counterparty's credit rating below a level specified by the Rating Agency where the servicer (as agent for the trustee) has failed, for a specified period after such rating withdrawal or reduction, to meet its obligation under the pooling and servicing agreement to:

(i) Obtain a replacement swap agreement with an Eligible Swap Counterparty which is acceptable to the Rating Agency and the terms of which are substantially the same as the current swap agreement (at which time the earlier swap agreement shall terminate); or

(ii) Cause the swap counterparty to establish any collateralization or other arrangement satisfactory to the Rating Agency such that the then current rating by the Rating Agency of the particular series of certificates will not be withdrawn or reduced;

(d) In the case of a Non-Ratings Dependent Swap, shall provide that, if the credit rating of the swap counterparty is withdrawn or reduced below the lowest level specified in Section III.II. hereof, the servicer, as agent for the trustee, shall within a specified period after such rating withdrawal or reduction:

(i) Obtain a replacement swap agreement with an Eligible Swap Counterparty, the terms of which are substantially the same as the current swap agreement (at which time the earlier swap agreement shall terminate); or

(ii) Cause the swap counterparty to post collateral with the trustee of the trust in an amount equal to all payments owed by the counterparty if the swap transaction were terminated; or

(iii) Terminate the swap agreement in accordance with its terms; and

(e) Shall not require the trust to make any termination payments to the swap counterparty (other than a currently scheduled payment under the swap agreement) except from "Excess Finance Charge Collections" (as defined below in Section III.LL.) or other amounts that would otherwise be payable to the servicer or the seller; and

(15) Any series of certificates, to which one or more swap agreements entered into by the trust applies, may be acquired or held in reliance upon this proposed exemption only by Qualified Plan Investors.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, nor any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under Section I, if the provision in Section II.A.(6) above is not satisfied for the acquisition or holding by a plan of such certificates, provided that:

(1) Such condition is disclosed in the prospectus or private placement memorandum; and

(2) In the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees shall be required to make a written representation regarding compliance with the condition set forth in Section II.A.(6).

### Section III—Definitions

For purposes of this proposed exemption:

A. *Certificate* means a certificate:

(1) That (i) represents a beneficial ownership interest in the assets of a trust and entitles the holder to payments denominated as principal, interest and/or other payments made as described in the applicable prospectus or private placement memorandum and in accordance with the pooling and servicing agreement in connection with the assets of such trust, to the extent allocable to the series of certificates purchased by a plan, either currently or after a revolving period during which principal payments on assets of the trust are reinvested in new assets, or (ii) is denominated as a debt instrument that represents a regular interest in a financial asset securitization investment trust (FASIT), within the meaning of section 860L(a) of the Code, and is issued by and is an obligation of the trust.

For purposes of this proposed exemption, references to "certificates representing an interest in a trust" include certificates denominated as debt which are issued by a trust; and

(2) With respect to which (a) MBNA or any of its affiliates is the sponsor, and (b) MBNA, any of its affiliates, or an "underwriter" (as defined in Section III.C.) is the sole underwriter or the manager or co-manager of the underwriting syndicate or a selling or placement agent.

B. *Trust* means an investment pool, the corpus of which is held in trust and consists solely of:

(1) Either

(a) Receivables (as defined in Section III.V.); or

(b) Participations in a pool of receivables (as defined in Section III.V.) where such beneficial ownership interests are not subordinated to any

other interest in the same pool of receivables;<sup>4</sup>

(2) Property which has secured any of the assets described in Section III.B.(1);<sup>5</sup>

(3) Undistributed cash or permitted investments made therewith maturing no later than the next date on which distributions are to be made to certificate holders, except during a Revolving Period (as defined herein) when permitted investments are made until such cash can be reinvested in additional receivables described in paragraph (a) of this Section III.B.(1);

(4) Rights of the trustee under the pooling and servicing agreement, and rights under any cash collateral accounts, insurance policies, third-party guarantees, contracts of suretyship and other credit support arrangements for any certificates, swap transactions, or under any yield supplement agreements,<sup>6</sup> yield maintenance agreements or similar arrangements; and

(5) Rights to receive interchange fees received by the sponsor as partial compensation for the sponsor's taking credit risk, absorbing fraud losses and funding receivables for a limited period prior to initial billing with respect to accounts designated to the trust.

Notwithstanding the foregoing, the term *trust* does not include any investment pool unless: (i) the investment pool consists only of receivables of the type which have been included in other investment pools; (ii) certificates evidencing interests in such other investment pools have been rated in one of the two highest generic rating categories by at least one of the Rating Agencies for at least one year prior to the plan's acquisition of certificates pursuant to this exemption; and (iii) certificates evidencing an interest in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

C. *Underwriter* means an entity which has received from the Department an individual prohibited transaction

<sup>4</sup>The Department notes that no relief would be available under the exemption if the participation interests held by the trust were subordinated to the rights and interests evidenced by other participation interests in the same pool of receivables.

<sup>5</sup>MBNA states that it is possible for credit card receivables to be secured by bank account balances or security interests in merchandise purchased with credit cards. Thus, the proposed exemption should permit foreclosed property to be an eligible trust asset.

<sup>6</sup>In a series involving an accumulation period (as defined in Section III.Z.), a yield supplement agreement may be used by the Trust to make up the difference between (i) the reinvestment yield on permitted investments, and (ii) the interest rate on the certificates of that series.

exemption which provides relief for the operation of asset pool investment trusts that issue asset-backed pass-through securities to plans that is similar in format and substance to this proposed exemption (each, an Underwriter Exemption);<sup>7</sup> any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with such entity; and any member of an underwriting syndicate or selling group of which such firm or affiliated person described above is a manager or co-manager with respect to the certificates.

D. *Sponsor* means MBNA, or an affiliate of MBNA that organizes a trust by transferring credit card receivables or interests therein to the trust in exchange for certificates.

E. *Master Servicer* means MBNA or an affiliate that is a party to the pooling and servicing agreement relating to trust receivables and is fully responsible for servicing, directly or through subservicers, the receivables in the trust pursuant to the pooling and servicing agreement.

F. *Subservicer* means MBNA or an affiliate of MBNA, or an entity unaffiliated with MBNA which, under the supervision of and on behalf of the master servicer, services receivables contained in the trust, but is not a party to the pooling and servicing agreement.

G. *Servicer* means MBNA or an affiliate which services receivables contained in the trust, including the master servicer and any subservicer or their successors pursuant to the pooling and servicing agreement.

H. *Trustee* means an entity which is independent of MBNA and its affiliates and is the trustee of the trust. In the case of certificates which are denominated as debt instruments, "trustee" also means the trustee of the indenture trust.

I. *Insurer* means the insurer or guarantor of, provider of other credit support for, or other contractual counterparty of, a trust.

Notwithstanding the foregoing, a swap counterparty is not an insurer, and a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust.

J. *Obligor* means any person, other than the insurer, that is obligated to make payments with respect to any receivable included in the trust.

K. *Excluded Plan* means any plan with respect to which any member of

<sup>7</sup>For a listing of Underwriter Exemptions, see the description provided in the text of the operative language of Prohibited Transaction Exemption (PTE) 97-34 (62 FR 39021, July 21, 1997).

the Restricted Group is a "plan sponsor" within the meaning of section 3(16)(B) of the Act.

L. *Restricted Group* with respect to a class of certificates means:

- (1) Each underwriter;
- (2) Each insurer;
- (3) The sponsor;
- (4) The trustee;
- (5) Each servicer;
- (6) Each swap counterparty;
- (7) Any obligor with respect to

receivables contained in the trust constituting more than 0.5 percent of the fair market value of the aggregate undivided interest in the trust allocated to the certificates of a series, determined on the date of the initial issuance of such series of certificates by the trust; or

(8) Any affiliate of a person described in Section III.L.(1)-(7).

M. *Affiliate* of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

N. *Control* means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person will be "independent" of another person only if:

(1) Such person is not an affiliate of that other person; and

(2) The other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

P. *Sale* includes the entrance into a forward delivery commitment (as defined in Section III.Q. below), provided that:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of the delivery, all conditions of this exemption applicable to sales are met.

Q. *Forward Delivery Commitment* means a contract for the purchase or

sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificates from, the other party).

R. *Reasonable Compensation* has the same meaning as that term is defined in 29 CFR section 2550.408c-2.

S. *Pooling and Servicing Agreement* means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust and any supplement thereto pertaining to a particular series of certificates. In the case of certificates which are denominated as debt instruments, "pooling and servicing agreement" also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

T. *Series* means an issuance of a class or various classes of certificates by the trust all on the same date pursuant to the same pooling and servicing agreement, and any supplement thereto and restrictions therein.

U. *Qualified Administrative Fee* means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing with respect to the receivables;

(2) The servicer may not charge the fee absent the act or failure to act referred to in (1);

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement or described in all material respects in the prospectus or private placement memorandum provided to the plan before it purchases certificates issued by the trust; and

(4) The amount paid to investors in the trust is not reduced by the amount of any such fee waived by the servicer.

V. *Receivables* means secured or unsecured obligations of credit card holders which have arisen or arise in Accounts designated to a trust. Such obligations represent amounts charged by cardholders for merchandise and services and amounts advanced as cash advances, as well as periodic finance charges, annual membership fees, cash advance fees, late charges on amounts charged for merchandise and services and certain other fees (such as bad check fees, cash advance fees, and other fees specified in the cardholder agreements) designated by card issuers

(other than a qualified administrative fee as defined in Section III.U.).

W. *Accounts* are revolving credit card accounts serviced by MBNA or an affiliate, which were originated or purchased by MBNA or an affiliate, and are designated to a trust such that receivables arising in such accounts become assets of the trust.

X. *Revolving Period* means a period of time, as specified in the pooling and servicing agreement, during which principal collections allocated to a series are reinvested in newly generated receivables arising in the accounts.

Y. *Amortization Period* means a period of time specified in the pooling and servicing agreement during which a portion of the principal collections allocated to a series will commence to be paid to the certificateholders of such series in installments.

Z. *Accumulation Period* means a period of time specified in the pooling and servicing agreement during which a portion of the principal collections allocated to a series will be deposited in an account to be distributed to certificateholders in a lump sum on the expected maturity date.

AA. *Pay Out Event* means any of the events specified in the pooling and servicing agreement or supplement thereto that results (in some instances without further affirmative action by any party) in the early commencement of either an amortization period or an accumulation period, including (1) the failure of the sponsor or the servicer, whichever is subject to the relevant obligation under the pooling and servicing agreement, (i) to make any payment or deposit required under the pooling and servicing agreement within five (5) business days after such payment or deposit was required to be made, or (ii) to observe or perform any of its other covenants or agreements set forth in the pooling and servicing agreement, which failure has a material adverse effect on holders of investor certificates of the relevant series and continues unremedied for 60 days; (2) a breach of any representation or warranty made by the sponsor or the servicer in the pooling and servicing agreement that continues to be incorrect in any material respect for 60 days; (3) the occurrence of certain bankruptcy events relating to the sponsor or the servicer; (4) the failure by the sponsor to convey to the trust additional receivables to maintain the minimum seller interest that is required by the pooling and servicing agreement and the Rating Agencies; (5) if a class of investor certificates is in an Accumulation Period, the amount on deposit in the accumulation account in any month is

less than the amount required to be on deposit therein; (6) the failure to pay in full amounts owing to investors on the expected maturity date; and (7) the Economic Pay Out Event.

BB. An *Economic Pay Out Event* occurs automatically when the portfolio yield for any series of certificates, averaged over three consecutive months (or such other period approved by one of the Rating Agencies) is less than the base rate of the series averaged over the same period. Portfolio yield for a series of certificates for any period is equal to the sum of the finance charge collections and other amounts treated as finance charge collections less total defaults for the series divided by the outstanding principal balance of the investor certificates of the series, or such other measure approved by one of the Rating Agencies. The base rate for a series of certificates for any period is the sum of (i) amounts payable to certificateholders of the series with respect to interest, (ii) servicing fees allocable to the series payable to the servicer, and (iii) any credit enhancement fee allocable to the series payable to a third party credit enhancer, divided by the outstanding principal balance of the investor certificates of the series, or such other measure approved by one of the Rating Agencies.

CC. *CCA or Cash Collateral Account* means that certain account established in the name of the trustee that serves as credit enhancement with respect to the investor certificates and holds cash and/or permitted investments (as defined below in Section III.KK.) which conform to applicable provisions of the pooling and servicing agreement.

DD. *Group* means a group of any number of series offered by the trust that share finance charge and/or principal collections in the manner described in the applicable prospectus or private placement memorandum.

EE. *Ratings Effect* means the reduction or withdrawal by a Rating Agency of its then current rating of the certificates held by any plan pursuant to this proposed exemption.

FF. *Principal Receivables Discount* means, with respect to any account designated by the sponsor, the portion of the related principal receivables that represents a discount from the face value thereof and that is treated under the pooling and servicing agreement as finance charge receivables.

GG. *Ratings Dependent Swap* means an interest rate swap, or (if purchased by or on behalf of the trust) an interest rate cap contract, that is part of the structure of a series of certificates where the rating assigned by the Rating Agency to any series of certificates held by any

plan is dependent on the terms and conditions of the swap and the rating of the swap counterparty, and if such certificate rating is not dependent on the existence of the swap and rating of the swap counterparty, such swap or cap shall be referred to as a "Non-Ratings Dependent Swap". With respect to a Non-Ratings Dependent Swap, each Rating Agency rating the certificates must confirm, as of the date of issuance of the certificates by the trust, that entering into an Eligible Swap with such counterparty will not affect the rating of the certificates.

HH. *Eligible Swap* means a Ratings Dependent or Non-Ratings Dependent Swap:

(1) Which is denominated in U.S. Dollars;

(2) Pursuant to which the trust pays or receives, on or immediately prior to the respective payment or distribution date for the series of certificates, a fixed rate of interest, or a floating rate of interest based on a publicly available index (e.g. LIBOR or the U.S. Federal Reserve's Cost of Funds Index (COFI)), with the trust receiving such payments on at least a quarterly basis and obligated to make separate payments no more frequently than the swap counterparty, with all simultaneous payments being netted;

(3) Which has a notional amount that does not exceed either (i) the certificate balance of the class of certificates to which the swap relates, or (ii) the portion of the certificate balance of such class represented by receivables;

(4) Which is not leveraged (i.e. payments are based on the applicable notional amount, the day count fractions, the fixed or floating rates designated in subparagraph (2) above, and the difference between the products thereof, calculated on a one to one ratio and not on a multiplier of such difference);

(5) Which has a final termination date that is the earlier of the date on which the trust terminates or the related class of certificates is fully repaid; and

(6) Which does not incorporate any provision which could cause a unilateral alteration in any provision described in subparagraphs (1) through (4) above without the consent of the trustee.

II. *Eligible Swap Counterparty* means a bank or other financial institution which has a rating, at the date of issuance of the certificates by the trust, which is in one of the three highest long-term credit rating categories, or one of the two highest short-term credit rating categories, utilized by at least one of the Rating Agencies rating the certificates; provided that, if a swap

counterparty is relying on its short-term rating to establish eligibility hereunder, such counterparty must either have a long-term rating in one of the three highest long-term rating categories or not have a long-term rating from the applicable Rating Agency, and provided further that if the series of certificates with which the swap is associated has a final maturity date of more than one year from the date of issuance of the certificates, and such swap is a Ratings Dependent Swap, the swap counterparty is required by the terms of the swap agreement to establish any collateralization or other arrangement satisfactory to the Rating Agencies in the event of a ratings downgrade of the swap counterparty.

JJ. *Qualified Plan Investor* means a plan investor or group of plan investors on whose behalf the decision to purchase certificates is made by an appropriate independent fiduciary that is qualified to analyze and understand the terms and conditions of any swap transaction used by the trust and the effect such swap would have upon the credit ratings of the certificates. For purposes of the proposed exemption, such a fiduciary is either:

(1) a "qualified professional asset manager" (QPAM),<sup>8</sup> as defined under Part V(a) of PTE 84-14 (49 FR 9494, 9506, March 13, 1984);

(2) an "in-house asset manager" (INHAM),<sup>9</sup> as defined under Part IV(a) of PTE 96-23 (61 FR 15975, 15982, April 10, 1996); or

(3) A plan fiduciary with total assets under management of at least \$100 million at the time of the acquisition of such certificates.

KK. *Permitted Investments* means investments that either (i) are direct obligations of, or obligations fully guaranteed as to timely payment of principal and interest by, the United States or any agency or instrumentality thereof, provided that such obligation is backed by the full faith and credit of the

<sup>8</sup> PTE 84-14 provides a class exemption for transactions between a party in interest with respect to an employee benefit plan and an investment fund (including either a single customer or pooled separate account) in which the plan has an interest, and which is managed by a QPAM, provided certain conditions are met. QPAMs (e.g. banks, insurance companies, registered investment advisers with total client assets under management in excess of \$50 million) are considered to be experienced investment managers for plan investors that are aware of their fiduciary duties under ERISA.

<sup>9</sup> PTE 96-23 permits various transactions involving employee benefit plans whose assets are managed by an INHAM, an entity which is generally a subsidiary of an employer sponsoring the plan which is a registered investment adviser with management and control of total assets attributable to plans maintained by the employer and its affiliates which are in excess of \$50 million.

United States, or (ii) have been rated (or the obligor thereof has been rated) in one of the three highest generic rating categories by a Rating Agency; are described in the pooling and servicing agreement; and are permitted by the relevant Rating Agency(ies).

LL. *Excess Finance Charge Collections* means, as of any day funds are distributed from the trust, the amount by which the finance charge collections allocated to certificates of a series exceed the amount necessary to pay certificate interest, servicing fees and expenses, to satisfy cardholder defaults or charge-offs, and to reinstate credit support.

The Department notes that this proposed exemption, if granted, will be included within the meaning of the term "Underwriter Exemption" as it is defined in Section V(h) of the Grant of the Class Exemption for Certain Transactions Involving Insurance Company General Accounts, which was published in the **Federal Register** on July 12, 1995 (see PTE 95-60, 60 FR 35925).

#### Summary of Facts and Representations

1. The applicant is MBNA America Bank, National Association (i.e. MBNA), a national banking association located in Wilmington, Delaware. MBNA conducts nationwide consumer lending programs principally comprised of credit card related activities. MBNA is a wholly-owned subsidiary of MBNA Corporation, a bank holding company organized under the laws of Maryland in 1990.

2. The transactions for which an exemption is requested are investments by employee benefit plans in certain certificates (Certificates) representing the right to receive principal and interest payments from the assets of various Trusts which hold credit card receivables. Each Trust will issue, from time to time, a particular series of Certificates (i.e. a Series) which will be secured by the Trust's assets. A Series may include one or more classes of Certificates, some of which may be subordinate to others. However, only senior certificates issued by such Trusts, which meet the restrictive criteria designed to ensure investor safety discussed herein would be eligible for the exemptive relief to be provided under this proposed exemption.

#### The Trusts

3. Each Trust is created under a Pooling and Servicing Agreement (PSA) between MBNA, as Seller and Servicer, and an independent and unaffiliated Trustee. Upon creation of a Trust, the Seller transfers to the Trust a pool of

interest-bearing credit card receivables which are selected under strict criteria approved by one or more of certain nationally recognized rating agencies,<sup>10</sup> from the portfolio of revolving credit card accounts owned by MBNA. The PSA establishes the general parameters for the Trust, such as the requirements for eligible receivables to be transferred to the Trust, the manner of transferring and administering and servicing the receivables, Seller representations and covenants as to receivable eligibility, Servicer and Trustee duties and eligibility, and other matters.

The applicant represents that any Trust that issues a class of Certificates to be covered by the proposed exemption would include the following investor safeguards:

- (a) Restricted selection of receivables;
- (b) Periodic reporting and monitoring of accounts;
- (c) Minimum receivable requirements;
- (d) Restrictions regarding addition and removal of accounts;
- (e) Servicer eligibility requirements;
- (f) Servicer daily reports, duties and public accounting firm review;
- (g) Trustee eligibility and duties;
- (h) Restrictions on investments;
- (i) Protection from the consequences of unplanned events; and
- (j) Limited discretion.

These investor safeguards are discussed in the following paragraphs.

4. **Restricted Selection of Receivables.** In order for a receivable to be eligible for transfer to the Trust, either on the initial closing date or on any subsequent date, it must have arisen under an eligible account. An eligible account is one that is in existence and owned by and maintained with MBNA (as of the initial selection date or, with respect to additional accounts, as of the relevant addition date), and is payable in U.S. dollars. In addition, an eligible account must have a United States address for its obligor, must not have been classified as counterfeit, canceled, fraudulent, stolen or lost, and must not have been charged off by MBNA under its customary and usual charge-off procedures. The eligible receivable must have been created in compliance with applicable law. All consents, licenses and other approvals necessary for the creation of the receivable and the execution of the credit card agreement must have been obtained and be in full force and effect, and MBNA must have good title to the

receivable, free and clear of liens. Finally, an eligible receivable must constitute the legal valid and binding payment obligation of the obligor, and constitute an "account" under Article 9 of the Uniform Commercial Code (the "UCC"), as in effect in the State of Delaware, so as to grant the Trust a first priority security interest in the event of bankruptcy. Once the pool of eligible accounts has been identified, accounts are selected at random for the transfer of their receivables to the Trust so as to provide a combination of receivables that is representative of the entire pool of eligible receivables.

