



November 17, 2003

Ms. Jennifer J. Johnson, Secretary  
Board of Governors of the Federal Reserve System  
20<sup>th</sup> & Constitution Avenue, N.W.  
Washington, D.C. 20551

Robert E. Feldman, Executive Secretary  
Federal Deposit Insurance Corporation  
550 17<sup>th</sup> Street, N.W.  
Washington, D.C. 20429

Attention: Docket No. R-1162

Attention: Comments/OES

Public Information Room  
Office of the Comptroller of the Currency  
Mailstop 1-5  
250 E Street, S.W.  
Washington, D.C. 20219

Regulation Comments  
Chief Counsel's Office  
Office of Thrift Supervision  
1700 G Street, N.W.  
Washington, D.C. 20552

Attention: Docket No. 03-22

Attention: No. 2003-47

Re: Notice of Proposed Rulemaking Regarding Asset-Backed Commercial Paper ("ABCP")  
Programs and Early Amortization Provisions

Ladies and Gentlemen:

Bank One Corporation ("Bank One") is pleased to have the opportunity to comment on the notice of proposed rulemaking ("NPR") regarding ABCP programs and early amortization provisions recently published by the Board of Governors of the Federal Reserve System (the "Board"), the Federal Deposit Insurance Corporation (the "FDIC"), the Office of the Comptroller of the Currency (the "OCC") and the Office of Thrift Supervision (the "OTS") (together, the "Agencies"). Bank One is the nation's sixth-largest bank holding company, with assets of approximately \$300 billion, providing a wide array of lending products to commercial, institutional and retail customers. We believe Bank One is well qualified to comment on the NPR.

We appreciate the Agencies' prompt response to the implementation of the Financial Accounting Standards Board's Interpretation No. 46 ("FIN 46") on banking organizations' risk-based capital calculations. We support the Agencies efforts to resolve issues created by recent changes to accounting treatment of variable interest entities resulting from FIN 46, including proposals regarding the treatment of liquidity facilities. We have set forth our specific comments on the NPR below.

Notice of Proposed Rulemaking

I. ABCP Programs/Treatment of Liquidity Facilities

A. Credit Conversion Factors

As drafted in the NPR, the Agencies will require a credit conversion factor for liquidity facilities of either 20% for liquidity facilities with original maturities of 364 days or less, or 50% for liquidity facilities with original maturities of greater than one year. These conversion factors are consistent with those currently proposed under the new Basel II capital accord (“BIS II”) for all externally rated asset-backed securities transactions, and while appropriate for some assets, they do not take into account the low loss given default of the senior tranches which generally comprise the largest percentage of the ABCP program transactions.

In addition, the conversion factors fail to adequately recognize risk mitigation provided by structural considerations. These include asset quality tests that protect the liquidity bank from funding defaulted assets in the event of a liquidity draw and 364-day renewable liquidity facilities that allow for annual re-evaluation and tightening of the structural features in the transaction, when necessary. Risk mitigation tools significantly reduce the risk of a ABCP program transaction versus similarly rated transactions in the term asset-backed securities market. Since 1988, Bank One has experienced very few liquidity draws and no losses related to customer financing activity in ABCP programs. Based upon the nature and low credit risk inherent in the short-term liquidity facilities, a conversion factor lower than 20% would be appropriate in many cases. We have noted that industry participants have submitted recommendations for credit conversion factors ranging from 5% to 10%. We support such a recommended range for short-term liquidity facilities.

B. Eligible Liquidity Facilities Requirements

In addition to the credit conversion factors for ABCP liquidity facilities, the NPR requires certain eligibility and asset quality tests to be made in order to apply credit conversion factors of less than 100%. Bank One believes a credit quality test used to determine the credit risk and related risk based capital requirements inherent in an ABCP program liquidity facility is appropriate. However, we believe that such a test should be specific to the credit requirements of a specific transaction or asset type. A “generic” 60-day delinquency asset quality test standard will not appropriately assess credit risk or determine capital requirements for liquidity facilities. As such, we recommend that the NPR eligible liquidity facility definition be replaced with a requirement for each bank to seek approval from its primary regulator for reasonable asset quality tests. This approach (of allowing an individual bank to obtain approval) is similar to that taken by the Agencies for direct credit substitutes and internal rating methodologies.

**Board of Governors of the Federal Reserve System  
Federal Deposit Insurance Corporation  
Office of the Comptroller of the Currency  
Office of Thrift Supervision**

We believe that our recommendations are supported by industry conditions and ABCP program marketplace convention. Generally for ABCP program liquidity facility agreements, the liquidity provider purchases a specific underlying ABCP conduit asset pool at fair value which is a price that is either par or less than par. A purchase price is determined based upon certain credit-related “triggers” incorporated into the liquidity facility agreement.