MBNA represents and warrants that the receivables transferred to the Trust, and the accounts related to those receivables, meet the above-described standards for eligible receivables and accounts, and that no selection procedures adverse to the Certificateholders have been employed in selecting accounts. These restrictions on account selection are in place to prevent the concentration of high risk accounts. Each relevant Rating Agency requires that all of these safeguards be in place before a superior rating is given.

5. **Periodic Reporting and Monitoring of Accounts.** In connection with the transfer of the receivables to the Trust, MBNA must record and file a UCC financing statement (including any continuation statements, when applicable) in order to perfect the assignment of the receivables, and must deliver a file-stamped copy of such financing or continuation statement to the Trustee. MBNA must also indicate in its computer system file of credit card accounts the receivables transferred to the Trust by identifying the accounts with a unique designation, as described in the PSA. MBNA must deliver a complete list of all accounts in the Trust to the Trustee on or prior to the initial closing date and thereafter on a periodic basis as required by the PSA.

The Trustee is able to continually monitor the Trust's assets by reviewing the monthly reports regarding pool performance which are prepared for the Trustee and investors by MBNA, as Servicer. In addition, MBNA provides the Trustee with a complete list of accounts on a periodic basis, as required by the PSA. Each relevant Rating Agency requires significant monitoring procedures for the servicing of receivables to ensure investor safety before a superior rating is granted.

6. **Minimum Receivable Requirements.** The aggregate principal amount of the receivables held by the Trust must be at least equal to the sum of the principal amount of the

<sup>10</sup> As noted in Section I.C.(3) above, these rating agencies are: (i) Standard & Poors Ratings Services, a division of McGraw-Hill Companies Inc.; (ii) Moody's Investors Service, Inc.; (iii) Duff & Phelps Credit Rating Co.; and (iv) Fitch Investors Service, L.P., or their successors (collectively, the Rating Agencies).

Certificates (prior to the commencement of any related amortization or accumulation) for all Series then outstanding (other than a Series which is backed in full by accumulated cash or permitted investments (see Paragraph 11 below)). If, on the last business day of any month, the aggregate amount of principal receivables is less than the required minimum, MBNA must designate additional accounts (or may convey participations in other credit card receivable pools sponsored by MBNA) to be transferred to the Trust so that the aggregate principal receivables will meet the minimum requirement.

Interests in the assets of each Trust are allocated among the Certificate holders of each Series and the Seller (i.e., MBNA). The interest in the Trust assets allocated to the Seller is referred to as the "Seller Interest." To protect against fraud, chargebacks or other dilution of receivables in the Trust, the PSA and the Rating Agencies will require MBNA, as the Trust's sponsor, to maintain a seller interest of not less than 2 percent of the principal balance of the receivables contained in the Trust (referred to as the "Minimum Seller Interest"). If, during any period of 30 consecutive days, the Seller Interest averages less than the Minimum Seller Interest, MBNA must designate additional accounts (or participations in other MBNA credit card receivable pools) to be transferred by MBNA to the Trust in order to satisfy the minimum requirement. When account payments exceed account purchases, the total pool of receivables in the relevant Trust contracts. As a result, the Seller Interest declines, thus providing a buffer to prevent a decline in the principal balance of the Certificates prior to the scheduled payment of principal. Thus, when the receivable balances in the accounts that secure the Certificates decline, the Seller Interest decreases, not the principal balance of the Certificates. When the account balances again increase, the Seller Interest is increased. The Seller Interest will also decline as a result of dilution of the receivable portfolio resulting from noncash reductions such as merchandise returns or servicer errors.

The minimum receivable requirement and Minimum Seller Interest requirement imposed on MBNA by the PSA (as described above) cause the Trustee, Servicer or Seller to have limited discretion regarding the minimum size of the Trust. Each relevant Rating Agency gains comfort from these minimum receivable levels that the Trust will be maintained so as not to adversely affect the ability of the Trust assets to support the promised

interest and/or principal payments to Certificate holders.

7. Restrictions Regarding Addition and Removal of Accounts. In addition to the limitations discussed above regarding the selection of accounts and minimum receivable requirements, the following restrictions apply to the addition of accounts subsequent to the initial transfer to the Trust. Any transfer of receivables from additional accounts must be preceded by written notice to the Trustee, each relevant Rating Agency and the Servicer specifying the approximate aggregate amount of receivables to be transferred. In connection with the transfer, MBNA will warrant that the additional accounts are eligible accounts and that each receivable is an eligible receivable, and that no selection procedures believed by MBNA to be materially adverse to the interest of the Certificateholders were utilized in selecting the accounts. MBNA must deliver an opinion of counsel with respect to the added receivables to the Trustee, with a copy to each relevant Rating Agency, that such addition is enforceable and that the Trust has either a valid transfer of, or a grant of security interest in, the additional accounts. The PSA requires that the Servicer and the Trustee receive confirmation from a Rating Agency that no Ratings Effect (i.e., a downgrade or withdrawal of the then current rating of any outstanding Series of Certificates) either (i) will result from a proposed transfer of receivables from additional accounts to the Trust, or (ii) will have resulted from the transfer of all receivables from additional accounts added to the Trust during the preceding three-month period (beginning at quarterly intervals specified in the PSA and ending in the calendar month prior to the date such confirmation is issued). However, a Rating Agency confirmation will not be required for any three-month period in which any additions of newly originated accounts occurred only after receipt of a prior Rating Agency confirmation.

MBNA may remove receivables, subject to the minimum receivable requirements discussed above, not more than once in a monthly period. MBNA must give the Trustee and the Servicer written notice stating the approximate aggregate principal balance of the removal, and certifying that such removal must not result in a Pay Out Event. MBNA must warrant that no selection procedures believed by it to be materially adverse to the Certificateholders were utilized in selecting the removed receivables. Each relevant Rating Agency must have confirmed that such proposed removal

will not result in a Ratings Effect.

MBNA states further that the amount of any receivables that are removed must be less than 5 percent of the aggregate amount of principal receivables or, if any Series is paid in full, the amount of receivables removed must approximate the initial investor interest of such Series.

Each Rating Agency has determined that the number of additional accounts from which receivables may be added is generally limited to: (i) with respect to any three-month period, 15 percent of the number of existing accounts designated to the Trust as of the first day of such period, and (ii) with respect to any twelve-month period, 20 percent of the number of accounts designated to the Trust as of the first day of such 12-month period. However, if this maximum amount is greater than a similar test (specified in the PSA) based on the calendar year, then the calendar year test serves as the maximum addition. MBNA may be able to exceed the maximum addition amount if approval is received from each relevant Rating Agency.

By informing the relevant Rating Agencies of all details regarding additions and removals, the Trust is effectively reexamined each time these events occur in order to assure that the changes to the Trust assets will not adversely affect the rating of any outstanding Series. Each relevant Rating Agency scrutinizes the receivables from the additional accounts, or the relative strength of the pool of receivables designated to the Trust both before and after the removal, as the case may be, in making any such re-examinations.

8. Servicer Eligibility Requirements. The Servicer of the receivables must be either the Seller (MBNA), an affiliate of MBNA, or an entity unaffiliated with MBNA acting as a "Subservicer" which is qualified to service a portfolio of consumer revolving credit card accounts and meets certain requirements. Under such requirements, the entity acting as either a Servicer or Subservicer must be legally qualified and have the capacity to service the accounts, must be qualified to use the software used to service the accounts, must have demonstrated the ability to professionally and competently service a portfolio of similar accounts in accordance with customary standards of skill and care, and must have a certain net worth (e.g. at least \$50,000,000). These requirements are in line with the Rating Agencies' standards for servicers.

Regardless of whether the Servicer is MBNA, an affiliate, or a third party meeting the eligibility requirements discussed above, the Servicer's duties

are largely ministerial and are provided in detail in the PSA. The Servicer administers the receivables, collects payments due thereunder, makes withdrawals from the various accounts created under the PSA which are forwarded to the Trustee on the dates and in the manner provided under the PSA, commences enforcement proceedings with respect to delinquent receivables and makes filings and other necessary reports with the SEC and any state securities authorities as necessary to comply with the law. The Servicer must maintain fidelity bond coverage insuring against losses through its own wrongdoing, and is entitled to receive a reasonable servicing fee which is specifically enumerated in each PSA supplement.

9. Servicer Daily Reports, Duties and Public Accounting Firm Review. On each business day the Servicer must prepare and make available to the Trustee a record of the collections processed on the preceding day and the aggregate amount of receivables as of the close of business on the preceding day. The Servicer must prepare monthly for the Trustee, the paying agent, any credit enhancement provider, and each relevant Rating Agency, a certificate setting forth the aggregate collections processed during the preceding month with respect to each Series outstanding, the aggregate amounts of the investor percentages of collections of finance charge receivables and principal receivables processed during the preceding month with respect to each Series outstanding, the balances in the finance charge account, the principal account or any Series account during the preceding month, and other detailed information.

The Servicer will provide annually a certificate from an officer indicating that the Servicer's activities over a 12-month period were reviewed and the officer believed such obligations were fully performed under the PSA. Every year, a nationally recognized firm of independent certified public accountants will review the internal accounting controls and their relation to the servicing of the receivables as well as the mathematical accuracy of the Servicer's monthly reports, and the results will be provided to the Trustee, any credit enhancement provider, and each relevant Rating Agency. These additional reviews of the Servicer are designed to prevent Servicer fraud and limit Servicer discretion. These safeguards protect investors and are a positive factor in a Rating Agency's evaluation.

10. Trustee Eligibility and Duties. The Trustee must be a financial institution

organized, doing business and regulated under the laws of the United States, any State and/or the District of Columbia and have a long-term unsecured debt rating as specified in the PSA. The Trustee must be independent of MBNA and its affiliates and meet the same requirements that would be necessary for an eligible Servicer (as discussed under "Servicer Eligibility Requirements" above). Any successor Trustee must also meet these requirements and be approved by each relevant Rating Agency.

The Trustee is responsible for receiving collections from receivables as provided in the PSA, investing any moneys as directed in the PSA, and directing payments to Certificateholders according to the plan of allocation and payment detailed in the PSA. In performing these functions, the Trustee has little, if any, discretion. The Trustee is also responsible for examining any resolutions, statements, certificates, opinions, reports or other instruments in order to determine whether they substantially conform to the requirements of the PSA. The Trustee has no power to vary the corpus of the Trust and must perform the duties of other parties should they fail to perform under the PSA. Like the Servicer restrictions, the restrictions on the Trustee limit discretion, enhance investor protection, and are a positive influence on a Rating Agency's evaluation.

11. Restrictions on Investments. The collections of principal receivables and finance charge receivables held in the Trust may be invested by the Trustee only in "permitted investments" during the interim periods between collection and payout to the Certificateholders. Such permitted investments are detailed in the PSA and represent what each relevant Rating Agency considers to be secure investments that sufficiently protect investors. Under the proposed exemption, permitted investments would be investments that either (i) are direct obligations of, or obligations fully guaranteed as to timely payment of principal and interest by, the United States or any agency or instrumentality thereof, provided that such obligation is backed by the full faith and credit of the United States, or (ii) have been rated (or the obligor thereof has been rated) in one of the three highest generic rating categories by a Rating Agency. In addition, all permitted investments must be described in the PSA and permitted by the relevant Rating Agencies.

12. Protection From the Consequences of Unplanned Events. If MBNA should desire to merge or consolidate with, or

assume the obligations of, another entity, certain provisions of the PSA ensure that the Trust assets remain secure. The new entity involved in the merger or consolidation must be a national banking association, a state banking corporation or another entity not subject to bankruptcy laws and must be organized and regulated under the laws of the United States, any State and/or the District of Columbia. The new entity must expressly assume the performance of every covenant and obligation of MBNA, and MBNA must provide the Trustee with an opinion of counsel that such assumption is legal, valid and binding. Finally, each relevant Rating Agency must be notified in advance of the change. Similarly, a merger, consolidation or assumption of the obligations of the Servicer also requires the same protections of a full assumption of liabilities, an opinion of counsel and Rating Agency notification.

The Certificateholders of each Series receive protection from certain unplanned events (called "Pay Out Events"). If a "Pay Out Event" occurs with respect to a Series, either (i) a rapid amortization period will commence during which the Certificates of such Series will be paid down periodically, as provided in the PSA Supplement, with the principal collections allocable to such Series or with principal collections allocable to other Series which are shared within the same Group (as discussed in Paragraph 15 below), or (ii) a rapid accumulation period will commence during which the Series' principal collections will be accumulated until a designated payment date. Pay Out Events include "Trust Pay Out Events," which apply to all Series, and "Series Pay Out Events," which apply to particular Series. "Trust Pay Out Events" include: (i) certain events of insolvency, conservatorship or receivership relating to MBNA; (ii) the Trust becomes an "investment company" within the meaning of the Investment Company Act of 1940, as amended; and (iii) MBNA becomes unable for any reason to transfer receivables to the Trust as required by the PSA.

*Series Pay Out Events* generally include:

(a) Failure of MBNA to make required payments or observe its other covenants to the extent there is a material adverse effect on the Certificateholders of that Series;

(b) Breach by MBNA of its representations and warranties to the extent there is a material adverse effect on the Certificateholders of that Series;

(c) A default by the Servicer that would have a material adverse effect on the Certificateholders of that Series; and

(d) The portfolio yield for any three consecutive monthly periods is less than the average base rate for such period (an "Economic Pay Out Event").

With respect to item (d) above, MBNA states that an "Economic Pay Out Event" will occur automatically when the portfolio yield for any series of certificates, averaged over three consecutive months (or such other period approved by one of the Rating Agencies) is less than the base rate of the series averaged over the same period. Portfolio yield for a series of certificates for any period is equal to the sum of the finance charge collections and other amounts treated as finance charge collections less total defaults for the series divided by the outstanding principal balance of the investor certificates of the series, or such other measure approved by one of the Rating Agencies. The base rate for a series of certificates for any period is the sum of (i) amounts payable to certificateholders of the series with respect to interest, (ii) servicing fees allocable to the series payable to the servicer, and (iii) any credit enhancement fee allocable to the series payable to a third party credit enhancer, divided by the outstanding principal balance of the investor certificates of the series, or such other measure approved by one of the Rating Agencies.

MBNA states that an "Economic Pay Out Event" should not occur because the amount of receivables included within the Trust has been designed to create "excess spread" between the yield on the receivables and the certificate rates. *Excess spread* is the amount by which the yield on the receivables held by the Trust exceeds, at any point in time, the amounts necessary to pay certificate interest, principal (if such payments are due to certificateholders), servicing fees and expenses, and to satisfy cardholder defaults or charge-offs. The Rating Agencies examine the expected amount of "excess spread" very closely before providing a high credit rating for the certificates.

A "Pay Out Event" accelerates the scheduled payments or accumulation of principal on the Certificates as specified within each PSA Supplement, and eliminates shared allocations from such Series, thus increasing the probability of full payment to senior Certificateholders, including plan investors. During a rapid amortization period, which is triggered by a "Pay Out Event", all collections are distributed periodically (instead of being

distributed on the originally scheduled principal payment dates), as provided in the PSA Supplement, until the senior Certificateholders are paid in full. During a rapid accumulation period, also triggered by a "Pay Out Event", all principal collections allocated to the senior Certificates are accumulated and invested by the Trustee until the senior Certificateholders' interest is backed in full by cash and/or permitted investments which will be distributed on the originally scheduled payment date. Payments or accumulations are then directed to the next level of Certificates below the senior Certificates, until all Certificates have been paid or accumulated, or the Trust terminates. Because this accelerated pay out or accumulation schedule is triggered as a result of poor performance, senior Certificateholders are protected from a loss which might result from long-term yield reduction, and are, to a level of certainty necessary to support a rating of "AA" (or better), likely to receive their entire investment return. The timing or amount of the payments or accumulations is specifically defined in each PSA Supplement, further protecting investors from mismanagement. This automatic pay out trigger is important to each relevant Rating Agency as well, because it strictly limits the potential losses to investors.

Investors are also protected from the negative consequences of an event of Seller insolvency. If one or more of a number of indications of insolvency are present, a "Pay Out Event" occurs and a rapid amortization or a rapid accumulation period is triggered. As discussed above, this event accelerates payments or accumulation of collections to maximize the probability that senior Certificateholders will be paid promptly and in full. In addition, the Trustee also liquidates the receivables (unless otherwise instructed by Certificateholders representing undivided interests aggregating more than 50 percent of each outstanding Series) in order to further accelerate the pay out or accumulation process. The proceeds of the liquidation are distributed or accumulated in the tiered manner discussed above in the low-yield scenario.

13. Limited Discretion. Inherent in all of the restrictions surrounding creation and management of the Trust, discussed above, is the limited ability of any party to the transaction to make discretionary decisions that would have a major impact on the Trust assets. The PSA addresses every possible important decision and provides the exact course of action required. Each detail is

designed to ensure maximum investor security, and minimum Trustee and Servicer discretion.

#### *The Series*

14. Once a Trust is established, a Series of Certificates may be issued pursuant to a PSA Supplement. One Trust typically supports multiple Series of Certificates over time. Each Series issued under a Trust is secured, along with other outstanding Series, by the assets of the issuing Trust. The PSA Supplement builds on the PSA by specifying the parameters for the Series, such as the number and type of Certificates, subordination and payment structuring, and other credit enhancement features.

The life of a Series consists of a revolving period and an amortization or accumulation period. During both periods, daily collections are allocated to the Trust accounts in the manner specified in the PSA Supplement. Interest payments are made periodically to the Certificateholders as provided in the PSA Supplement, and principal is paid in a lump sum on the date designated in the PSA Supplement (in the case of an accumulation period), or periodically pursuant to a schedule in the PSA Supplement (in the case of an amortization period), for each class of Certificates. The allocation of collections and the priority of payments differs slightly during the revolving period and the amortization or accumulation period.

15. During a Series' revolving period, periodic interest payments are made to Certificateholders. Principal payments, however, are not made until the amortization period or at the end of the accumulation period. Principal collections during the revolving period typically are shared among the Series that are members of the same Group. If one Series has principal receipts greater than needed to pay principal for that period, the excess may be used to pay principal for another Series in the Group which may have a need for such principal collections. In such instances, the minimum principal receivable balances required by the Rating Agencies for all Series must be maintained. The process of sharing within the Group spreads payment risk over a broader base of collections and effectively allows concentration of principal collections supporting a particular Series, resulting in increased reliability of the payment streams.

Principal collections received during the amortization or accumulation period are also potentially shared, but are first applied to the principal funding for the Series to which they relate. The

amortization or accumulation period ends on the earliest of: (i) when the investors interests are paid in full; (ii) the Series termination date provided in the PSA Supplement; or (iii) the commencement of a rapid amortization or rapid accumulation period. Finance charges and fees collected during the revolving period and the accumulation or amortization period are applied to the related Series, and are not generally shared within the Group.

16. Every Trust will have a variety of credit enhancement features, as described in the PSA and specified in the applicable PSA Supplement. In addition to the Group sharing of collections discussed above, other credit enhancements may include subordination and letters of credit or other third party arrangements. The type and value of credit enhancement for a particular Series is designed to compliment the underlying Trust receivables so that, as a whole, the Trust assets satisfy the relevant Rating Agency's requirements for the superior rating desired. In this regard, MBNA represents that the particular class of certificates for each series to which this proposed exemption would apply (an Exempt Class) will have credit support provided to the Exempt Class through either a senior-subordinated series structure or other form of third party credit support which, at a minimum, will represent five (5) percent of the outstanding principal balance of certificates issued for the Exempt Class, so that an investor in the Exempt Class will not bear the initial risk of loss.

Each Series with an Exempt Class covered by the proposed exemption will include one or more of the following credit enhancing investor safeguards (as discussed further below): (i) Subordination; (ii) Third Party Credit Enhancement; and (iii) Allocation of Collections and Payments to Certificateholders Allows No Variation.

17. Subordination. Typically, a Series will have some form of subordination incorporated within the payment schedule detailed in the PSA Supplement. Such a Series will consist of at least one class of senior Certificates (typically designated as "Class A Certificates") which will be allocated collections in a more favorable manner than, and/or prior to, another class (or other classes) of Certificates (i.e., the next lower level, typically designated as "Class B Certificates") and often will include an uncertificated class subordinate to the Class B Certificates (typically designated as the "Collateral Interest" or "Class C Interest"). The subordination process generally will involve both the receipt of collections

and the effect of losses. Thus, such collections will be applied to the senior (or Class A) Certificates first and then the second tier (or Class B) Certificates, and will be applied last to the lowest level class of Certificates (or the Collateral Interest). Conversely, the losses will first reduce the lowest class of Certificates (or the Collateral Interest), only affecting the senior (or Class A) Certificates after all other classes have been reduced to zero. The result of this tiered structure is that the senior (or Class A) Certificates are protected from nonpayment by the lower classes. If the certainty of payment provided by the subordination or other credit support mechanism is insufficient to allow each relevant Rating Agency to bestow one of its two highest ratings on the senior Certificates, the senior Certificates would not be eligible for the relief provided under the proposed exemption.

18. Third Party Credit Enhancement. A Series may include a form of credit enhancement provided by an outside party, such as a letter of credit, a cash collateral account, insurance or a guaranty or other extension of credit. This arrangement will be documented by a separate contract outlining the terms of the enhancement. A holder of the Collateral Interest (described in the preceding paragraph) or other subordinate interest holder may be a loan provider or an investor in the Class C Interest, and the PSA Supplement typically requires that a minimum Collateral Interest (or subordinate interest) be a feature of each Series. As with all the forms of credit enhancement, the terms and the amount of the Collateral Interest will be dependent upon an evaluation of the other Trust assets and the additional support needed to satisfy each relevant Rating Agency that the Certificates are sufficiently protected from default.

19. Allocation of Collections and Payments to Certificateholders Allows No Variation. The PSA Supplement provides instructions to the Servicer regarding each day's collections and the allocation of those collections to the various accounts created by the PSA. These instructions indicate how to make the payments and allocations during the revolving period, the amortization or accumulation period and the rapid amortization or rapid accumulation period, if any. The instructions also cover the treatment of other moneys from loans or other credit enhancement features, and carefully describe how to accommodate any excess collections, or how to compensate for any shortfalls. In following these detailed instructions, the Servicer does not make any

discretionary decisions. The tasks are predetermined and largely ministerial. These explicit instructions, in concert with the Servicer reporting and review requirements, are designed to permit each relevant Rating Agency to conclude that mismanagement risks are minimal.

#### *The Certificates*

20. Each Series may include a class or various classes of Certificates, some of which may be subordinate to others.

Certificateholders will be entitled to receive periodic payments of interest based upon a fixed or variable interest rate which is set forth in the PSA Supplement and applied to the Certificateholder's unpaid principal balance. Certificateholders will also be entitled to receive a lump sum principal payment on the scheduled payment date, or a series of periodic payments beginning on the scheduled payment commencement date, as specified in the PSA Supplement, to the extent of the Certificateholder's investor interest.

As noted earlier, only Certificates that are not subordinate to any other class or classes of Certificates (the "Senior Certificates") would be eligible for exemptive relief under the proposed exemption.

21. MBNA represents that a plan would invest in the Certificates for the same reasons any investor would invest in a highly secure, "AA" (or better) rated investment with attractive yields. The Senior Certificates represent an investment alternative which offers all the benefits of a highly rated fixed-income security, such as fixed payment streams, investment diversity and market rates of return. Permitting plans to invest in Senior Certificates in reliance on the proposed exemption would provide plans with additional and safe investment opportunities.

22. With respect to the credit ratings of the Certificates, MBNA states that the rating reflects a Rating Agency's opinion as to the relative amount of protection that investors have against loss of principal and interest during the life of the security. A high rating comports with a low risk of loss. In order to achieve this rating, each relevant Rating Agency requires the credit card securitizations effected through the Trust to include a variety of safeguards—such as subordination or other forms of credit enhancement, limitations on the Seller's discretion, and Rating Agency approval of certain actions taken with respect to the Trust or a Series of Certificates. Each relevant Rating Agency typically requires legal opinions regarding the credit card securitization's structure and performs

stress tests on the portfolio of selected receivables in order to evaluate the securitization's anticipated performance within a range of significant market fluctuations. In addition, each relevant Rating Agency performs a comprehensive review of all documents related to the credit card securitization before the formal rating is given. Each relevant Rating Agency must provide confirmations that additions of receivables from accounts to a Trust, or withdrawals of existing accounts from a trust, will not result in a Ratings Effect on the Certificates.

After its rating is assigned, the Rating Agency monitors the performance of the credit card receivables included in a Trust in order to assess whether the performance remains consistent with the rating. Although variations in portfolio performance are expected during a Certificate's duration and are factored into a Rating Agency's analysis, extreme and unexpected performance results may result in a revision of the rating. MBNA makes its Trust performance information available to each relevant Rating Agency in a variety of ways, in order to ensure that the Rating Agency receives all the information it deems necessary to make its evaluation. For example, MBNA provides information on portfolio performance broken down by account balance, credit limit, account age, delinquency period and geographic distribution.

MBNA states that the receipt of one of the two highest generic ratings from a Rating Agency represents the result of an exhaustive analysis of the many risk factors involved with a Series of Certificates, and provides a comfort level to investors that the potential reduction in yield as a result of credit losses is minimal.<sup>11</sup>

<sup>11</sup> In this regard, the Department was advised by representatives from two of the Rating Agencies (RA Reps) of certain issues concerning the ratings of certificates issued by trusts holding credit card receivables. The RA Reps discussed, among other things, the fact that different banks use different underwriting standards and may offer cardholders different terms on their accounts. Some banks may be willing to accept cardholders with more risky credit histories while other banks may not or may offer better terms to cardholders with superior payment histories. The result may be that some banks have a higher quality portfolio of receivables than other banks. The RA Reps stated that if a bank securitizes a portfolio of receivables which holds a number of riskier accounts, the Rating Agencies will require more credit enhancement measures because different assumptions will have to be made about the performance of the portfolio—e.g. higher charge-off rates will be assumed and greater "excess spread" will be necessary to avoid losses—in order to achieve an "AAA" rating. Thus, for example, Bank A's certificates may receive an "AAA" rating along with MBNA's certificates even though Bank A may experience more charge-offs on the credit

23. MBNA represents that the statistics on Certificates backed by credit card trusts indicate that they are sound investments. In this regard, MBNA states that public credit card securitization transactions have been in existence since 1987 and issuers have successfully sold over \$230 billion in Certificates backed by credit card receivables since then with a zero investor loss rate. MBNA states further that plans have invested during this time in such Certificates, despite the prohibited transaction provisions of the Act, in reliance upon the Department's regulation defining "plan assets" and, specifically, the "100-Holder Exception" for "publicly-offered" securities (see 29 CFR 2510.3-101).<sup>12</sup>

MBNA maintains that the proposed exemption offers a number of safeguards in the form of concentration restrictions that are designed to provide additional protections for plan investors which are not included in the typical 100-holder exception transactions. For example, for purposes of the relief from the prohibitions of section 406(b) of the Act<sup>13</sup> provided under Section I.B. herein (relating to certain obligors of the Trust who may have discretionary authority for a plan investing in certificates of the Trust), the proposed exemption limits such plan's investment in any class of Certificates of any Series to not more than 25 percent of the principal amount of the Certificates of that class outstanding at the time of acquisition. In addition, immediately after the acquisition of the certificates, not more than 25 percent of the assets of such a plan may be invested in certificates representing an interest in the trust, or trusts containing receivables sold or serviced by the same entity. Further, the proposed exemption requires that at least 50 percent of the

card accounts and may have different payment rates on the receivables associated with those accounts.

<sup>12</sup> The Department's regulation defining "plan assets" provides that, if a plan invests in a publicly-offered security, the plan's assets will not include, solely by reason of such investment, any of the underlying assets of the entity issuing the security (i.e. the "look-through rule" will not apply and the operations of the entity will not be subject to scrutiny under the prohibited transaction provisions of the Act). The regulation defines a "publicly-offered" security as one that is freely transferable, widely-held, and registered under the federal securities laws. A class of securities is "widely held" if it is owned by 100 or more investors who are independent of the issuer and of one another at the conclusion of the offering (see 29 CFR 2510.3-101(b)(3)).

<sup>13</sup> Section 406(b) of the Act, in pertinent part, prohibits a plan fiduciary from dealing with the assets of the plan in his own interest or for his own account, or from acting on behalf of a party (or representing a party) whose interests are adverse to the interests of the plan and its participants and beneficiaries.

outstanding principal amount of each class of Certificates in which plans have invested, and at least 50 percent of the outstanding aggregate interest of the Trust, in connection with the initial issuance of the Certificates, must be acquired by persons independent of the Sponsor, the Servicer and other related parties. These restrictions are designed to protect plan investors from the risks inherent in excessive ownership concentration and related party transactions.

24. MBNA represents that the requested exemption is similar to the Underwriter Exemptions.<sup>14</sup> The Underwriter Exemptions are a series of exemptions granted by the Department to various underwriters or trust sponsors for transactions relating to the acquisition by plans of certificates representing interests in trusts holding various types of assets (e.g. single and multi-family residential or commercial mortgages, motor vehicle leases and related vehicles, equipment leases or other secured obligations), as provided in Section III.B. of the Underwriter Exemptions.

The Trusts described under the proposed exemption for Certificates backed by credit card receivables differ from trusts holding secured obligations in that the Trusts do not contain a fixed pool of assets and the receivables are not secured by real or tangible personal property. However, MBNA states that this difference in structure does not represent a difference in the quality or safety of investments by plans and other investors in the Certificates. Under the proposed exemption, MBNA represents that the other forms of credit enhancement provide at least the same level of security for investors in Trusts holding credit card receivables as exists for investors in trusts holding tangible or real property as collateral for the payment obligations to Certificateholders. In addition, Trusts holding credit card receivables do not involve the expense and administrative complexities of foreclosure procedures relating to tangible and real property.

25. Certificateholders are entitled to receive periodic payments of interest based upon an interest rate, which may be variable or fixed. This interest rate is specified or defined in the PSA Supplement for the particular Series and is applied to the outstanding principal balance of the Certificates. This outstanding balance (net of any charge-offs) is known as the investor

<sup>14</sup> As indicated in Footnote 7 above, PTE 97-34 (which granted an amendment to the Underwriter Exemptions) contains the most comprehensive listing of these exemptions.

interest for the senior class of Certificates. Certificateholders are also entitled to receive principal payments on the scheduled payment dates, or sooner or later under certain limited circumstances, pursuant to the PSA Supplement to the extent of the Certificateholders' investor interest. The payments are funded from collections on the related receivables and allocated to the investor interests as provided in the PSA Supplement.

MBNA states that a Series or class of Certificates may have the benefit of an interest rate swap agreement entered into between the Trustee for a Trust and a bank or other financial institution acting as a swap counterparty. Pursuant to the swap agreement, the swap counterparty would pay a certain rate of interest to the Trust in return for a payment of a rate of interest by the Trust, from collections allocable to the relevant Series or class of Certificates, to the swap counterparty. MBNA represents that the credit rating provided to a particular Series or class of Certificates by the relevant Rating Agency may or may not be dependent upon the existence of a swap agreement. Thus, in some instances, the terms and conditions of the swap agreements will not effect the credit rating of the Series or class of Certificates to which the swap relates (i.e. a "Non-Ratings Dependent Swap").

MBNA states that whether or not the credit rating of a particular Series or class of Certificates is dependent upon the terms and conditions of one or more interest rate swap agreements entered into by the Trust (i.e. a "Ratings Dependent Swap" or a "Non-Ratings Dependent Swap"), each particular swap transaction will be an "Eligible Swap" as defined in Section III.HH. above.

In this regard, an Eligible Swap will be a swap transaction:

(a) Which is denominated in U.S. Dollars;

(b) Pursuant to which the Trust pays or receives, on or immediately prior to the respective payment or distribution date for the applicable senior class of Certificates, a fixed rate of interest, or a floating rate of interest based on a publicly available index (e.g. LIBOR or the U.S. Federal Reserve's Cost of Funds Index (COFI)), with the Trust receiving such payments on at least a quarterly basis and obligated to make separate payments no more frequently than the counterparty, with all simultaneous payments being netted;

(c) Which has a notional amount that does not exceed either (i) the certificate balance of the class of certificates to which the swap relates, or (ii) the

portion of the certificate balance of such class represented by receivables;

(d) Which is not leveraged (i.e. payments are based on the applicable notional amount, the day count fractions, the fixed or floating rates designated in item (b) above, and the difference between the products thereof, calculated on a one to one ratio and not on a multiplier of such difference);

(e) Which has a final termination date that is the earlier of the date on which the Trust terminates or the related class of Certificates is fully repaid; and

(f) Which does not incorporate any provision which could cause a unilateral alteration in any provision described in items (a) through (e) above without the consent of the Trustee.

In addition, any Eligible Swap entered into by the Trust will be with an "Eligible Swap Counterparty", which will be a bank or other financial institution with a rating at the date of issuance of the Certificates by the Trust which is in one of the three highest long-term credit rating categories, or one of the two highest short-term credit rating categories, utilized by at least one of the Rating Agencies rating the Certificates (see Section III.II above). However, if a swap counterparty is relying on its short-term rating to establish its eligibility, such counterparty must either have a long-term rating in one of the three highest long-term rating categories or not have a long-term rating from the applicable Rating Agency.

With respect to a Ratings Dependent Swap, an Eligible Swap Counterparty will be subject to certain collateralization or other arrangements satisfactory to the Rating Agencies in the event of a rating downgrade of such swap counterparty below a level specified by the Rating Agency, which would be no lower than the level that would make such counterparty "eligible" under this proposed exemption (see Section III.II. above). If these arrangements are not established within a specified period, as described in the PSA, there will be an early payout event causing certificateholders to receive an earlier than expected payout of principal on their certificates for the series to which the swap relates. However, with respect to a Non-Ratings Dependent Swap, the PSA will not specify that there be an early payout event for the series to which the swap relates if the credit rating of the swap counterparty falls below the level required for it to be considered an Eligible Swap Counterparty (as described in Section III.II. above). In such instances, in order to protect the interests of the Trust as a swap

counterparty, the servicer (as agent for the trustee of the trust) will be required to either:

(i) Obtain a replacement swap agreement with an Eligible Swap Counterparty, the terms of which are substantially the same as the current swap agreement (at which time the earlier swap agreement will terminate);

(ii) Cause the swap counterparty to post collateral with the trustee of the trust in an amount equal to all payments owed by the counterparty if the swap transaction were terminated; or

(iii) Terminate the swap agreement in accordance with its terms.

Under any termination of a swap, the Trust will not be required to make any termination payments to the swap counterparty (other than a currently scheduled payment under the swap agreement) except from "excess finance charge collections" or other amounts that would otherwise be payable to the servicer or the seller (i.e. MBNA). In this regard, "excess finance charge collections" will be, as of any day funds are distributed from the Trust, the amounts by which the finance charge collections allocated to certificates of a series exceed the amounts necessary to pay certificate interest, servicing fees and expenses, to satisfy cardholder defaults or charge-offs, and to reinstate credit support.

With respect to Non-Ratings Dependent Swaps, each Rating Agency rating the Certificates must confirm, as of the date of issuance of the Certificates by the Trust, that entering into the swap transactions with the Eligible Swap Counterparty will not effect the rating of the Certificates, even if such counterparty is no longer an "eligible" counterparty and the swap is terminated.<sup>15</sup>

Any class of senior Certificates to which one or more swap agreements entered into by the trust applies, will be acquired or held only by Qualified Plan

<sup>15</sup> RA Reps have indicated to the Department that certain series of certificates issued by a trust holding credit card receivables will have certificate ratings that are not dependent on the existence of a swap transaction entered into by the trust. Therefore, a downgrade in the swap counterparty's credit rating would not cause a downgrade in the rating established by the Rating Agency for the certificates. RA Reps state that in such instances there will be more credit enhancements (e.g. "excess spread", letters of credit, cash collateral accounts) for the series to protect the certificateholders than there would be in a comparable series where the trust enters into a so-called Ratings Dependent Swap. Non-Ratings Dependent Swaps are generally used as a convenience to enable the trust to pay certain fixed interest rates on a series of certificates. However, the receipt of such fixed rates by the trust from the counterparty is not a necessity for the trust to be able to make its fixed rate payments to the certificateholders.

Investors (as defined in Section III.JJ. above). Qualified Plan Investors will be plan investors represented by an appropriate independent fiduciary that is qualified to analyze and understand the terms and conditions of any swap transaction relating to the class of senior Certificates to be purchased and the effect such swap would have upon the credit rating of the senior Certificates to which the swap relates.

For purposes of the proposed exemption, such a qualified independent fiduciary will be either:

(i) A "qualified professional asset manager" (i.e. QPAM), as defined under Part V(a) of PTE 84-14;<sup>16</sup>

(ii) an "in-house asset manager" (i.e. INHAM), as defined under Part IV(a) of PTE 96-23;<sup>17</sup> or

(iii) A plan fiduciary with total assets under management of at least \$100 million at the time of the acquisition of such Certificates.

#### *Disclosures Available to Investing Plans*

26. In connection with the original issuance of certificates, the prospectus or private offering memorandum will be furnished to investing plans. The prospectus or private offering memorandum will contain information pertinent to a plan's decision to invest in the Certificates, such as:

(a) Information concerning the Certificates, including payment terms, certain tax consequences of owning and selling Certificates, the legal investment status and rating of the Certificates, and any special considerations with respect to the Certificates;

(b) Information about the underlying receivables, including the types of receivables, statistical information relating to the receivables, their payment terms, and the legal aspects of the receivables;

(c) Information about the servicing of the receivables, including the identity of the servicer and servicing compensation;

(d) Information about the Sponsor of the Trust;

(e) A full description of the material terms of the Pooling and Servicing Agreement; and

(f) Information about the scope and nature of the secondary market, if any, for such Certificates.

Certificateholders will be provided with information concerning the amount of principal and interest to be paid on Certificates in connection with each distribution to Certificateholders. Certificateholders will also be provided with periodic information statements

setting forth material information concerning the status of the Trust.

In the case of a Trust that offers and sells Certificates in a registered public offering, the Trustee, the Servicer or the Sponsor will file such periodic reports as may be required to be filed under the Securities Exchange Act of 1934 (the '34 Act). Although some Trusts that offer Certificates in a public offering will file quarterly reports on Form 10-Q and Annual Reports on Form 10-K, many Trusts (i) obtain, by application to the SEC, a complete exemption from the requirement to file quarterly reports on Form 10-Q and a modification of the disclosure requirements for annual reports on Form 10-K; or (ii) are not subject to such requirements for one or more Series of Certificates issued by the Trust. If such an exemption is obtained, these Trusts normally would continue to have the obligation to file current reports on Form 8-K to report material developments concerning the Trust and the Certificates. While the SEC's interpretation of the periodic reporting requirement is subject to change, periodic reports concerning a Trust will be filed to the extent required under the '34 Act.

MBNA states that at or about the time distributions are made to Certificateholders, reports will be delivered to the Trustee as to the status of the Trust and its assets, including underlying Receivables. Such reports will typically contain information regarding the Trust's assets, payments received or collected by the Servicer, the amount of delinquencies and defaults, the amount of any payments made pursuant to any credit support or credit enhancement feature, and the amount of compensation payable to the Servicer. Such reports will also be delivered or made available to the Rating Agency that currently rates the Certificates. Such reports will be available to investors and its availability will be made known to potential investors. In addition, promptly after each distribution date, Certificateholders will receive a statement summarizing information regarding the Trust and its assets and the applicable Series, including underlying receivables.

28. In summary, MBNA represents that the proposed transactions will meet the statutory criteria of section 408(a) of the Act because, among other things:

(a) The acquisition of senior Certificates by a plan will be on terms (including Certificate price) that are at least as favorable to the plan as such terms would be in an arm's-length transaction with an unrelated party;

(b) The rights and interests evidenced by the senior Certificates will not be subordinated to the rights and interests evidenced by other investor Certificates of the Trust;

(c) Any senior Certificates acquired by a plan will have received a rating at the time of such acquisition that is in one of the two highest generic rating categories from any one of the Rating Agencies or, for certificates with a duration of one year or less, the highest short-term generic rating category from any one of the Rating Agencies;

(d) The Trustee of the Trust will not be an affiliate of any other member of the Restricted Group;

(e) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of Certificates will represent not more than reasonable compensation for underwriting or placing the Certificates; the consideration received by the Sponsor as a consequence of the assignment of receivables (or interests therein) to the Trust will represent not more than the fair market value of such receivables (or interests); and the sum of all payments made to and retained by the Servicer, which are allocable to the Series or class of certificates purchased by a plan, will represent not more than reasonable compensation for the Servicer's services under the Pooling and Servicing Agreement and reimbursement of the Servicer's reasonable expenses in connection therewith;

(f) Any plan investing in such Certificates will be an "accredited investor" as defined in Rule 501(a)(1) of Regulation D of the SEC under the Securities Act of 1933;

(g) The terms of each Series or class of Certificates, and the conditions under which MBNA may designate additional accounts to, or remove previously-designated accounts from, the Trust will be described in the prospectus or private placement memorandum provided to investing plans;

(h) The Trustee of the Trust will be a substantial financial institution or trust company experienced in trust activities and would be familiar with its duties, responsibilities and liabilities as a fiduciary under the Act;

(i) The PSA will include "Economic Pay Out Events" triggered by a decline in the performance of the receivables in the Trust;

(j) To protect against fraud, chargebacks or other dilution of the receivables in the Trust, the PSA and the Rating Agencies will require MBNA, as the Trust's sponsor, to maintain a seller interest of not less than 2 percent

<sup>16</sup> See Footnote 8 above.

<sup>17</sup> See Footnote 9 above.

of the principal balance of the receivables contained in the Trust;

(k) Each receivable added to a Trust will be an eligible receivable, based on criteria of the relevant Rating Agency(ies) and as specified in the PSA;

(l) The PSA will require that any change in the terms of any cardholder agreements also will be made applicable to the comparable segment of accounts owned or serviced by MBNA which are part of the same program or have the same or substantially similar characteristics;

(m) The addition of new receivables or designation of new accounts, or removal of previously-designated accounts, will meet the terms and conditions for such additions, designations, or removals as described in the prospectus or private placement memorandum for such Certificates, which terms and conditions will have been approved by each relevant Rating Agency, and will not result in the Certificates receiving a lower credit rating from the relevant Rating Agency than the then current rating of the Certificates;

(n) Any swap transaction relating to senior Certificates that are covered by the proposed exemption must satisfy the several investor-protective conditions applicable to Eligible Swaps and must be entered into by the Trust with an Eligible Swap Counterparty; and

(o) Any class of Certificates to which one or more swap agreements entered into by the Trust applies may be acquired or held by plans in reliance upon this proposed exemption only if such plans are represented by "Qualified Plan Investors."