Credit-related triggers that determine the purchase price vary based upon the specific transactions as well as the underlying asset pool characteristics. Credit-related triggers are generally one of two types: ratings based triggers or cash flow/financial benchmark triggers. Both of these types of triggers are found in industry practice, depending on the transaction structure.

Ratings based triggers in ABCP program liquidity facilities can be based upon the rating of the underlying seller, the transaction itself<sup>1</sup> (if externally rated) or a transaction guarantor. For example, the liquidity facility may be “wrapped” by a third party guarantee for the entire facility. Therefore, cash flows within the actual deal are supported by the third party guarantee. Such a liquidity facility would have asset quality triggers based upon the credit rating of the guarantor. The timing or delinquency of cash flows is less relevant in determining the credit quality of the transaction. For externally rated transactions, a similar ratings criterion (of the transaction itself), not a cash flow delinquency criterion, is often used to determine the purchase price adjustment.

For cash flow/financial benchmark triggers, purchase price triggers are often based upon certain cash flow and other underlying asset financial benchmarks. Here, among other benchmarks, cash flow delinquencies may be a contributor to the asset quality test that drives the purchase price for a liquidity facility draw. Where delinquent cash flow benchmarks are used, different underlying asset types have very different charge off/delinquency standards. For example, trade receivable pool transactions typically have a 60 to 90 day charge off/delinquency standard for purposes of the asset quality triggers and credit card receivable pool transactions would typically have a 120 to 180 day charge off/delinquency standard. Therefore, an arbitrary cut off at the 60 day delinquency level in the case of credit card receivable pool transactions would significantly overstate the risk of default as the amount of credit cards that ultimately charge-off at 120 to 180 days.

In conjunction with the asset quality test requirements, we do not believe that the limitation that prohibits liquidity facility draws for transactions where the rating falls below

---

<sup>1</sup> For example, certain types conduits often purchase investment securities that are externally rated on a transaction basis.

**Board of Governors of the Federal Reserve System  
Federal Deposit Insurance Corporation  
Office of the Comptroller of the Currency  
Office of Thrift Supervision**

investment grade is appropriate. Such a requirement is irrelevant for non-ratings-based triggered transactions where the asset quality is determined using cash flow or other benchmarks. Further, it should be noted that all cash flow and ratings based purchase price triggers are in place to adjust the purchase price of the asset pool under the liquidity facility to ensure that any credit risk of the underlying asset pool is incorporated into the value of the draw thereby making the investment grade requirement unnecessary.

Therefore, instead of a standardized eligible liquidity facility definition and asset quality requirement as proposed in the NPR, we believe that a more risk sensitive specific transaction or asset type metric should be applied. More specifically, we recommend that the NPR allow for each bank to seek approval for reasonable asset quality tests. Such an approach would be based upon that bank's liquidity facility programs and would incorporate the differences in how credit quality is assessed and observed in industry practice for ABCP program liquidity facilities. This approach would allow for a more accurate assessment of risk exposure and be more consistent with the overall BIS II objectives.

## II. Early Amortization Capital Charge

The NPR applies capital based upon the level of excess spread present in the securitization. This approach requires increased capital as spread income deteriorates on the securitized pool of assets. This forces originators to raise capital at the time when it becomes too expensive or is the least available.

Revolving retail securitizations function primarily as financing vehicles, which utilize structural mechanisms to insulate the investor from the credit risk of the receivables in all but catastrophic events. The current treatment should be modified to apply capital based upon risk weighting of the underlying assets. A risk weighting of less than 100% of the assets is appropriate, consistent with the risk inherent in a pool of credit card receivables.

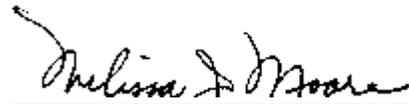
The current rules recognize risk in the assets by applying a dollar for dollar capital charge to interest-only strips, spread accounts, and accrued interest receivable. Alternatively, rather than creating a framework based on excess spread to "correct" the current regulatory treatment of securitized revolving receivables, we recommend that the current treatment remain in place until BIS II is implemented.

**Board of Governors of the Federal Reserve System  
Federal Deposit Insurance Corporation  
Office of the Comptroller of the Currency  
Office of Thrift Supervision**

\* \* \*

Thank you for considering the views expressed in this letter. If you have any questions on this comment letter or would like any additional information, please do not hesitate to contact Melissa J. Moore at (312) 336-4060 or William L. Tabaka at (312) 336-3723.

Very truly yours,



---

Melissa J. Moore  
*Controller and  
Chief Accounting Officer*



---

William L. Tabaka  
*Director of Reporting and  
Accounting Policy*