**FOR FURTHER INFORMATION CONTACT:** Mr. E.F. Williams of the Department, telephone (202) 219-8194. (This is not a toll-free number.)

Citibank (South Dakota), N.A., Citibank (Nevada), N.A., and Affiliates  
Located in North Sioux Falls, South Dakota  
(Application No. D-10313)

### Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

#### Section I—Transactions

A. Effective as of the date this proposed exemption is granted, the restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to the

following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the trust, the sponsor or an underwriter and an employee benefit plan subject to the Act or section 4975 of the Code (a plan) when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to Section I.A.(1) or (2).

Notwithstanding the foregoing, Section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate on behalf of an Excluded Plan, as defined in Section III.K. below, by any person who has discretionary authority or renders investment advice with respect to the assets of the Excluded Plan that are invested in certificates.<sup>18</sup>

B. Effective as of the date this proposed exemption is granted, the restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(E) of the Code, shall not apply to:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the trust, the sponsor or an underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to receivables contained in the trust constituting 0.5 percent or less of the fair market value of the aggregate undivided interest in the trust allocated to the certificates of a series, or (b) an affiliate of a person described in (a); if

(i) The plan is not an Excluded Plan; and  
(ii) Solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested is acquired by persons independent of the members of the

<sup>18</sup> Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3-21(c).

Restricted Group, as defined in Section III.L., and at least 50 percent of the aggregate undivided interest in the trust allocated to the certificates of a series is acquired by persons independent of the Restricted Group;

(iii) A plan's investment in each class of certificates of a series does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition;

(iv) Immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice is invested in certificates representing the aggregate undivided interest in a trust allocated to the certificates of a series and containing receivables sold or serviced by the same entity;<sup>19</sup> and

(v) Immediately after the acquisition of the certificates, not more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice is invested in certificates representing an interest in the trust, or trusts containing receivables sold or serviced by the same entity. For purposes of paragraphs B.(1)(iv) and B.(1)(v) only, an entity shall not be considered to service receivables contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that conditions set forth in Section I. B.(1)(i), (iii) through (v) are met; and

(3) The continued holding of certificates acquired by a plan pursuant to Section I.B.(1) or (2).

C. Effective as of the date that the proposed exemption is granted, the restrictions of sections 406(a), 406(b) and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust, including the reassignment to the sponsor of receivables, the removal from the trust of accounts previously designated to the trust, the changing of the underlying terms of accounts designated to the trust, the adding of

<sup>19</sup> For purposes of this proposed exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

new receivables to the trust, the designation of new accounts to the trust, the retention of a retained interest by the sponsor in the receivables, the exercise of the right to cause the commencement of amortization of the principal amount of the certificates, or the use of any eligible swap transactions, provided:

(1) Such transactions are carried out in accordance with the terms of a binding pooling and servicing agreement; and

(2) The pooling and servicing agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase certificates issued by the trust;<sup>20</sup>

(3) The addition of new receivables or designation of new accounts, or the removal of receivables or previously-designated accounts, meets the terms and conditions for such additions, designations or removals as are described in the prospectus or private placement memorandum for such certificates, which terms and conditions have been approved by Standard & Poor's Ratings Services, Moody's Investor Service, Inc., Duff & Phelps Credit Rating Co., or Fitch Investors Service, L.P., or their successors (collectively, the Rating Agencies), and does not result in the certificates receiving a lower credit rating from the Rating Agencies than the then current rating for the Certificates; and

(4) The series of which the certificates are a part will be subject to an Economic Early Amortization Event, which is set forth in the pooling and servicing agreement and described in the prospectus or private placement memorandum associated with the series, the occurrence of which will cause any Revolving Period, Controlled Amortization Period, or Accumulation Period applicable to the certificates to end, and principal collections to be applied to monthly payments of principal to, or accumulated for the account of, the certificateholders of such series until the earlier of: (i) payment in full of the outstanding principal amount

of such certificates of such series, or (ii) the series termination date specified in the prospectus or private placement memorandum.

Notwithstanding the foregoing, Section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act, or from the taxes imposed under section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(E) or (F) of the Code, for the receipt of a fee by the servicer of the trust, in connection with the servicing of the receivables and the operation of the trust, from a person other than the trustee or sponsor, unless such fee constitutes a "qualified administrative fee" as defined in Section III.S. below.

D. Effective as of the date that the proposed exemption is granted, the restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by sections 4975(a) and (b) of the Code, by reason of sections 4975(c)(1)(A) through (D) of the Code, shall not apply to any transaction to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider as described in section 3(14)(F), (G), (H) or (I) of the Act or section 4975(e)(2)(F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

#### *Section II—General Conditions*

A. The relief provided under Section I is available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as such terms would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating at the time of such acquisition that is either: (i) in one of the two highest generic rating categories from any one of the Rating Agencies; or (ii) for certificates with a duration of one year or less, the highest short-term generic rating category from any one of the Rating Agencies; provided that, notwithstanding such ratings, this exemption (if granted) shall apply to a particular class of certificates only if such class (an Exempt Class) is part of a series in which credit support is provided to the Exempt Class through a senior-subordinated series structure or

other form of third-party credit support which, at a minimum, represents five (5) percent of the outstanding principal balance of certificates issued for the Exempt Class, so that an investor in the Exempt Class will not bear the initial risk of loss;

(4) The trustee is not an affiliate of any other member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of a pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the consideration received by the sponsor as a consequence of the assignment of receivables (or interests therein) to the trust represents not more than the fair market value of such receivables (or interests); and the sum of all payments made to and retained by the servicer, that are allocable to the series of certificates purchased by a plan, represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith;

(6) The plan investing in such certificates is an "accredited investor" as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission (SEC) under the Securities Act of 1933;

(7) The trustee of the trust is a substantial financial institution or trust company experienced in trust activities and is familiar with its duties, responsibilities, and liabilities as a fiduciary under the Act (i.e. ERISA). The trustee, as the legal owner of the receivables in the trust, enforces all the rights created in favor of certificateholders of such trust, including employee benefit plans subject to the Act;

(8) Prior to the issuance of any new series in the trust, confirmation must be received from the Rating Agencies that such issuance will not result in the reduction or withdrawal of the then current rating or ratings of the certificates held by any plan pursuant to this exemption;

(9) To protect against fraud, chargebacks or other dilution of receivables in the trust, the pooling and

<sup>20</sup> In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions. For purposes of this proposed exemption, all references to "prospectus" include any related supplement thereto, and any documents incorporated by reference therein, pursuant to which certificates are offered to investors.

servicing agreement and the Rating Agencies require the sponsor to maintain a seller interest of not less than the greater of (i) 2 percent of the initial aggregate principal balance of investor certificates issued by the trust, or (ii) 7 percent of the outstanding aggregate principal balance of investor certificates issued by the trust;

(10) Each receivable added to the trust will be an eligible receivable, based on criteria of the Rating Agency and as specified in the pooling and servicing agreement. The pooling and servicing agreement requires that any change in the terms of any cardholder agreements also be made applicable to the comparable segment of Accounts owned or serviced by the sponsor which are part of the same program or have the same or substantially similar characteristics;

(11) The pooling and servicing agreement limits the number of the sponsor's newly originated accounts to be added to the trust, unless the Rating Agency otherwise affirmatively consents, to the following: (i) with respect to any three month period, 15 percent of the number of existing accounts designated to the trust as of the first day of such period, and (ii) with respect to any calendar year, 20 percent of the number of existing accounts designated to the trust as of the first day of such calendar year;

(12) The pooling and servicing agreement requires the sponsor to deliver an opinion of counsel semi-annually confirming the validity and perfection of each transfer of newly originated accounts to the trust;

(13) The pooling and servicing agreement requires the sponsor and the trustee to receive at specified quarterly intervals during the year, confirmation from a Rating Agency that the addition of all newly originated accounts added to the trust (during the three month period ending in the calendar month prior to such confirmation) will not have resulted in a Ratings Effect;

(14) If a particular series of certificates held by any plan involves a Ratings Dependent or Non-Ratings Dependent Swap entered into by the trust, then each particular swap transaction relating to such certificates:

(a) Shall be an Eligible Swap;

(b) Shall be with an Eligible Swap Counterparty;

(c) In the case of a Ratings Dependent Swap, shall include as an early amortization event, as specified in the pooling and servicing agreement, the withdrawal or reduction by any Rating Agency of the swap counterparty's credit rating below a level specified by the Rating Agency where the servicer (as

agent for the trustee) has failed, for a specified period after such rating withdrawal or reduction, to meet its obligation under the pooling and servicing agreement to:

(i) Obtain a replacement swap agreement with an Eligible Swap Counterparty which is acceptable to the Rating Agency and the terms of which are substantially the same as the current swap agreement (at which time the earlier swap agreement shall terminate); or

(ii) Cause the swap counterparty to establish any collateralization or other arrangement satisfactory to the Rating Agency such that the then current rating by the Rating Agency of the particular series of certificates will not be withdrawn or reduced;

(d) In the case of a Non-Ratings Dependent Swap, shall provide that, if the credit rating of the swap counterparty is withdrawn or reduced below the lowest level specified in Section III.II. hereof, the servicer (as agent for the trustee) shall within a specified period after such rating withdrawal or reduction:

(i) Obtain a replacement swap agreement with an Eligible Swap Counterparty, the terms of which are substantially the same as the current swap agreement (at which time the earlier swap agreement shall terminate); or

(ii) Cause the swap counterparty to post collateral with the trustee of the trust in an amount equal to all payments owed by the counterparty if the swap transaction were terminated; or

(iii) Terminate the swap agreement in accordance with its terms; and

(e) Shall not require the trust to make any termination payments to the swap counterparty (other than a currently scheduled payment under the swap agreement) except from "Excess Finance Charge Collections" (as defined below in Section III.LL.) or other amounts that would otherwise be payable to the servicer or the seller; and

(15) Any Series of certificates which entails one or more swap agreements entered into by the trust shall be sold only to Qualified Plan Investors.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, or any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under Section I, if the provision in Section II.A.(6) above is not satisfied for the acquisition or holding by a plan of such certificates, provided that:

(1) Such condition is disclosed in the prospectus or private placement memorandum; and

(2) In the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees shall be required to make a written representation regarding compliance with the condition set forth in Section II.A.(6).

### Section III—Definitions

For purposes of this proposed exemption:

#### A. Certificate means

(1) A certificate:

(a) That represents a beneficial ownership interest in the assets of a trust;

(b) That entitles the holder to payments denominated as principal and interest, and/or other payments made in connection with the assets of such trust, either currently, or after a Revolving Period during which principal payments on assets in the trust are reinvested in new assets; or

(2) A certificate denominated as a debt instrument that represents an interest in a financial asset securitization investment trust (FASIT) within the meaning of section 860L of the Code, and that is issued by and is an obligation of a trust; which is sold upon initial issuance by an underwriter (as defined in Section III.C.) in an underwriting or private placement.

For purposes of this proposed exemption, references to "certificates representing an interest in a trust" include certificates denominated as debt which are issued by a trust.

B. Trust means an investment pool, the corpus of which is held in trust and consists solely of:

(1) Either

(a) Receivables (as defined in Section III.T.); or

(b) Participations in a pool of receivables (as defined in Section III.T.) where such beneficial ownership interests are not subordinated to any other interest in the same pool of receivables;<sup>21</sup>

<sup>21</sup> The Department notes that no relief would be available under the exemption if the participation interests held by the trust were subordinated to the rights and interests evidenced by other

(2) Property which has secured any of the assets described in Section III.B.(1);<sup>22</sup>

(3) Undistributed cash or permitted investments made therewith maturing no later than the next date on which distributions are to be made to certificate holders, except during a Revolving Period (as defined herein) when permitted investments are made until such cash can be reinvested in additional receivables described in paragraph (a) of this Section III.B.(1);

(4) Rights of the trustee under the pooling and servicing agreement, and rights under any cash collateral accounts, insurance policies, third-party guarantees, contracts of suretyship and other credit support arrangements for any certificates, swap transactions, or under any yield supplement agreements,<sup>23</sup> yield maintenance agreements or similar arrangements; and

(5) Rights to receive interchange fees received by the sponsor as partial compensation for the sponsor's taking credit risk, absorbing fraud losses and funding receivables for a limited period prior to initial billing with respect to accounts designated to the trust.

Notwithstanding the foregoing, the term "trust" does not include any investment pool unless: (i) the investment pool consists only of receivables of the type which have been included in other investment pools; (ii) certificates evidencing interests in such other investment pools have been rated in one of the two highest generic rating categories by at least one of the Rating Agencies for at least one year prior to the plan's acquisition of certificates pursuant to this exemption; and (iii) certificates evidencing an interest in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

C. *Underwriter* means an entity which has received an individual prohibited transaction exemption from the Department that provides relief for the operation of asset pool investment trusts that issue "asset-backed" pass-through securities to plans, that is similar in

participation interests in the same pool of receivables.

<sup>22</sup> Citibank states that it is possible for credit card receivables to be secured by bank account balances or security interests in merchandise purchased with credit cards. Thus, the proposed exemption should permit foreclosed property to be an eligible trust asset.

<sup>23</sup> In a series involving an accumulation period (as defined in Section III.AA), a yield supplement agreement may be used by the Trust to make up the difference between (i) the reinvestment yield on permitted investments, and (ii) the interest rate on the certificates of that series.

format and structure to this proposed exemption (the Underwriter Exemptions);<sup>24</sup> any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with such entity; and any member of an underwriting syndicate or selling group of which such firm or affiliated person described above is a manager or co-manager with respect to the certificates.

D. *Sponsor* means Citibank or an affiliate of Citibank that organizes a trust by transferring credit card receivables or interests therein to the trust in exchange for certificates.

E. *Master Servicer* means Citibank or an entity affiliated with Citibank that is a party to the pooling and servicing agreement relating to trust receivables and is fully responsible for servicing, directly or through subservicers, the receivables in the trust pursuant to the pooling and servicing agreement.

F. *Subservicer* means Citibank or an affiliate, or an entity unaffiliated with Citibank, which, under the supervision of and on behalf of the master servicer, services receivables contained in the trust, but is not a party to the pooling and servicing agreement.

G. *Servicer* means Citibank or an affiliate which services receivables contained in the trust, including the master servicer and any subservicer or their successors pursuant to the pooling and servicing agreement.

H. *Trustee* means an entity which is independent of Citibank and its affiliates and is the trustee of the trust. In the case of certificates which are denominated as debt instruments, "trustee" also means the trustee of the indenture trust.

I. *Insurer* means the insurer or guarantor of, provider of other credit support for, or other contractual counterparty of, a trust. Notwithstanding the foregoing, a swap counterparty is not an insurer, and a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust.

J. *Obligor* means any person, other than the insurer, that is obligated to make payments with respect to any receivable included in the trust.

K. *Excluded Plan* means any plan with respect to which any member of the Restricted Group is a "plan sponsor" within the meaning of section 3(16)(B) of the Act.

<sup>24</sup> For a listing of the Underwriter Exemptions, see the description provided in the text of the operative language of Prohibited Transaction Exemption (PTE) 97-34 (62 FR 39021, July 21, 1997).

L. *Restricted Group* with respect to a class of certificates means:

- (1) Each underwriter;
- (2) Each insurer;
- (3) The sponsor;
- (4) The trustee;
- (5) Each servicer;
- (6) Each swap counterparty;
- (7) Any obligor with respect to

receivables contained in the trust constituting more than 0.5 percent of the fair market value of the aggregate undivided interest in the trust allocated to the certificates of a series, determined on the date of the initial issuance of such series of certificates by the trust; or (8) Any affiliate of a person described in Section III.L.(1)-(7).

M. *Affiliate* of another person includes:

- (1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;
- (2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and
- (3) Any corporation or partnership of which such other person is an officer, director or partner.

N. *Control* means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person will be "independent" of another person only if:

- (1) Such person is not an affiliate of that other person; and
- (2) The other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

P. *Sale* includes the entrance into a forward delivery commitment (as defined in Section III.Q. below), provided:

- (1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's length transaction with an unrelated party;
- (2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and
- (3) At the time of the delivery, all conditions of this exemption applicable to sales are met.

Q. *Forward Delivery Commitment* means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory

contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificates from, the other party).

R. *Reasonable Compensation* has the same meaning as that term is defined in 29 CFR section 2550.408c-2.

S. *Qualified Administrative Fee* means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing with respect to the receivables;

(2) The servicer may not charge the fee absent the act or failure to act referred to in (1);

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement or described in all material respects in the prospectus or private placement memorandum provided to the plan before it purchases certificates issued by the trust; and

(4) The amount paid to investors in the trust is not reduced by the amount of any such fee waived by the servicer.

T. *Receivables* means secured or unsecured obligations of credit card holders which have arisen or arise in Accounts designated to a trust. Such obligations represent amounts charged by cardholders for merchandise and services and amounts advanced as cash advances, as well as periodic finance charges, annual membership fees, cash advance fees, late charges on amounts charged for merchandise and services and over-limit fees and fees of a similar nature designated by card issuers (other than a qualified administrative fee as defined in Section III.S. above).

U. *Accounts* are revolving credit card accounts serviced by Citibank or an affiliate, which were originated or purchased by Citibank or an affiliate, and are designated to a trust such that receivables arising in such accounts become assets of the trust.

V. *Pooling and Servicing Agreement* means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust and any supplement thereto pertaining to a particular series of certificates. In the case of certificates which are denominated as debt instruments, "pooling and servicing agreement" also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

W. *Early Amortization Event* means the events specified in the pooling and

servicing agreement that result (in some instances without further affirmative action by any party) in an early amortization of the certificates, including: (1) the failure of the sponsor or the servicer (i) to make any payment or deposit required under the pooling and servicing agreement or supplement thereto within five (5) business days after such payment or deposit was required to be made, or (ii) to observe or perform any of its other covenants or agreements set forth in the pooling and servicing agreement or supplement thereto, which failure has a material adverse effect on investors and continues unremedied for 60 days; (2) a breach of any representation or warranty made by the sponsor or the servicer in the pooling and servicing agreement or supplement thereto that continues to be incorrect in any material respect for 60 days; (3) the occurrence of certain bankruptcy events relating to the sponsor or the servicer; (4) the failure by the sponsor to convey to the trust additional receivables to maintain the minimum seller interest that is required by the pooling and servicing agreement and the Rating Agencies; (5) if a class of investor certificates is in an Accumulation Period, the amount on deposit in the accumulation account in any month is less than the amount required to be on deposit therein; (6) the failure to pay in full amounts owing to investors on the expected maturity date; and (7) the Economic Early Amortization Event.

X. *Series* means an issuance of a class or various classes of certificates by the trust all on the same date pursuant to the same pooling and servicing agreement and any supplement thereto and restrictions therein.

Y. *Revolving Period* means a period of time, as specified in the pooling and servicing agreement, during which principal collections allocated to a series are reinvested in newly generated receivables.

Z. *Controlled Amortization Period* means a period of time specified in the pooling and servicing agreement during which a portion of the principal collections allocated to a series will commence to be paid to the certificateholders of such series in installments.

AA. *Accumulation Period* means a period of time specified in the pooling and servicing agreement during which a portion of the principal collections allocated to a series will be deposited in an account to be distributed to certificateholders in a lump sum on the expected maturity date.

BB. *CCA or Cash Collateral Account* means that certain account, established

by the trustee, that serves as credit enhancement with respect to the investor certificates and consists of cash deposits and the proceeds of investments thereon, which investments are permitted investments, as defined below.

CC. *Permitted Investments* means investments which: (1) are direct obligations of, or obligations fully guaranteed as to timely payment of principal and interest by, the United States or any agency or instrumentality thereof, provided that such obligation is backed by the full faith and credit of the United States, or (2) have been rated (or the obligor has been rated) in one of the three highest generic rating categories by a Rating Agency; are described in the pooling and servicing agreement; and are permitted by the Rating Agency.

DD. *Group* means a group of any number of series offered by the trust that share finance charge and/or principal collections in the manner described in the prospectus.

EE. *An Economic Early Amortization Event* occurs automatically when finance charge collections averaged over three consecutive months are less than the total amount payable on the investor certificates, including (i) amounts payable to, or on behalf of, certificateholders, with respect to interest, defaults, and chargeoffs, (ii) servicing fees payable to the servicer, and (iii) any credit enhancement fee payable to the third-party credit enhancer and allocable to the certificateholders. With respect to a series to which an Accumulation Period (as defined above in Section III.AA.) applies, an additional Economic Early Amortization Event occurs when, for any time during the Accumulation Period, the yield on the receivables in the Trust is less than the weighted average of the certificate rates of all series included in a particular Group within the Trust.

FF. *Ratings Effect* means the reduction or withdrawal by a Rating Agency of its then current rating of the investor certificates of any outstanding series.

GG. *Principal Receivables Discount* means, with respect to any account designated by the sponsor, the portion of the related principal receivables that represents a discount from the face value thereof and that is treated under the pooling and servicing agreement as finance charge receivables.

HH. *Eligible Swap* means an interest rate swap, or (if purchased by or on behalf of the trust) an interest rate cap, that is part of the structure of a Series of certificates:

(1) Which is denominated in U.S. Dollars;

(2) Pursuant to which the trust pays or receives on or immediately prior to the respective payment or distribution date for the series of certificates, a fixed rate of interest, or a floating rate of interest based on a publicly available index (e.g. LIBOR or the U.S. Federal Reserve's Cost of Funds Index (COFI)), with the trust receiving such payments on at least a quarterly basis and obligated to make separate payments no more frequently than the swap counterparty, with all simultaneous payments being netted;

(3) Which has a notional amount that does not exceed either (i) the certificate balance of the class of certificates to which the swap relates, or (ii) the portion of the certificate balance of such class represented by receivables;

(4) Which is not leveraged, (i.e. payments are based on the applicable notional amount, the day count fractions, the fixed or floating rates designated in (2) above, and the difference between the products thereof, calculated on a one to one ratio and not on a multiplier of such difference);

(5) Which has a termination date that is the earlier of the date on which the trust terminates or the related Series of certificates is fully repaid; and

(6) Which does not incorporate any provision which could cause a unilateral alteration in a provision described in clauses (1) through (4) hereof without the consent of the trustee.

II. *Eligible Swap Counterparty* means a bank or other financial institution with a rating at the date of issuance of the certificates by the trust which is in one of the three highest long-term credit rating categories, or one of the two highest short-term credit rating categories, utilized by at least one of the Rating Agencies rating the certificates; provided that, if a swap counterparty is relying on its short-term rating to establish eligibility hereunder, such counterparty must either have a long-term rating in one of the three highest long-term rating categories or not have a long-term rating from the applicable Rating Agency, and provided further that if the series of certificates with which the swap is associated has a final maturity date of more than one year from the date of issuance of the certificates, and such swap is a Ratings Dependent Swap, the swap counterparty is required by the terms of the swap to establish any collateralization or other arrangement satisfactory to the Rating Agency in the event of a ratings downgrade of the swap counterparty.

JJ. *Qualified Plan Investor* means a plan investor or group of plan investors on whose behalf the decision to purchase certificates is made by an appropriate independent fiduciary that is qualified to analyze and understand the terms and conditions of any swap transaction used by the trust and the effect such swap would have upon the credit ratings of the certificates. For purposes of the proposed exemption, such a fiduciary is either:

(1) A "qualified professional asset manager" (QPAM), as defined under Part V(a) of PTE 84-14 (49 FR 9494, 9506, March 13, 1984);<sup>25</sup>

(2) An "in-house asset manager" (INHAM), as defined under Part IV(a) of PTE 96-23 (61 FR 15975, 15982, April 10, 1996);<sup>26</sup> or

(3) A plan fiduciary with total assets under management of at least \$100 million at the time of the acquisition of such certificates.

KK. *Ratings Dependent Swap* means an interest rate swap, or (if purchased by or on behalf of the trust) an interest rate cap contract, that is part of the structure of a series of certificates where the rating assigned by the Rating Agency to any series of certificates held by any plan is dependent on the terms and conditions of the swap and the rating of the swap counterparty, and if such certificate rating is not dependent on the existence of such swap and rating of the swap counterparty, such swap or cap shall be referred to as a "Non-Ratings Dependent Swap". With respect to a Non-Ratings Dependent Swap, each Rating Agency rating the certificates must confirm, as of the date of issuance of the certificates by the trust, that entering into an Eligible Swap with such counterparty will not affect the rating of the certificates.

LL. *Excess Finance Charge Collections* means, as of any day funds are distributed from the trust, the amount by which the finance charge collections allocated to certificates of a series

<sup>25</sup> PTE 84-14 provides a class exemption for transactions between a party in interest with respect to an employee benefit plan and an investment fund (including either a single customer or pooled separate account) in which the plan has an interest, and which is managed by a QPAM, provided certain conditions are met. QPAMs (e.g. banks, insurance companies, registered investment advisers with total client assets under management in excess of \$50 million) are considered to be experienced investment managers for plan investors that are aware of their fiduciary duties under ERISA.

<sup>26</sup> PTE 96-23 permits various transactions involving employee benefit plans whose assets are managed by an INHAM, an entity which is generally a subsidiary of an employer sponsoring the plan which is a registered investment adviser with management and control of total assets attributable to plans maintained by the employer and its affiliates which are in excess of \$50 million.

exceed the amount necessary to pay certificate interest, servicing fees and expenses, to satisfy cardholder defaults or charge-offs, and to reinstate credit support.

The Department notes that this proposed exemption, if granted, will be included within the meaning of the term "Underwriter Exemption" as it is defined in Section V(h) of the Grant of the Class Exemption for Certain Transactions Involving Insurance Company General Accounts, which was published in the **Federal Register** on July 12, 1995 (see PTE 95-60, 60 FR 35925).

### Summary of Facts and Representations

1. The applicants are Citibank (South Dakota), N.A., Citibank (Nevada), N.A. (together referred to herein as either "the Banks" or "Citibank"), and their Affiliates (collectively, the Applicants). Each of the Banks is a national banking association and an indirect wholly-owned subsidiary of Citicorp.

2. The Banks are, collectively, through their securitization trust vehicles, the largest issuers of credit card receivable asset-backed securities (ABS) in the United States. As of May 26, 1996, such vehicles had issued over \$46 billion of credit card receivable ABS. The Banks created Citibank Credit Card Master Trust I (the Trust), formerly known as Standard Credit Card Master Trust I, in May 1991 by entering into a pooling and servicing agreement (a Pooling Agreement) with Yasuda Bank and Trust Company (U.S.A.), as trustee (the Trustee), for the purpose of securitizing a portion of each Bank's portfolio of credit card receivables.

Although the Banks, the Trust and the Pooling Agreement are described herein, the Applicants request an exemption for any master trust similar to the Trust (a Similar Master Trust)<sup>27</sup> established by either of the Banks or an Affiliate pursuant to a pooling and servicing agreement or other contractual arrangement similar to the Pooling

<sup>27</sup> With respect to such Similar Master Trusts, Citibank states that the Small Business Act of 1996 created a new form of statutory entity called a "financial asset securitization investment trust" (FASIT) which may be used to securitize debt obligations such as credit card receivables, home equity loans, and automobile loans. The Applicants state that a FASIT is equitably owned by a single taxable corporation and issues asset-backed securities that are treated as debt for Federal Income Tax purposes. Activities of a FASIT are generally limited to holding a portfolio of qualified loans. For local law purposes, a FASIT might be a trust, a corporation, or a designated subset of the assets of a trust or a corporation. The Applicants represent that some certificates covered by the proposed exemption may be issued by a FASIT, assuming all of the conditions of the exemption are met including the requirement that the certificates be issued by a Trust (as defined herein).

Agreement and satisfying the conditions set forth in this proposed exemption. In addition, although Citibank (South Dakota) is described as the owner of Accounts and the servicer and a seller with respect to the Trust, the Applicants request an exemption for any Similar Master Trust established by the Banks or one or more Affiliates of the Banks, regardless of the identity or affiliation of the servicer, for which Citibank or an Affiliate acts as the Master Servicer.

#### *The Series*

3. The Pooling Agreement allows the Trust to issue multiple series of investor certificates (each, a Series) with different coupons, interest payment dates, maturities and other terms. The assets of the Trust consist primarily of receivables (the Receivables) from a portfolio of revolving credit card accounts (the Accounts) and collections thereon. The Banks are required to provide sufficient Receivables to allow the reinvestment of principal collections during the Revolving Period (as discussed below) for a Series. The Banks retain an ownership interest in the Trust in the form of a seller certificate. By maintaining this interest, the Banks share with the certificateholders of each Series a pro rata mutual interest in the overall credit quality of the Receivables in the Trust.

Investor certificates of a Series may be sold by the Banks directly to purchasers, through underwriting syndicates led by one or more managing underwriters, through an underwriter acting alone or through agents designated from time to time. As of June 25, 1997, investors in the Trust owned approximately \$24.5 billion in certificates issued by the Trust, comprising 33 outstanding Series. The Banks expect to issue additional Series evidencing interests in the Trust from time to time. The Banks may offer additional Series with terms similar to or significantly different from an outstanding Series. Before issuance of any new Series, the Banks must receive confirmation from Standard & Poor's Ratings Group, Moody's Investors Service, Inc., Duff & Phelps Credit Rating Co., or Fitch Investors Service, L.P. (a Rating Agency) that the ratings on any outstanding Series will not be reduced or withdrawn (a Ratings Effect) as a result of such new issuance. The particular terms of each Series are determined at the time of sale and are contained in a supplement to the Pooling Agreement (a Series Supplement).

The investor certificates of each Series represent beneficial interests in the assets of the Trust and evidence the right to receive distributions of

principal and interest therefrom. Although representing beneficial interests in the Trust assets, the investor certificates have a structure similar to debt instruments, with a principal amount and a coupon. The investor certificates are treated as debt for federal income tax purposes, and are also issued in authorized denominations like debt. Each Series has an expected maturity date (the Expected Final Payment Date) and a legal final maturity date (the Series Termination Date). Citibank states that the Expected Final Payment Date is not the date on which the payment of the security is legally obligated to be paid. Rather, the Expected Final Payment Date is the date on which, to a high degree of certainty, collections on the Receivables are expected to be sufficient to repay the investors. However, the investors must be repaid by the Series Termination Date and, if necessary, any interest in the Receivables represented by the investor certificates of such Series will be sold and the proceeds distributed to investors to make such repayment.

All Series issued by the Trust to date are subdivided into a senior class of investor certificates and a junior or subordinated class of investor certificates, or have the benefit of third-party credit support such that a person other than an investor in senior certificates bears the initial risk of loss. In this regard, Citibank represents that the particular class of certificates for each series to which this proposed exemption would apply (an Exempt Class) will have credit support provided to the Exempt Class through either a senior-subordinated series structure or other form of third party credit support which, at a minimum, will represent five (5) percent of the outstanding principal balance of certificates issued for the Exempt Class, so that an investor in the Exempt Class will not bear the initial risk of loss.

The subdivision of a Series into two classes, along with the credit enhancement discussed herein, permits the senior or Class A certificates to receive an "AAA" rating, the highest possible investment grade rating. The subordinate or Class B certificates also receive an investment grade rating, typically "A". The ratings address the likelihood that investors will receive all interest when due and principal by the legal final maturity date. As discussed in more detail below, these ratings are based upon, among other things, (i) the historical performance of the Receivables arising in the Accounts, (ii) a loan made by a third party financial institution to a cash collateral account (CCA) established by the Trustee to

serve as credit enhancement for the Class A and Class B Certificates or other credit enhancement, and (iii) in the case of the Class A Certificates, the subordination of the Class B Certificates.

The Applicants state that if a CCA is used as credit enhancement for a Series, only cash in the form of a loan will be contributed or deposited in a CCA. The loans made to a CCA will be made by third-party financial institutions, unrelated to Citibank. The Trustee will have the right to draw on the CCA under the terms of the Series supplement to the Pooling Agreement and the related loan agreement for the CCA. Cash deposits held in a CCA will be invested in certain permitted investments, as described in the Pooling Agreement, and such investments will be either highly rated or otherwise approved by a Rating Agency. The Applicants state further that not all Series will have the benefit of a CCA. Some Series will have other forms of credit enhancement (such as a letter of credit or a reserve fund) as set forth in the applicable prospectus supplement for the Series.

In general, under current Rating Agency guidelines for the Master Trust, the Class A Certificates comprise 94 percent of the principal amount of a Series and the Class B Certificates comprise 6 percent of the principal amount of a Series. Citibank states that where a CCA is used as enhancement for a Series, the CCA will be funded at closing in an amount generally equal to 7 percent of the principal amount of the Series. The CCA is often further divided into a 5 percent shared CCA, which is shared by the Class A and Class B Certificateholders, but with the Class A Certificateholders having priority, and a 2% Class B CCA, which is for the exclusive benefit of the Class B Certificateholders. The CCA provider receives a monthly fee for providing the loan. This fee is deducted from the monthly finance charge collections allocated to the Series, but only after first deducting amounts payable to, or on behalf of, the investor certificateholders of such Series, as described below.

Citibank represents that the Trust may commence a new program (the "MTC Program") for the issuance of a new Series of investor certificates to be comprised of senior certificates (Series A Certificates) and subordinate certificates (Series B Certificates). Under the MTC Program, the Series B Certificates will be subordinated to each Series of Series A Certificates, in accordance with the current Rating Agency guidelines. The Series issued under the MTC Program will also have the benefit of a common CCA which

will be funded in an amount sufficient to permit each of the Series A Certificates to receive an "AAA" rating and each of the Series B Certificates to receive at least an "A" rating.

#### The Receivables and the Accounts

4. The Receivables conveyed by the Banks to the Trust consist of all amounts charged by cardholders for merchandise and services and amounts advanced as cash advances (Principal Receivables), and all periodic finance charges, annual membership fees, cash advance fees, late charges on amounts charged for merchandise and services and certain other fees designated by the Banks (Finance Charge Receivables). Citibank states that as of April 21, 1997, the Trust had \$35,677,604,475 in Receivables, of which \$35,175,269,487 were Principal Receivables and \$502,335,488 were Finance Charge Receivables. The Receivables conveyed to the Trust to date were generated under the VISA or MasterCard<sup>28</sup> programs and were either originated by Citibank or purchased by Citibank from other credit card issuers. Citibank states that other credit card receivables may be included in the Trust so long as the eligibility criteria discussed herein are met.

The Accounts are owned by Citibank (South Dakota), but a participation in the Receivables in certain of the Accounts was sold to Citibank (Nevada) prior to their conveyance to the Trust. The Accounts have been selected from substantially all of the Eligible Accounts (as defined under "Eligibility Criteria" below) in the credit card portfolio of Citibank (South Dakota) (referred to herein as "the Portfolio"). Citibank (South Dakota) believes that the Accounts are representative of the Eligible Accounts in the Portfolio. Citibank represents in the Pooling Agreement that the inclusion of the Accounts, as a whole, does not represent an adverse selection from among the Eligible Accounts.

The Pooling Agreement designates Citibank (South Dakota) to service the Accounts on behalf of the Trust, including collecting payments due under the Receivables. Citibank, as the servicer of the Trust, receives fees for its services from the Trustee or sponsor of the Trust. Citibank states that the sum of all payments made to and retained by Citibank, as the servicer of the Trust, which are allocable to the series of certificates purchased by a plan, will represent not more than reasonable

compensation for such services and reimbursement of any reasonable expenses in connection therewith. Citibank, in its role as servicer of the Receivables in the Trust, does not receive fees from other persons other than the Trustee or sponsor. Citibank may receive fees from others for activities unrelated to the Trust, and may receive payments from obligors on Receivables in the Trust because it has some other relationship to the obligors, such as the provider of credit card insurance. In this regard, Citibank states that the proposed exemption would permit it to receive a "qualified administrative fee" (as defined in Section III.S) from a person other than the Trustee or sponsor of the Trust under circumstances which are similar to those which were permitted in the Underwriter Exemptions.

Principal receivables are sold to the Trust at par (or, as discussed below, at a discount to par) in exchange for a seller certificate or to maintain investor certificates during the Revolving Period. Each dollar of investor certificates entitles an investor to a dollar of principal receivables. Prior to transferring principal receivables to the Trust, Citibank may redesignate a portion of principal receivables to be classified as finance charge receivables (a/k/a the Principal Receivables Discount). This allows Citibank to transfer lower yielding receivables to the Trust at a discount from their par value and to treat the discounted portion of the principal receivables collected as finance charge receivables (a Discount Option). The Discount Option enables Citibank to add receivables relating to credit card accounts with relatively low finance charge rates without adversely effecting the "excess spread" between the certificate rate and the overall net yield on the receivables held in the Trust. The discounted portion of the principal receivables is not counted toward any requirements for maintaining the "required minimum principal balance" (as discussed below). Citibank states that the redesignation of principal receivables as finance charge receivables will not disadvantage investors as each dollar of investor certificates will always be entitled to a dollar of principal receivables held in the Trust.

Upon the sale of investor certificates, the transaction between Citibank and the Trust is characterized as a sale for generally accepted accounting principals. However, legal opinions issued in connection with such a sale may conclude that the transaction is either an absolute transfer of the receivables to the Trust or, in the

alternative, a grant of a perfected security interest in the Receivables for the benefit of certificateholders in the Trust.

The Pooling Agreement sets forth the various requirements governing the quantity and quality of Receivables that may be included in the Trust. In connection with any conveyance to the Trust, Citibank must make certain representations and warranties regarding the Receivables, including that the Receivables to be conveyed meet eligibility criteria described below and specified in the Pooling Agreement. Citibank also must maintain the level of Principal Receivables at or above a certain minimum amount specified by the Rating Agencies (see discussion of additions of accounts in Paragraph 7 below).

Notwithstanding such requirements, the Pooling Agreement contains provisions analogous to the collateral substitution provisions in a loan agreement or indenture relating to a secured loan, which permit Citibank, subject to certain conditions imposed by the Rating Agencies, to designate new Accounts or remove certain Accounts, to cause the reassignment to Citibank of previously conveyed Receivables and, subject to certain limitations, to change the underlying terms of the Accounts with cardholders.

#### 5. Representations and Warranties.

On the issuance date for a Series of investor certificates, Citibank makes representations and warranties to the Trust relating to the Receivables and Accounts to the effect, among other things, that:

(a) Each Account was an Eligible Account (as defined under the "Eligibility Criteria" below), generally as of the date the Receivables arising therein were initially conveyed to the Trust;

(b) Each of the Receivables then existing in the Accounts is an Eligible Receivable; and

(c) As of the date of creation of any new Receivable, such Receivable is an Eligible Receivable.

The Pooling Agreement provides that if Citibank breaches any such representation or warranty, and such breach has a material adverse effect on the investor certificateholders' interest, as determined by the Trustee, the Receivables with respect to the affected Account will be reassigned to Citibank if the breach remains uncured after a specified period of time.

Citibank states that it also represents and warrants to the Trust, among other things, that as of the issuance date for a Series of investor certificates the Pooling Agreement and Series

<sup>28</sup> VISA and MasterCard are registered trademarks of VISA U.S.A., Inc. and MasterCard International Incorporated, respectively.

Supplement thereto creates a valid sale, transfer and assignment to the Trust of all right, title and interest of Citibank in the Receivables or the grant of a first priority perfected security interest under the Uniform Commercial Code as in effect in South Dakota and Nevada in such Receivables. If Citibank breaches such representation or warranty, and such breach has a material adverse effect on the investor certificateholders' interest, the Trustee or the holders of the investor certificates may direct Citibank to accept the reassignment of the Receivables in the Trust and transfer funds to the Trust in an amount equal to the outstanding principal amount of the investor certificates plus accrued interest thereon.

6. *Eligibility Criteria.* An *Eligible Account* is a credit card account owned by Citibank (South Dakota) which: (a) is in existence and maintained by Citibank (South Dakota); (b) is payable in U.S. dollars; (c) in the case of initial Accounts, has a cardholder with a billing address located in the United States or its territories or possessions or a military address; (d) has a cardholder who has not been identified as being involved in a voluntary or involuntary bankruptcy proceeding; (e) has not been identified as an Account with respect to which the related card has been lost or stolen; (f) has not been sold or pledged to any other party; (g) does not have receivables which have been sold or pledged to any other party; and (h) in the case of the Accounts initially assigned to the Trust, is a VISA or MasterCard revolving credit card account.

An *Eligible Receivable* is a Receivable: (a) Which has arisen under an Eligible Account; (b) which was created in compliance in all material respects with all requirements of law and pursuant to a credit card agreement which complies in all material respects with all requirements of law; (c) with respect to which all material consents, licenses, approvals or authorizations of, or registrations with, any governmental authority required to be obtained or given in connection with the creation of such Receivable or the execution, delivery, creation and performance by Citibank (South Dakota) or by the original credit card issuer, if not Citibank (South Dakota), of the related credit card agreement have been duly obtained or given and are in full force and effect; (d) as to which at the time of its transfer to the Trust, the Banks or the Trust have good and marketable title, free and clear of all liens, encumbrances, charges and security interests; (e) which has been the subject of a valid transfer and assignment from

the Banks to the Trust of all the Banks' right, title and interest therein or the grant of a first priority perfected security interest therein (and in the proceeds thereof); (f) which will at all times be a legal, valid and binding payment obligation of the cardholder thereof enforceable against such cardholder in accordance with its terms, subject to certain customary exceptions relating to the bankruptcy of the cardholder; (g) which at the time of its transfer to the Trust, has not been waived or modified except as permitted under the Pooling Agreement; (h) which is not at the time of its transfer to the Trust subject to any right of rescission, set off, counterclaim or defense (including the defense of usury), other than certain bankruptcy-related defenses; (i) as to which Citibank has satisfied all obligations to be fulfilled at the time it is transferred to the Trust; (j) as to which Citibank has done nothing, at the time of its transfer to the Trust, to impair the rights of the Trust or investor certificateholders of a Series therein, and (k) which constitutes either an "account" or a "general intangible" under the Uniform Commercial Code as then in effect under South Dakota or Nevada state law.

7. *Additions of Accounts.* To maintain Citibank's seller interest in the Trust, the Pooling Agreement contains provisions analogous to collateral maintenance requirements under a secured loan that require Citibank to designate new Accounts (the receivables in which will be conveyed to the Trust) if, as of the end of any calendar week, the total amount of Principal Receivables in the Trust is less than the amount required by the Rating Agencies (the Required Minimum Principal Balance).

The Pooling Agreement provides that Citibank will be required to make a Lump Sum Addition to the Trust in the event that the amount of Principal Receivables is not maintained at a minimum level equal to the greater of: (a) 107 percent of the sum of the invested amounts of all outstanding investor certificates of all Series, or (b) 102 percent of the sum of the initial invested amounts of all outstanding investor certificates of all Series (or, if applicable for a particular Series, the highest invested amount during a Due Period,<sup>29</sup> or, during any accumulation period, scheduled amortization period, early amortization period or Class A amortization period, the highest

<sup>29</sup> A *Due Period* refers to the monthly period beginning at the close of business on the fourth-to-last business day of each month and ending at the close of business on the fourth-to-last business day of the immediately following month.

invested amount during the Due Period preceding the first Due Period for such accumulation scheduled amortization period, early amortization period or Class A amortization period). Citibank may, upon 30 days prior notice to the Trustee, the Rating Agency and any provider of Series credit enhancement, reduce the Required Minimum Principal Balance, provided that such reduction will not result in (1) a reduction or withdrawal of any Rating Agency's rating of the investor certificates of any outstanding Series, or (2) an adverse effect, as defined in the Pooling Agreement (an Adverse Effect) on the certificateholders of any Series, and provided further that the Required Minimum Principal Balance may never be less than 102 percent of the sum of the initial invested amounts of all outstanding investor certificates of all Series (or, if applicable for a particular Series, the highest invested amount during a Due Period, or, during any scheduled amortization period, early amortization period or Class A amortization period, the highest invested amount during the Due Period preceding the first Due Period for such scheduled amortization period, early amortization period or Class A amortization period).

As previously noted, the requirement that Citibank maintain Principal Receivables in an amount at least equal to the Required Minimum Principal Balance is one mandated by the Rating Agencies. The purpose of the Required Minimum Principal Balance is to ensure that Citibank's interest in the Trust is large enough to absorb dilution caused by obligors returning merchandise originally charged under their Account ("Returns") and possible seasonal fluctuations in the Receivables. In assessing the size of the Required Minimum Principal Balance, Rating Agencies generally consider a number of factors including historical portfolio dilution, the timing of Returns, the portfolio composition, rebate programs and the structural provisions designed to ensure that a minimum amount of Principal Receivables is maintained. The Rating Agencies must affirmatively confirm by written notice to the Trustee that any reduction in the Required Minimum Principal Balance will not result in the reduction or withdrawal of the rating assigned to any outstanding Series or class of investor certificates.

Conveyance of additional receivables (i.e. a Lump Sum Addition) may consist of:

- (a) Receivables arising in additional Eligible Accounts from the Portfolio;
- (b) Receivables arising in portfolios of revolving credit card accounts acquired

by the Banks from other credit card issuers;

(c) Receivables arising from certain non-premium and premium MasterCard and VISA credit card accounts previously transferred by Citibank to certain trusts in securitization transactions that have matured or terminated;

(d) Receivables arising in any other revolving credit card accounts of a type which have not been previously included in the Accounts;<sup>30</sup> and/or

(e) Participations in a pool of receivables.

After giving effect to a Lump Sum Addition, the total amount of Principal Receivables in the Trust will at least equal the Required Minimum Principal Balance. In addition, subject to the conditions contained in the Pooling Agreement, Citibank may from time to time, at its sole discretion, voluntarily make a Lump Sum Addition to the Trust.

Subject to limitations and conditions in the Pooling Agreement, Citibank from time to time may also designate, at its sole discretion, Receivables in newly originated Eligible Accounts to be included as Accounts (New Accounts). By adding Receivables in New Accounts, the Seller's interest will be increased, but the Seller and the investors will share interests in all of the Receivables, including all those arising in New Accounts and in Accounts previously assigned to the Trust. Citibank has designated New Accounts (the Receivables in which have been added to the Trust) since the creation of the Trust, and Citibank may continue to do so in the future. To protect the Trust from dramatic changes in composition, the number of New

<sup>30</sup> Because additional Accounts may not be accounts of the same type as previously included in the Trust, Citibank states that there can be no assurance that such additional Accounts will be of the same credit quality as the initial Accounts or the additional Accounts currently included in the Trust. In addition, such additional Accounts may consist of credit card accounts which have different terms than the initial Accounts, including lower periodic finance charges, which may have the effect of reducing the average yield on the portfolio of Accounts. However, as with any removal of any Accounts, the designation of additional Accounts will be subject to the satisfaction of certain conditions required by the Rating Agencies, including that (i) such addition will not result in a Ratings Effect (i.e. a lower credit rating for the certificates), and (ii) Citibank must deliver to the Trustee and any provider of credit enhancement for the Series a certificate of an authorized officer to the effect that, in the reasonable belief of Citibank, such addition will not at the time of such addition or at a future date cause an early amortization event or adversely affect the timing or amount of payments to certificateholders (referred to in the Series prospectus as an "Adverse Effect"—see Paragraph 8 regarding the Reassignment of Receivables for further discussion of an Adverse Effect).

Accounts Citibank may designate with respect to any specified three month period may not exceed 15 percent of the number of Accounts as of the first day of such period, and the number of New Accounts designated during any calendar year may not exceed 20 percent of the number of Accounts as of the first day of such calendar year. The Pooling Agreement also requires Citibank to deliver an opinion of counsel semi-annually with respect to the New Accounts included as Accounts, confirming the validity of each transfer of Receivables in such New Accounts.

8. *Reassignment of Receivables.* Citibank has the right to require the reassignment to Citibank of the Receivables with respect to certain Accounts. Citibank represents that it may desire such a reassignment, for example, to set up a new master trust or other securitization vehicle. However, such a reassignment may only occur upon satisfaction of certain conditions in the Pooling Agreement under guidelines established by the Rating Agencies, which are described in the Series prospectus. Citibank states that in order to satisfy such conditions, the Rating Agencies must confirm in advance that such reassignment will not cause the rating assigned to any outstanding Series or class of investor certificates to be withdrawn or reduced. In addition, Citibank must deliver an officers' certificate to the effect that Citibank reasonably believes that such reassignment will not, at the time of its occurrence or a future date: (a) Cause an early amortization event; (b) cause a reduction of the amounts of surplus finance charge collections with respect to any Series of investor certificates below the level required by the Rating Agencies; or (c) adversely affect the amount or timing of payments to investor certificateholders of any Series.

Only after satisfaction of these and other conditions set forth in the Series prospectus<sup>31</sup> for the removal of

<sup>31</sup> The complete conditions specified by the Series prospectus for the removal of Accounts from the Trust are as follows:

(a) on or before the fifth business day immediately preceding the date upon which such Accounts are to be removed, Citibank will give the Trustee, the Servicer, the Rating Agency and any provider of credit support (i.e., Series Enhancement) written notice of such removal specifying the date for removal of the Removed Accounts (the Removal Date);

(b) on or prior to the date that is five business days after the Removal Date, Citibank will deliver to the Trustee a list of the Removed Accounts specifying for each such Account, as of the removal notice date, its account number, the aggregate amount outstanding in such Account and the aggregate amount of Principal Receivables outstanding in such Account;

Accounts from the Trust will the Trustee execute and deliver to Citibank a written reassignment to reconvey to Citibank, without recourse, the Receivables arising in Removed Accounts (Removed Accounts).

9. *Modification to the Underlying Terms of the Accounts.* Each cardholder is subject to an agreement governing the terms and conditions of such cardholder's Account. Pursuant to such agreement, Citibank (South Dakota), as owner of the Accounts, has the right to change or terminate any terms, conditions, services or features of the Accounts (including increasing or decreasing periodic finance charges or minimum payments). Citibank has covenanted in the Pooling Agreement that, except as otherwise required by any requirement of law or as is deemed necessary by Citibank to maintain its credit card business on a competitive basis, it will not take actions which would reduce the net portfolio yield on the Receivables (after subtracting therefrom the amount of Principal Receivables that were written off as uncollectible) to be less than the sum of: (a) the weighted average certificate rate of each class of investor certificates of each Series; and (b) the weighted average of the net servicing fee rate allocable to each class of investor certificates of each Series. In addition, Citibank has agreed in the Pooling Agreement that, unless required by law, it will not reduce such net portfolio yield to less than the highest certificate rate for any outstanding Series or class. Citibank also has covenanted in the Pooling Agreement that it will change

(c) Citibank will represent and warrant as of each Removal Date that the list of Removed Accounts delivered pursuant to (b) above, as of the Removal Date, is true and complete in all material respects;

(d) the Trustee shall have received advance confirmation from the Rating Agency that such removal will not result in a Ratings Effect;

(e) Citibank will deliver to the Trustee and any provider of Series Enhancement a certificate of an authorized officer, dated as of the Removal Date, to the effect that Citibank reasonably believes that such removal will not at the time of its occurrence or at a future date cause an Adverse Effect (i.e., the occurrence of an early amortization event for any Series or a reduction of the amount of surplus finance charge collections below the level required by the Rating Agencies, or an event which adversely affects in any manner the timing or amount of payments to investor certificateholders of any Series or any enhancement invested amounts); and

(f) Citibank will deliver to the Trustee, the Rating Agency and any provider of Series Enhancement an opinion of counsel acceptable to the Trustee that for federal and state tax law purposes: (i) Following such removal the Trust will not be an association (or publicly traded partnership) taxable as a corporation, and (ii) such removal will not adversely affect the characterization of the investor certificates of any Series as debt and will not cause a taxable event to holders of any such investor certificates.

the terms relating to the Accounts designated to the Trust only if such change is made applicable to the comparable segment of the portfolio of Accounts owned or serviced by Citibank which are part of the same program or which have the same or substantially similar characteristics. The ability of Citibank to change the terms of the Accounts is necessary to meet the competitive demands of the marketplace.

Citibank states that it offers a variety of different underwriting standards and terms on its credit card accounts. For example, Citibank offers Gold Visa cards and Regular Classic Visa cards. Citibank also offers "co-branded" cardholder programs, in conjunction with, among others, American Airlines, under which cardholders can earn frequent flyer miles or credits to be applied to the purchase price of goods or services. With respect to such programs, some Accounts are designated to the Trust and some are not. If Citibank determines to change an underwriting standard or cardholder agreement terms under one of these programs, Citibank does so without distinguishing those affected Accounts designated to the Trust from those affected Accounts which are not designated to the Trust. This failure to distinguish is mandated by the Pooling Agreement and the Rating Agencies. Citibank's decisions are fundamentally decisions with respect to how to operate its business in a competitive manner and will not treat Accounts designated to a Trust any differently than other Accounts.

Citibank states that if changes to underwriting standards or cardholder agreement terms were to adversely affect the performance of the Receivables in the Trust (e.g. cause an increase in charge-offs or defaults, or a lower yield on the Receivables), investors are protected by the early amortization event triggers (as discussed further in Paragraphs 13 and 14 below) and credit enhancement. In order for certificates issued by the Trust to obtain a high credit rating, there must be sufficient credit enhancement to meet the Rating Agency's "high stress" scenarios to ensure full and timely payment of principal and interest. In this regard, an "economic early amortization event" occurs immediately upon the occurrence of either of the two events specified in Paragraph 14 below, without any notice or other action on the part of the Trustee or the certificateholders.

#### Pass-Through of Cardholder Payments

10. Cardholder payments for each month are separated into principal

collections and finance charge collections, both of which, as well as defaults on Principal Receivables, are allocated to each Series and to Citibank pro rata based on the relative interest of each in the Trust. Investors will, however, receive a fixed allocation of principal collections during the Accumulation or Amortization Period. Citibank's interest in the Trust represents the portion of the Principal Receivables in the Trust that is not represented by investor certificates. Finance charge collections are used to pay the coupon on the investor certificates of each Series, as well as to pay the servicing costs and cover defaults on principal payments due from cardholders. Principal collections are typically reinvested in new Receivables and/or allowed to accumulate for a period of time, rather than distributed immediately to investors, so that the investor certificates' payment characteristics will mirror those of comparable long-term debt instruments. However, the Pooling Agreement specifies Early Amortization Events following the occurrence of which all principal collections will commence being distributed to investors.

11. *Principal Collections.* If principal collections that were allocated to a Series were immediately distributed to the investors, the investors would be quickly repaid. For example, Citibank states that in 1996 the average monthly cardholder principal payment rate was 18.46 percent, which means all investors would be repaid over a six-month period assuming all Series in the Trust simultaneously amortize. To structure the investor certificates so as to perform as if they were long-term debt instruments, principal collections allocated to a Series are reinvested in newly generated Receivables arising in the Accounts for a period of time specified in the Series Supplement (i.e., the Revolving Period). Reinvestment in Receivables during the Revolving Period maintains the principal amount of the Series invested in the Trust for such period. At the end of the Revolving Period, shortly before the expected maturity date, a portion of the principal collections allocated to a Series either will commence to be paid to the investor certificateholders of such Series in monthly installments (a Controlled Amortization Period) or will be deposited in an account to be distributed to such certificateholders in a lump sum on the expected maturity date (an Accumulation Period), depending on the terms specified in the related Series Supplement. Generally,

each of the recently issued Series has: (i) an eleven-month Accumulation Period for the Class A Certificates, which may be shortened (and the Revolving Period extended) according to an objective formula used to project the level of principal collections in the Trust; and (ii) a one-month accumulation period for the Class B Certificates.

12. *Finance Charge Collections.* Finance charge collections that are allocated to Series belonging to the same Group are pooled together and then shared among all Series in the Group based on the amount of total expenses of each Series for coupon, losses and servicing fees.<sup>32</sup> All Series issued to date have been designated as belonging to Group One. As a result of this reallocation of finance charges, those Series that have higher coupons will receive a proportionately larger share of the finance charge income and thus may avoid suffering a shortfall which might occur if finance charge income were allocated based on the relative interest (based on aggregate principal amounts) of such Series in the Trust. However, if finance charge income is not sufficient to cover total expenses in Group One, all Series within Group One will share proportionately in the shortfall regardless of the interest rate of the investor certificates of an individual Series. Finance charge collections allocable to a Series belonging to one Group will not impact finance charge collections allocable to any Series belonging to a different Group.

All Series issued under the MTC Program will be designated as belonging to Group Two. Finance charge collections that are allocated to Series belonging to Group Two will be pooled together and then shared the same way as the Series which are included in Group One.

#### Early Amortization Events

13. Citibank represents that an earlier than scheduled payout of principal to investor certificateholders of a Series will occur under certain circumstances specified in the Pooling Agreement (each condition is described as an Early Amortization Event).

Generally, Early Amortization Events include:

<sup>32</sup> In addition, Citibank states that in some instances principal collections on receivables allocated to a particular Series may be shared with other Series within the same Group, provided that the minimum principal receivable balances required by the Rating Agencies for all Series within the Group are maintained. However, Citibank states further that under its current payment structure, principal collections on receivables allocated to a particular Series are usually not shared.

(a) The failure of the Bank to either (i) make any payment or deposit required under the Pooling Agreement or any Series Supplement within five (5) business days after such payment or deposit was required to be made, or (ii) observe or perform any of its other covenants or agreements set forth in the Pooling Agreement or any Series Supplement, which failure has a material adverse effect on investors and continues unremedied for 60 days;

(b) A breach of any representation or warranty made by Citibank in the Pooling Agreement or any Series Supplement which continues to be uncorrected in any material respect for 60 days;

(c) The occurrence of certain bankruptcy events relating to either Bank (an Insolvency Event);

(d) The failure by the Banks to make a Lump Sum Addition;

(e) The occurrence of any servicer default by Citibank;

(f) If a class of investor certificates is in an Accumulation Period, the amount on deposit in the accumulation account in any month is less than the amount required to be on deposit therein;

(g) The failure to pay in full amounts owing to investors on the expected maturity date; and

(h) The Economic Early Amortization Event described below.

Each Series Supplement may contain other Early Amortization Events for the related Series in addition to those specified in the Pooling Agreement. To date, no Early Amortization Event has occurred with respect to any Series of investor certificates issued by the Trust.

Citibank has no discretion with respect to the determination whether an Early Amortization Event has occurred. However, certain Early Amortization Events, such as the breach of a representation or warranty, are qualified by materiality and may be declared at the option of the Trustee. Citibank states that in light of the complexity of these securitization transactions, such flexibility is intended to permit the Trustee to act in the best interests of investor certificateholders, which may be to forego early amortization by reason of a mere technical violation. Other Early Amortization Events, such as the Economic Early Amortization Event, are not qualified by materiality and operate automatically. In effect, such events are always material.

The occurrence of an Early Amortization Event will cause the Revolving Period, Controlled Amortization Period or Accumulation Period, as may be applicable, to end and principal collections will be used thereafter to make monthly payments of

principal to the investor certificateholders of such Series (i.e. an Early Amortization Period) until the earlier of payment in full of the outstanding principal amount of the certificates of such Series or the legal final maturity date for such Series specified in the related Series Supplement. If an Accumulation Period has already begun for a Series, then all monies that have been previously deposited in an accumulation account for such Series will be withdrawn upon the occurrence of an Early Amortization Event and paid to the investor certificateholders of such Series.

In addition to the foregoing consequences of an Early Amortization Event described above, if an Insolvency Event occurs, Citibank will immediately cease to transfer Receivables to the Trust. Thereafter, unless the requisite number of investor certificateholders instruct otherwise, the Trustee will sell or otherwise liquidate the Receivables in the Trust in a commercially reasonable manner and on commercially reasonable terms. The proceeds of such sale or liquidation will be applied first to payments on the Class A Certificates, then to the Class B Certificates.

14. *Economic Early Amortization Events.* Citibank represents that all outstanding Series include an Economic Early Amortization Event, which is triggered if finance charge collections averaged over three consecutive months are less than the total amounts payable with respect to the Class A and Class B Certificates (including amounts payable with respect to interest, servicing fees, defaults, charge-offs and any credit enhancement fee).<sup>33</sup> Upon the occurrence of an Economic Early Amortization Event, monies on deposit in the CCA will be used to make payments of principal to the Class A Certificateholders and Class B Certificateholders. However, Citibank states that because the amount on deposit in a CCA is likely to be insufficient to pay outstanding principal amounts in full, additional collections with respect to the Receivables will be required to fully pay down the certificates. Thus, the Trust generally will depend on several forms of credit enhancement [e.g. "excess spread" between the Receivables and the certificate rate, subordination of the Class B Certificates, letters of credit or other third party credit enhancement], as well as any interest rate swap

transactions (as discussed in Paragraph 16 below) and the maintenance of the "required minimum principal balance" for the Receivables under guidelines set by the Rating Agencies, to ensure timely repayment of principal and interest to the certificateholders.

Utilization of Credit Support—The Role of the Master Servicer and the Role of the Trustee

15. The servicer of Citibank's credit card ABS does not supply credit support. Further, if the servicer fails to call upon a credit support mechanism to produce needed funds, the Trustee may exercise its rights as beneficiary of the credit support to obtain the funds under the credit support mechanism. Therefore, in all cases, the Trustee will be ultimately responsible for deciding when to exercise its rights as beneficiary of the credit support.

In some cases, the servicer or an affiliate will be required under the terms of the Pooling Agreement to provide liquidity (but not credit) advances to the Trust. In these cases, the servicer will advance funds to cover shortfalls and will be reimbursed on the following distribution date from collections on the Receivables or Series credit support. The servicer will not be required to make any such liquidity advance unless there is sufficient Series credit support available to ensure repayment of the liquidity advance on the following distribution date. If the servicer fails to advance funds in respect of a shortfall when obligated to do so, the Trustee will exercise its rights under any available credit support on the following distribution date to obtain the necessary funds under the credit support mechanism.

The servicer has servicing guidelines which include a general policy as to the allowable delinquency period after which Receivables ordinarily are deemed uncollectible. The Pooling Agreement requires the servicer to follow its normal servicing guidelines and also sets forth in the definition of Defaulted Receivables the servicer's general policy as to the period of time after which delinquent Receivables will be considered uncollectible.

On a monthly basis the servicer is required to report to the Trustee the amount of all past-due payments along with other current information as to collections on the Receivables and draws upon, or payments to be made from, the credit support. Further, the servicer is required to deliver to the Trustee annually a certificate of an officer of the servicer stating that a review of the servicing activities has been made under such officer's

<sup>33</sup> The Series to which an Accumulation Period applies contain an additional Economic Early Amortization Event which is triggered if, during the Accumulation Period, the yield on the Receivables in the Trust is less than the weighted average of the certificate rates of all Series included in the Group.

supervision, and either stating that the servicer has fulfilled all of its obligations under the Pooling Agreement or, if the servicer has defaulted under any of its obligations, specifying any such default. The servicer's reports are reviewed annually by independent accountants to ensure that the servicer is following its normal servicing standards and that the servicer's reports conform to the servicer's internal accounting records. The results of the independent accountant's review are delivered to the Trustee.

#### Interest Rate Swap Agreements by the Trust

16. For certain Series of certificates, the Trust will have the benefit of interest rate swap agreements for the exclusive benefit of the Class A Certificateholders (the Class A Interest Rate Swap) and/or interest rate swap agreements for the exclusive benefit of the Class B Certificateholders (the Class B Interest Rate Swap). Citibank (South Dakota) and Citibank (Nevada) may be the counterparties to the Trust for these Interest Rate Swaps.<sup>34</sup>

Pursuant to the terms and conditions of the Interest Rate Swaps, the Trust will be obligated to make certain payments periodically to the swap counterparty based on either a fixed or floating interest rate. In turn, the swap counterparty will be obligated to make payments periodically to the Trust based on either a fixed or floating interest rate. Payments received by the Trust pursuant to the Class A Interest Rate Swaps will be available to pay interest due on the Class A Certificates on each Class A interest payment date and payments received by the Trust pursuant to the Class B Interest Rate Swaps will be available to pay interest due on the Class B Certificates on each Class B interest payment date. The Trust will also have the benefit of funds on deposit in a CCA or other applicable credit support.

As an example, Citibank has submitted information for the Series of certificates issued by the Trust on August 29, 1996 (known as \$750,000,000 Floating Rate Class A

<sup>34</sup> Banks or financial institutions other than Citibank may be swap counterparties to the Trust on other interest rate swaps. In addition, an interest rate "cap" could be used where the Trust issues floating rate certificates. In such instances, a counterparty would be paid a premium in advance by Citibank (from its own funds). Under the interest rate cap agreement, if the floating rate on the certificates were to rise above a specified rate (i.e. the cap rate), the counterparty would be required to provide the Trust with the amounts in excess of the cap rate necessary to pay the balance of the interest on the certificates.

Credit Card Participation Certificates, Series 1996-5 and \$48,000,000 Floating Rate Class B Credit Card Participation Certificates, Series 1996-5). On the Series issuance date (August 29, 1996), the Trustee of the Trust, for the exclusive benefit of the Class A Certificateholders, entered into two Class A Interest Rate Swaps with Citibank (South Dakota) and Citibank (Nevada), respectively, which together had a combined notional amount as of any swap payment date equal to the outstanding principal amount of the Class A Certificates as of the close of business on the preceding distribution date.

Interest with respect to the investor certificates accrues from August 29, 1996 and is payable quarterly on the fifteenth day of March, June, September and December, commencing December 15, 1996. Pursuant to the Class A Interest Rate Swaps, on the business day preceding each distribution date, payments are made by the Trust to Citibank (if the following is a positive number), or by Citibank to the Trust (if the following is a negative number) of an amount in the aggregate equal to:<sup>35</sup>

- (i) one quarter of the product of
  - (A) the Class A Notional Amount; and
  - (B) 6.8691 percent (the Class A Swap Rate); minus
- (ii) the product of
  - (A) a fraction, the numerator of which is the actual number of days from and including the prior distribution date (excluding the related distribution date), and the denominator of which is 360;<sup>36</sup>
  - (B) the Class A Notional Amount; and
  - (C) The Class A Certificate Rate.

The Class A Certificate Rate for each interest period is a per annum rate equal to the arithmetic mean of London interbank offered quotations for United States dollar deposits (i.e. LIBOR) for the applicable three month period, plus .105 percent.<sup>37</sup>

<sup>35</sup> If such amount is positive, it will be referred to as the "Class A Net Swap Payment", and if such amount is negative, it will be referred to as the "Class A Net Swap Receipt".

<sup>36</sup> The day count fraction used in any swap would correspond to the day count fraction used in the related Series of certificates. For example, industry convention is that fixed rate securities bear interest on a 30/360 day count fraction while floating rate securities often bear interest on an actual/360 day count fraction. Accordingly, any floating payments made by a swap counterparty to the Trust which relate to a floating rate Series of certificates with an actual/360 day count fraction would also have an actual/360 day count fraction and any fixed payments made by a swap counterparty to a Trust which relate to a fixed rate Series of certificates with a 30/360 day count fraction would also have a 30/360 day count fraction.

<sup>37</sup> It should be noted that a substantial portion of the Receivables in the Trust bear interest at the prime rate plus a margin, while the investor certificates will bear interest at one or more fixed

The principal on the Class A and Class B Certificates issued on August 29, 1996, is scheduled to be paid on the September 2003 payment date, but principal and interest for such certificates may be paid earlier under the circumstances described herein (e.g. an economic early amortization event). Principal payments will not be made to Class B Certificateholders until the final principal payment has been made for the Class A Certificates. Unless an early amortization event has occurred, the Revolving Period will end and the Accumulation Period (i.e. for principal payments to certificateholders) will commence at the close of business on the fourth-to-last business day of August 2002. However, Citibank, as Servicer, may shorten the length of the Accumulation Period and extend by an equivalent period the length of the Revolving Period based on the amount of principal available to the investor certificates of all Series determined based on the principal payment rate on the Receivables and the amount of principal distributable to certificateholders of all outstanding Series.

The Series prospectus for these certificates indicates that the CCA was funded by an initial deposit of \$55,860,000, of which \$39,900,000 was for the benefit of both the Class A and Class B Certificates, and \$15,960,000 was for the exclusive benefit of the Class B Certificates. In the event of an economic early amortization event, the available shared enhancement amount (after giving effect to other withdrawals from the CCA on the distribution date) will be applied to pay principal of the Class A Certificates and the remainder of the available CCA will be applied to pay principal of the Class B Certificates.

The Series prospectus states that it was a condition to the issuance of the Class A Certificates on August 29, 1996, that they be rated in the highest rating category by at least one Rating Agency. Under this proposed exemption, employee benefit plan investors are able

or floating rates specified in the related prospectus. If there is a decline in the prime rate, the amount of Finance Charge Receivables in the Trust may be reduced and, even if there is a similar reduction in any floating rate or other rates applicable to the investor certificates, there will not be a similar reduction in the other amounts (e.g. servicing fees or expenses for operating the Trust) required to be funded out of such Receivables. The subject Series prospectus notes that this mismatch between the various cashflows into and out of the Trust results in "basis risk" which is partially mitigated by the presence of the Interest Rate Swaps. Thus, as noted in more detail above, payment of the Class A Certificate Rate and the credit rating for such certificates may be dependent, in part, on the swap agreements and the creditworthiness of the swap counterparty.

to acquire only the Class A Certificates. The rating of the Class A Certificates was based primarily on the value of the Receivables (see Rating Agency Analysis in Paragraph 17 below), the extent of the initial shared enhancement amount (i.e. the CCA, etc.), the circumstances in which funds may be withdrawn from the CCA for the benefit of the investor certificateholders, the terms of the Class B Certificates and the Interest Rate Swaps and the credit ratings of the swap counterparties [e.g., Citibank (South Dakota) and Citibank (Nevada)]. In the event the short-term debt rating of either swap counterparty is withdrawn or reduced below A-1+ by Standard & Poor's Ratings Group or its long-term debt rating is withdrawn or reduced below Aa3 by Moody's Investors Service, the Servicer will (as agent for the Trustee),<sup>38</sup> within 30 days after such rating withdrawal or reduction, use reasonable efforts to (i) obtain a replacement interest rate swap agreement with terms substantially the same as the respective Interest Rate Swap, or (ii) establish any other arrangement satisfactory to the applicable Rating Agency, such that the ratings of the investor certificates by the applicable Rating Agency will not be withdrawn or reduced. In the event no such replacement interest rate swap agreement is obtained, or no other arrangement satisfactory to the Rating Agency is established within such period, an early amortization event will occur. The Series prospectus states that there can be no assurance that the ratings of the investor certificates will remain for any given period of time or that such ratings will not be lowered or withdrawn entirely by the Rating Agency if in its judgment circumstances in the future so warrant.<sup>39</sup>

<sup>38</sup> In this regard, the Department notes that the Trustee would be obligated, as a fiduciary for "plan assets" held by the Trust, to ensure that the Servicer uses reasonable efforts to take whatever actions are necessary to satisfy the Rating Agency so as to avoid a reduction or withdrawal of the current rating for certificates of a particular Series following any reduction or withdrawal of the swap counterparty's rating.

<sup>39</sup> The Department cautions plan fiduciaries to fully understand the risks and benefits associated with investments made in asset-backed securities, such as credit card receivable ABS, or any other fixed-income security. In this regard, section 404(a) of the Act requires, among other things, that a plan fiduciary act prudently when making investment decisions on behalf of a plan. The Department also cautions plan fiduciaries that if the assets of a trust which issues certificates is deemed to be "plan assets" under the Department's regulations (see 29 CFR 2510.3-101), the plan's assets would include not only the certificates purchased but also an undivided interest in each of the underlying assets of the trust, including any interest rate swap agreement between the trust and a bank. For a current statement of the Department's views on the use of "derivatives" by pension plans, see DOL

The Series prospectus states that delivery of these investor certificates was made in book-entry form through the facilities of the Depository Trust Company (DTC), Cedel Bank and the Euroclear System on August 29, 1996. The underwriters for the Class A Certificates were Citibank, Goldman, Sachs & Co., Merrill Lynch & Co. and Salomon Brothers Inc. An application was made by Citibank to list the certificates on the Luxembourg Stock Exchange. The Trust had previously issued thirty (30) other Series of investor certificates which evidence undivided interests in the Trust which were still outstanding at that time.<sup>40</sup> The Series prospectus states that additional Series are expected to be issued from time to time by the Trust and that additional credit enhancement will be provided for each additional Series issued.

Citibank represents that the credit rating provided to a particular Series or class of certificates by the relevant Rating Agency may or may not be dependent upon the existence of a swap agreement. Thus, in some instances, the terms and conditions of a swap agreement entered into by the Trust will not effect the credit rating of the Series or class of certificates to which the swap relates (i.e. a "Non-Ratings Dependent" Swap). Citibank states that typically when a swap agreement is entered into by the Trust, the credit rating established by the Rating Agency for the particular Series of certificates to which the swap relates will be dependent upon the existence of the swap (i.e. a "Ratings Dependent" Swap).

Citibank represents further that each particular swap transaction entered into by the Trust will be an "Eligible Swap" (as defined in Section III.HH. above). In addition, each swap transaction will be with an "Eligible Swap Counterparty", which shall be a bank or other financial institution with a rating at the date of issuance of the certificates by the trust which is in one of the three highest long-term credit rating categories, and/or one of the two highest short-term credit rating categories, utilized by the Rating Agencies rating the certificates. However, if a swap counterparty is relying on its short-term rating to establish its eligibility, such

Letter from Olena Berg, Assistant Secretary for Pension and Welfare Benefits, to The Honorable Eugene A. Ludwig, Comptroller of the Currency, dated March 21, 1996.

<sup>40</sup> The Series prospectus states that the aggregate amount of Receivables in the Accounts included in the Trust as of July 7, 1996 was \$31,796,288,366, of which \$31,414,439,867 were Principal Receivables and \$381,848,499 were Finance Charge Receivables.

counterparty must either have a long-term rating in one of the three highest long-term rating categories or not have a long-term rating from the applicable Rating Agency. If the rating of a particular Series or class of certificates is dependent upon the terms and conditions of an Eligible Swap entered into by the Trust (i.e., a "Ratings Dependent" Swap), the swap counterparty will be subject to certain collateralization or other arrangements satisfactory to the Rating Agencies in the event of a rating downgrade of the swap counterparty below a level specified by the Rating Agency, which would be no lower than the level that would make such counterparty "eligible" under this proposed exemption (see Section III.II above). If these arrangements are not established within a specified period, as described in the Pooling Agreement, there will be an early amortization event causing certificateholders to receive an earlier than expected payout of principal on their certificates for the series to which the swap relates. However, with respect to a Non-Ratings Dependent Swap, the Pooling Agreement will not specify that there be an early amortization event for the series to which the swap relates if the credit rating of the swap counterparty falls below the level required for it to be considered an Eligible Swap Counterparty (as described in Section III.II. above). In such instances, in order to protect the interests of the trust as a swap counterparty, the servicer (as agent for the trustee of the trust) will be required to either:

- (i) Obtain a replacement swap agreement with an Eligible Swap Counterparty, the terms of which are substantially the same as the current swap agreement (at which time the earlier swap agreement will terminate);
- (ii) Cause the swap counterparty to post collateral with the trustee of the trust in an amount equal to all payments owed by the counterparty if the swap transaction were terminated; or
- (iii) Terminate the swap agreement in accordance with its terms.

Under any termination of a swap, the trust will not be required to make any termination payments to the swap counterparty (other than a currently scheduled payment under the swap agreement) except from "excess finance charge collections" or other amounts that would otherwise be payable to the servicer or the seller (i.e. Citibank). In this regard, "excess finance charge collections" will be, as of any day funds are distributed from the trust, the amounts by which finance charge collections allocated to certificates of a

series exceed the amounts necessary to pay certificate interest, servicing fees and expenses, to satisfy cardholder defaults or charge-offs, and to reinstate credit support.

With respect to Non-Ratings Dependent Swaps, each Rating Agency rating the Certificates must confirm, as of the date of issuance of the Certificates by the Trust, that entering into the swap transactions with the Eligible Swap Counterparty will not affect the rating of the Certificates, even if such counterparty is no longer an "eligible" counterparty and the swap is terminated.<sup>41</sup>

Any Series of certificates which conveys rights with respect to an Eligible Swap would only be sold to a Qualified Plan Investor (as defined in Section III.JJ. above). Qualified Plan Investors will be plan investors represented by an appropriate independent fiduciary that is qualified to analyze and understand the terms and conditions of any swap transaction used by the Trust and the effect such swap would have upon the credit ratings of the certificates. For purposes of the proposed exemption, such a qualified independent fiduciary would be either: (i) A "qualified professional asset manager" (i.e. QPAM), as defined under Part V(a) of PTE 84-14; (ii) an "in-house asset manager" (i.e. INHAM), as defined under Part IV(a) of PTE 96-23; or (iii) a plan fiduciary with total assets under management of at least \$100 million at the time of the acquisition of such certificates.

### Rating Agency Analysis

17. The Applicants state that the rating guidelines and stress scenarios used by the Rating Agencies in assigning a rating to a credit card receivable ABS take into consideration many factors and are determined on a case-by-case basis. The Rating Agencies

<sup>41</sup> Representatives from two of the Rating Agencies (RA Reps) have indicated to the Department that certain series of certificates issued by a trust holding credit card receivables will have certificate ratings that are not dependent on the existence of a swap transaction entered into by the trust. Therefore, a downgrade in the swap counterparty's credit rating would not cause a downgrade in the rating established by the Rating Agency for the certificates. RA Reps state that in such instances there will be more credit enhancements (e.g. "excess spread", letters of credit, cash collateral accounts) for the series to protect the certificateholders than there would be in a comparable series where the trust enters into a so-called Ratings Dependent Swap. Non-Ratings Dependent Swaps are generally used as a convenience to enable the trust to pay certain fixed interest rates on a series of certificates. However, the receipt of such fixed rates by the trust from the counterparty is not a necessity for the trust to be able to make its fixed rate payments to the certificateholders.

review three principal areas in arriving at a credit enhancement level to support a rating for a credit card receivable ABS:

(i) Quantitative performance of the portfolio, including historical yield, loss, delinquency and monthly payment rates, as well as credit exposure caused by factors such as geographic concentration of risk;

(ii) Qualitative portfolio factors, such as the originator's underwriting standards, audit and control procedures, collection process and marketing strategy; and

(iii) Legal and structural issues raised by the securitization structure, such as priority of security interests, timeliness of cash flow and exposures to third party bankruptcy risk (e.g. seller, guarantor, obligor, servicer), etc.

The Applicants represent that each Rating Agency adopts a slightly different approach to the determination of credit enhancement levels. For example, Moody's Investors Service, Inc. (Moody's) generally uses a Monte Carlo simulation model utilizing various possible cases with subjectively assigned probabilities. This model then enables Moody's to arrive at an estimate of potential lifetime losses which must be covered by the credit support for the securitization. Standard and Poor's Ratings Group (S&P) looks at a "worst case" loss scenario based on subjectively assigned multiples of historical loss, portfolio yield and payment rates to reflect a severe economic downturn over the life of the securities. As with Moody's, this process produces an estimate of potential lifetime losses which must be covered by the credit support.

The Applicants state that because the credit card receivables in a master trust are unsecured revolving debt obligations, the Rating Agencies assume no recoveries on defaulted credit card accounts in determining credit enhancement levels for each Series. Stress scenarios are run reducing both the portfolio yield (total yield on the receivables minus the sum of certificate interest, the servicing fee and amounts necessary to satisfy cardholder defaults) and the monthly payment rate, in order to test the level of defaults that credit enhancement can withstand. Such stress tests assume no recoveries on defaulted credit card accounts in the master trust. For example, for "AAA" rated certificates, available enhancement levels are structured to enable a Series to withstand the worst case "AAA" scenarios, just as would be the case with similarly rated transactions involving collateralized assets such as mortgage loans or automobile loans or leases. The first level of enhancement is typically

"excess spread" (i.e. the amount by which the yield on the credit card receivables exceeds amounts necessary to pay certificate interest and servicing fees and to satisfy cardholder defaults).<sup>42</sup> Additional forms of enhancement for a Series may include cash collateral accounts (i.e. a CCA), reserve funds, letters of credit, the use of a senior-subordinated structure or a combination thereof.

Citibank represents that, in addition to the enhancement described above, certificates have the benefit of one or more "economic early amortization event" triggers relating to the receivables performance. Breach of such a trigger will cause an early amortization event and an early payout of principal to certificateholders, thereby protecting certificateholders from any potential future deterioration of credit quality of receivables in the master trust portfolio. Citibank states that the combination of credit enhancement (sized to satisfy Rating Agency "high stress" scenarios) and early amortization event triggers assures that certificateholders will receive payment in full of interest and principal.

Citibank represents that its credit cards are marketed nationally and are held by millions of individuals. The consequent size and diversity of Citibank's credit card accounts provide balanced risk distribution. For example, as of June 25, 1997, the largest Citibank master trust held in excess of \$35 billion of receivables, generated by more than 28 million accounts, and each individual cardholder had a principal balance that averaged approximately \$1221. Similarly, Citibank states that its portfolios are geographically diverse with no more than 15 percent of the receivables in Citibank's largest master trust being concentrated in a single state and in only four states did the percentage exceed 5 percent. Citibank notes that the loss experience for a geographically well diversified portfolio

<sup>42</sup> For example, the annual portfolio yield for the Trust in 1995 was 18.11 percent. The annual certificate rates for each Series outstanding at that time varied between approximately 5.50 and 8.8 percent, depending upon the date of issuance, the expected duration, whether the particular Series certificates were Class A or Class B, etc. The Series servicing rates (including interchange fees) varied between 0.37 and 1.87 percent of the outstanding receivables. The annual loss rate for the receivables in the Trust, as a percentage of the average principal receivables outstanding was approximately 3.8 percent during this period. Under the Rating Agencies hypothetical "stress" scenarios submitted by Citibank, the annual loss rate could have been increased to approximately 27.5 percent during this period without resulting in a failure of the Trust to pay any interest or principal on the AAA rated certificates.

of a large number of relatively small obligations is more stable and predictable than a portfolio of fewer, large individual obligations, and/or high geographic concentrations. Citibank represents that because of this diversification, a Citibank master trust should be able to withstand a recession or similar economic downturn which might affect different industries or geographic regions at different times.

Citibank states that a combination of credit enhancement, early amortization triggers and portfolio characteristics are among the reasons why no investor has failed to receive payment in full of all principal and interest on the over \$51 billion of Citibank credit card receivable ABS issued from 1988 to the present. Citibank states further that no Citibank credit card securitization has ever gone into early amortization.<sup>43</sup>

#### Disclosures Available to Investing Plans

18. In connection with the original issuance of certificates, the prospectus or private offering memorandum will be furnished to investing plans. The prospectus or private offering memorandum will contain information pertinent to a plan's decision to invest in the certificates, such as:

(a) Information concerning the certificates, including payment terms, certain tax consequences of owning and selling certificates, the legal investment status and rating of the certificates, and any special considerations with respect to the certificates;

(b) Information about the underlying Receivables, including the types of Receivables, statistical information relating to the Receivables, their payment terms, and the legal aspects of the Receivables;

(c) Information about the servicing of the Receivables, including the identity

of the servicer and servicing compensation;

(d) Information about the sponsor of the Trust;

(e) A full description of the material terms of the Pooling Agreement; and

(f) Information about the scope and nature of the secondary market, if any, for such certificates.

Certificateholders will be provided with information concerning the amount of principal and interest to be paid on certificates at least as frequently as distributions are made to certificateholders. Certificateholders will also be provided with periodic information statements setting forth material information concerning the status of the Trust.

In the case of a Trust that offers and sells certificates in a registered public offering, the Trustee, the servicer or the sponsor will file such periodic reports as may be required to be filed under the Securities Exchange Act of 1934 (the '34 Act). Although some Trusts that offer certificates in a public offering will file quarterly reports on Form 10-Q and Annual Reports on Form 10-K, many Trusts obtain, by application to the SEC, a complete exemption from the requirement to file quarterly reports on Form 10-Q and a modification of the disclosure requirements for annual reports on Form 10-K. If such an exemption is obtained, these Trusts normally would continue to have the obligation to file current reports on Form 8-K to report material developments concerning the Trust and the certificates. While the SEC's interpretation of the periodic reporting requirement is subject to change, periodic reports concerning a Trust will be filed to the extent required under the '34 Act.

The applicant states that at or about the time distributions are made to certificateholders, a report will be delivered to the Trustee as to the status of the Trust and its assets, including underlying Receivables. Such report will typically contain information regarding the Trust's assets, payments received or collected by the servicer, the amount of delinquencies and defaults, the amount of any payments made pursuant to any credit support, and the amount of compensation payable to the servicer. Such report will also be delivered or made available to the Rating Agencies or Agency that rated the Trust's certificates. Such report will be available to investors and its availability will be made known to potential investors. In addition, promptly after each distribution date, certificateholders will receive a statement summarizing information

regarding the Trust and its assets, including underlying Receivables.

#### Reasons for Plans To Enter Into the Exemption Transactions

19. Citibank states that a plan would choose to purchase the investor certificates offered by a master trust to diversify its portfolio and enhance investment return. During the past 10 years, asset-backed securities (including Citibank credit card receivable backed certificates) have developed into a very significant sector of the U.S. capital markets. Citibank represents that in 1996, public issuance of asset-backed securities (i.e. ABS) totaled approximately \$151.7 billion and almost equaled public issuance of corporate debt, which totaled approximately \$161.8 billion. Further, Citibank states that the vast majority of public ABS issuances is AAA/Aaa-rated and, as a result, public issuance of investment grade ABS was greater than the public issuance of investment grade rated corporate debt, which totaled \$135.1 billion.

Thus, Citibank represents that for many fixed income investors who have traditionally invested a significant portion of their portfolios in corporate bonds, credit card receivable ABS have become a corporate bond substitute. Citibank states that there are several primary attributes of credit card receivable ABS that make them corporate bond substitutes, including: (i) Very high credit quality (most are AAA/Aaa rated); (ii) basic payment terms which can be structured to replicate corporate bonds (e.g. bullet maturities or semiannual coupon payments); (iii) healthy yield spreads in comparison to U.S. Treasuries; and (iv) the issuance of large, liquid transactions that are characterized by relatively narrow bid/offer spreads in the secondary market. Citibank states that for these reasons, the investor base for credit card receivable ABS has expanded in recent years and today includes the entire range of institutional investors. Further, given the performance to date of the ABS market, the Applicants expect that these institutional investors will continue to increase the proportion of their portfolio devoted to ABS. The Applicants note that on the supply side of the market, given projections of continued growth in the credit card business and the growing importance of securitization as a funding source for the credit card industry, market participants predict further growth in credit card ABS issuance in the near term.

As a result of these developments, the Applicants believe that fixed income

<sup>43</sup> When the Department was advised by the Rating Agencies concerning the ratings of certificates issued by trusts holding credit card receivables, the RA Reps noted, among other things, that different banks use different underwriting standards and may offer cardholders different terms on their accounts. Some banks may be willing to accept cardholders with riskier credit histories while other banks may not or may offer better terms to cardholders with superior payment histories. The result may be that some banks have a higher quality portfolio of receivables than other banks. The RA Reps stated that if a bank securitizes a portfolio of receivables which holds a number of riskier accounts, the Rating Agencies will require more credit enhancement measures because different assumptions will have to be made about the performance of the portfolio—e.g. higher charge-off rates will be assumed and greater "excess spread" will be necessary to avoid losses—in order to achieve a Triple A rating. Thus, for example, Bank A's certificates may receive a Triple A rating along with Citibank's certificates even though Bank A may experience more charge-offs on the credit card accounts and may have different payment rates on the receivables associated with those accounts.

investment managers seeking liquid, high credit quality fixed income securities which provide a fair yield to U.S. Treasuries at relatively low risk, are interested in or are already participating in the credit card ABS market. The requested exemption would facilitate more investment by plans in this market, and would enable the Applicants to better structure offerings which plan asset managers would find attractive.

Citibank credit card receivable ABS have been sold to employee benefit plans covered by the Act (ERISA plans) without concern regarding possible prohibited transactions involving the assets of the master trusts, as "publicly-offered" securities described in the Department's regulations defining "plan assets" (see 29 CFR 2510.3-101(b)(2)). However, Citibank has requested the proposed exemption in order to be able to sell such securities to ERISA plans without having to sell to one hundred independent investors. Thus, if the proposed exemption is granted, the Applicants would have the ability to sell credit card receivable ABS which are designed to meet the investment prerequisites of more limited groups of investors, including ERISA plans.

20. In summary, the Applicants represent that the proposed transactions will meet the statutory criteria of section 408(a) of the Act because, among other things:

- (a) The acquisition of investor certificates by a plan will be on terms (including certificate price) that are at least as favorable to the plan as such terms would be in an arm's-length transaction with an unrelated party;
- (b) The rights and interests evidenced by the investor certificates will not be subordinated to the rights and interests evidenced by other investor certificates of the trust;
- (c) Any investor certificates acquired by a plan will have received a rating at the time of such acquisition that is in one of two highest generic rating categories from either of the Rating Agencies, and/or the highest short-term generic rating category from any one of the Rating Agencies;
- (d) The particular class of certificates for each series to which this proposed exemption will apply (an Exempt Class) will have credit support provided to the Exempt Class through a senior-subordinated series structure or other form of third party credit support which, at a minimum, will represent five (5) percent of the outstanding principal balance of certificates issued by the Exempt Class, so that an investor in the Exempt Class will not bear the initial risk of loss;

(e) The trustee of the trust will not be an affiliate of any other member of the Restricted Group;

(f) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates will represent not more than reasonable compensation for underwriting or placing the certificates; the consideration received by the sponsor as a consequence of the assignment of receivables (or interests therein) to the trust will represent not more than the fair market value of such receivables (or interests); and the sum of all payments made to and retained by the servicer, that are allocable to the series of certificates purchased by a plan, will represent not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith;

(g) Any plan investing in such certificates will be an "accredited investor" as defined in Rule 501(a)(1) of Regulation D of the SEC under the Securities Act of 1933;

(h) The Revolving Period for a Series of investor certificates, and the conditions under which Citibank may designate additional Accounts or remove previously-designated Accounts, will be described in the prospectus or private placement memorandum provided to investing plans;

(i) The Trustee of the Trust will be a substantial financial institution or trust company experienced in trust activities and would be familiar with its duties, responsibilities, and liabilities as a fiduciary under the Act;

(j) The Pooling Agreement will include an Economic Early Amortization Event triggered by a decline in the performance of the Receivables in the Trust;

(k) The Pooling Agreement will require Citibank to maintain a seller interest of not less than the greater of (i) 2 percent of the initial aggregate principal balance of investor certificates issued by the trust, or (ii) 7 percent of the outstanding aggregate principal balance of investor certificates issued by the trust;

(l) The Pooling Agreement will require that any change in the terms of any cardholder agreements also will be made applicable to the comparable segment of Accounts owned or serviced by Citibank which are part of the same program or which have the same or substantially similar characteristics;

(m) The addition of new Receivables or designation of new Accounts, or

removal of Receivables or previously-designated Accounts, will meet the terms and conditions for such additions, designations, or removals as described in the Pooling Agreement as well as the prospectus or private placement memorandum for such certificates, which terms and conditions will have been affirmatively approved by the Rating Agencies, and will not result in the certificates receiving a lower credit rating from the Rating Agencies than the then current rating for the certificates;

(n) Any swap transaction relating to senior Certificates that are covered by the proposed exemption must satisfy the several investor-protective conditions applicable to Eligible Swaps and must be entered into by the Trust with an Eligible Swap Counterparty; and

(o) Any Series of certificates which entails one or more swap agreements entered into by the Trust will be sold only to Qualified Plan Investors.

**FOR FURTHER INFORMATION CONTACT:** Mr. E.F. Williams of the Department, telephone (202) 219-8194. (This is not a toll-free number.)

**Massachusetts Mutual Life Insurance Company (MassMutual), Located in Springfield, Massachusetts**

[Application No. D-10436]

#### **Proposed Exemption**

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to (1) the proposed mergers of the following Connecticut Mutual Life Insurance Company (CML) separate investment accounts (SIAs), the assets of which include assets of employee benefit plans (the Plans), into the following Massachusetts Mutual Life Insurance Company (MassMutual) SIAs: CML Select into MassMutual SIA-A, CML Fixed Income into MassMutual SIA-E, CML Basis into MassMutual SIA-F, CML Money Market into MassMutual SIA-G, and CML Overseas into MassMutual SIA-I (the Merger Transactions); (2) the proposed transfer of Plan assets from CML Dimensions and CML Converts, after termination of those SIAs, into MassMutual SIA-E and MassMutual SIA-A, respectively (the Termination Transfers); and (3) the proposed transfer of Plan assets from CML Life Style Funds designated as CML Asset Allocation A, CML Asset Allocation B, and CML Asset Allocation C, after termination of those funds, into MassMutual SIA-BC, MassMutual SIA-BP, and MassMutual SIA-BA, respectively (the Life Style Transfers);

the Termination Transfers and the Life Style Transfers are referred to collectively as the Transfer Transactions); provided the following conditions are met:

(A) At least 30 days prior to the effective date of each Merger and Transfer Transaction, MassMutual provides to a fiduciary of each Plan participating in the CML SIAs (the Plan Fiduciary) affected by the Transaction full written disclosure of information concerning the proposed Transaction and the affected MassMutual SIAs, including a current prospectus and a full and detailed written description of the fees charged by the affected MassMutual SIA's and the funds in which they invest, the differential between that fee level and the fee level applicable to the affected CML SIAs and the reasons why MassMutual believes that the investment is appropriate for the Plans. The notice will also inform the Plan Fiduciary of the proposed effective date of the Transaction;

(B) As part of the disclosure required under paragraph (A) of this exemption, MassMutual notifies the Plan Fiduciary in writing that instead of participating in the particular Merger or Transfer Transaction proposed by MassMutual, the Plan Fiduciary may direct that the assets of the Plan in the affected CML SIA may be transferred, without penalty, charge or adjustment, to any other available MassMutual SIA or liquidated, without penalty, charge or adjustment, for a cash payment to the Plan equal to the fair market value of the Plan's interest in the affected SIA in lieu of the Plan's participation in the proposed transaction;

(C) Upon completion of the Merger Transactions, the fair market value of the interests of each Plan participating in the MassMutual SIAs immediately following such Merger Transactions equals the fair market value of such Plan's interest in the affected CML SIAs immediately before the transactions;

(D) Upon completion of the Transfer Transactions, the fair market value of the interests of each Plan participating in the MassMutual SIAs immediately following such Transfer Transactions equals the fair market value of such Plan's interest in the affected CML SIAs immediately before the transaction;

(E) The assets of each of the Plans are invested in the same or similar investment type or asset class before and after the Merger and Transfer Transactions;

(F) The assets of the CML SIAs will be valued for purposes of the Merger and Transfer Transactions at the "independent current market price" within the meaning of Rule 17a-7 of the

Securities and Exchange Commission under the Investment Company Act of 1940. The assets of the CML SIAs being merged or transferred and the assets of the MassMutual SIAs affected by the merger or transfer will be valued in a single valuation using the same methodology by the same custodian at the close of the same business day that the Merger and Transfer Transactions are effected;

(G) No later than forty five (45) days after the Merger and Transfer Transactions, each Plan Fiduciary will be provided a written confirmation of the Transactions which will include a statement of the number of units held by each Plan in each affected CML SIA, the unit value of each such CML SIA unit and the aggregate dollar value of such Plan's CML SIA units, determined immediately prior to the Transactions, as well as the number of units held by each Plan in each affected MassMutual SIA, the unit value of each such MassMutual SIA unit, and the aggregate dollar value of such Plan's MassMutual SIA units, determined immediately after the Transactions.

(H) Neither MassMutual nor any of its affiliates receives any fees or commissions in connection with the Merger and Transfer Transactions;

(I) The Plans pay no sales commissions or fees in connection with the Merger and Transfer Transactions;

(J) The Plans participating in the CML SIAs are not employee benefit plans sponsored or maintained by MassMutual or CML; and

(K) All assets involved in the transactions are securities for which market quotations are readily available, or cash.

#### Summary of Facts and Representations

1. The Plans involved in this proposed exemption are pension, profit sharing and stock bonus plans which are exempt from Federal income taxation under section 501(a) of the Code by reason of qualifying under section 401(a) of the Code.

2. The proposed exemption is requested on behalf of the Massachusetts Mutual Life Insurance Company (MassMutual), a mutual life insurance company organized under Massachusetts law. Another previously-unrelated mutual life insurance company, Connecticut Mutual Life Insurance Company (CML), merged into MassMutual on February 29, 1996 (the Company Merger).

3. MassMutual represents that it performs a wide variety of services for employee benefit plans, including opportunities for the Plans to invest in group annuity contracts (the GACs),

which are popular funding vehicles for Plans. The funds invested in the GACs are allocated by the Plans' fiduciaries or by individual participants among separate investment accounts (SIAs) maintained by MassMutual for investment in various types and classes of assets, including the MassMutual Institutional Funds and other mutual fund companies affiliated with Mass Mutual. For example, funds invested by a Plan in a GAC might be allocated among several SIAs, which in turn invest in various MassMutual mutual funds. MassMutual represents that prior to the Company Merger MassMutual maintained twenty-five SIAs (the MassMutual SIAs) and CML maintained twelve SIAs (the CML SIAs). The assets of the MassMutual SIAs involved in this proposed exemption are invested solely in mutual funds affiliated with MassMutual, whereas the assets of the CML SIAs involved in this proposed exemption are invested in various marketable equity and debt securities.

4. MassMutual represents that five of the CML SIAs have investment objectives and strategies which are substantially similar to those of five MassMutual SIAs, holding assets which are of the same or similar class and type. Since the Company Merger, these five CML SIAs have been maintained by MassMutual with the same investment advisors and portfolio managers as the corresponding MassMutual SIAs. In order to eliminate duplicative administrative expenses and take greater advantage of economies of scale, and to avoid the adverse consequences of declining asset pools in the CML SIAs, MassMutual proposes to merge the five CML SIAs (the Merging CML SIAs) into the corresponding MassMutual SIAs (the Merger Transactions).

5. In addition to the Merger Transactions, MassMutual also proposes to effect transfer transactions with respect to (a) two other CML SIAs (the Terminating CML SIAs) which MassMutual has determined to have investment objectives and asset types which are not widely utilized by Plans covered by the Act, and, consequently, will not maintain sufficient assets to provide an appropriate investment portfolio, and (b) three CML master funds, called Life Style Funds.

*The Terminating CML SIAs:* MassMutual states that upon the Company Merger, it was determined that MassMutual GAC funds would not be invested in the Terminating CML SIAs, and that CML GAC investors would be allowed to convert their investments to GACs issued by MassMutual. Since the Company Merger, the assets in the Terminating

CML SIAs have declined steadily due to Plan transfers and withdrawals. As a result of these developments, MassMutual represents that it will be increasingly difficult for the Terminating CML SIAs to maintain well-diversified portfolios and risk and return profiles that are appropriate for the remaining Plan investors in the Terminating CML SIAs. Accordingly, MassMutual proposes to liquidate the Terminating CML SIAs by liquidation of the securities held in the SIAs and transfer of the proceeds into the two designated MassMutual SIAs to take greater advantage of economies of scale and to avoid the adverse consequences of declining asset pools. Thus, Plans previously invested in the Terminating CML SIAs would own units in the corresponding transferee MassMutual SIAs of an equal value to their units in the Terminating CML SIAs immediately prior to the transfer.

*The Life Style Funds:* The Life Style Funds are master funds, maintained by both CML and MassMutual, which distribute Plans' investments in GACs among various SIAs. Each of these Life Style Funds offers to Plan asset investors a particular approach to asset mix, investment philosophy and overall management, and a Plan asset investor is able to designate a Life Style Fund with an approach which is most consistent and responsive to the particular needs of the individual Plan. After designation of one of the Life Style Funds, those Plan assets invested in the GACs of the insurance company are directed into the designated Life Style Fund, where such monies are then directed to the particular SIAs in which the selected Life Style Fund invests. The CML Life Style Funds are designated as CML Asset Allocation A, CML Asset Allocation B, and CML Asset Allocation C. The MassMutual Life Style Funds are designated as MassMutual SIA-BC, MassMutual SIA-BP, and MassMutual SIA-BA.

MassMutual proposes to transfer the assets from the CML Life Style Funds into the three MassMutual Life Style Funds, as follows: The CML Life Style Funds are invested in (a) different combinations of the Merging CML SIAs, (b) the Terminating CML SIAs, and (c) two other CML SIAs (the Unaffected CML SIAs) which will continue to be maintained by MassMutual and will not be merged or terminated. Therefore, to the extent the CML Life Style Funds include investments in Merging CML SIAs, the Life Style Transfers will be accomplished in the same manner as the merger of the Merging CML SIAs with the corresponding MassMutual SIAs. However, any investments of the CML

Life Style Funds which are held in one of the Terminating CML SIAs or an Unaffected CML SIA will be sold<sup>44</sup> and the proceeds from the sale will be transferred to the corresponding MassMutual Life Style Fund.

MassMutual is unable to conclude that the transactions described herein do not constitute prohibited transactions under the Act. Accordingly, MassMutual is requesting an administrative exemption from the prohibitions of sections 406(a) and 406(b)(1) and (b)(2) of the Act for the Merger and Transfer Transactions.

6. No less than thirty days in advance of each Merger and Transfer Transaction, MassMutual will provide to a fiduciary of each Plan participating in the CML SIA affected by the Transaction (the Plan Fiduciary) a written notice of the proposed Transaction (the Notice). The Notice will consist of a full written disclosure of information concerning the proposed Transaction, the affected MassMutual SIAs, and the proposed effective date of the Transaction. The Notice will include a current prospectus for each of the mutual funds in which the affected MassMutual SIAs invest and will describe the fees charged by the affected MassMutual SIAs and the funds in which they invest and the differential between that fee level and the fee level applicable to the affected CML SIAs. The proposed exemption requires that the Notice advise the Plan Fiduciary that in lieu of participating in the proposed Transaction, the Plan Fiduciary may direct that the assets of the Plan in the affected CML SIA may instead be transferred to any other available MassMutual SIA or liquidated for a cash payment to the Plan.<sup>45</sup> In addition, the Plan Fiduciary will be provided with a written confirmation of the subject Transaction.

7. In accordance with the procedures to be utilized by MassMutual in effecting the Merger and Transfer Transactions, the fair market value of the interests of the Plans participating in the MassMutual SIAs immediately following the Transactions will equal

<sup>44</sup> The Unaffected CML SIAs will continue to be maintained by MassMutual on behalf of investors other than the Life Style Funds, and only the Life Style Funds' investments in the Unaffected CML SIAs will be liquidated for transfer to the MassMutual Life Style Funds. MassMutual chooses not to transfer the CML Life Style Funds' interests in the Unaffected CML SIAs to the MassMutual Life Style Funds because the Unaffected CML SIAs do not have corresponding counterpart MassMutual SIAs.

<sup>45</sup> MassMutual represents that such a transfer would be accomplished first by accessing available cash reserves in the affected CML SIA and then, to the extent cash reserves are depleted, by liquidating assets in the affected CML SIA.

the fair market value of each participating Plan's interest in the affected CML SIAs immediately before the Transactions. MassMutual represents that the fair market value of the CML SIAs involved in the Transactions are readily ascertainable by reference to external markets, and that each underlying security involved in the subject transactions will be valued only at the "independent current market price" within the meaning of Rule 17a-7 of the Securities and Exchange Commission under the Investment Company Act of 1940 (the 1940 Act). MassMutual represents that Rule 17a-7 constitutes a set of standards for the determination of the independently verifiable prices for securities in transactions between registered investment companies and their affiliates.<sup>46</sup> The Merger and Transfer Transactions will be effected without payment of commissions or sales charges by the Plans, including fees payable in accordance with Rule 12b-1 under the 1940 Act.

8. In addition to notification of each Plan Fiduciary in advance of the Merger and Transfer Transactions, as discussed above, MassMutual will also provide to each Plan Fiduciary a written confirmation of the Transactions after they have been completed. No later than forty five days after the Merger and Transfer Transactions, each Plan Fiduciary will be provided a written confirmation of the Transactions which will include a statement of the number of units held by each Plan in each affected CML SIA, the unit value of each such CML SIA unit and the aggregate dollar value of such Plan's CML SIA units, determined immediately prior to the Transactions, as well as the number of units held by each Plan in each affected MassMutual SIA, the unit value of each such MassMutual SIA unit, and the aggregate dollar value of such Plan's MassMutual SIA units, determined immediately after the Transactions.

<sup>46</sup> Rule 17a-7 under the 1940 Act provides a general exception from Section 17(a) of the Act for certain securities transactions between registered investment companies and certain of their affiliates. As a general matter, Section 17(a) of the 1940 Act prohibits any "affiliated person" of a registered investment company from selling any security to the registered investment company. Rule 17a-7 permits certain types of affiliate transactions if, among other things, the transaction is effected at an independently verifiable price, the "current independent market price" within the meaning of Rule 17a-7. MassMutual states that this standard of valuation is appropriate for the proposed exemption for purposes of valuing the assets held in the affected CML SIAs, which are not investments in registered investment companies, that will be merged or transferred into the affected MassMutual SIAs, which are solely invested in registered investment companies.

9. In summary, the applicant represents that the proposed transactions satisfy the criteria of section 408(a) of the Act for the following reasons:

(a) Upon completion of the Merger and Transfer Transactions, the fair market value of the interests of each Plan participating in the MassMutual SIAs immediately following the Transactions will equal the fair market value of such Plan's interest in the affected CML SIA immediately before the Transaction;

(b) The assets of each participating Plan will be invested in the same or similar investment type or asset class before and after the Merger and Transfer Transactions;

(c) The Plans will not pay, and MassMutual and its affiliates will not receive, any fees or commissions in connection with the Merger and Transfer Transactions; and

(d) A fiduciary on behalf of each Plan, who is independent of and unrelated to MassMutual or any of its affiliates, will receive advance written disclosure of the Merger and Transfer Transactions, including notification that the assets of the Plan in the affected CML SIA may instead be transferred, without penalty, charge or adjustment, to any other available MassMutual SIA or liquidated, without penalty, charge or adjustment, for a cash payment to the Plan equal to the fair market value of the Plan's interest in the affected SIA in lieu of the Plan's participation in the proposed transaction.

**FOR FURTHER INFORMATION CONTACT:**  
Ronald Willett of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

#### **General Information**

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 21st day of January, 1998.

**Ivan Strasfeld,**

*Director of Exemption Determinations,  
Pension and Welfare Benefits Administration,  
Department of Labor.*

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