March 1, 2006

SEC Opinion No. 06-15
RE: Credit Card Receivables may be classified as "Assets" under the Securitization Act of 2004 (R.A. 9267)

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Attn: Atty. Gabriel Dee, Luis Manuel L. Gatmaitan and Maricris C. Ang

Gentlemen:

This refers to your letters of September 13 and October 21, 2005 wherein you request confirmation from the Commission that credit card receivables arising from transactional credit card accounts, pre-selected by the transferor, may be classified as "assets", as contemplated in Republic Act 9267, otherwise known as "the Securitization Act of 2004".

As stated in your letters, the transferor will convey on a non-recourse basis, credit card receivables arising from transactional credit card accounts to a Special Purpose Trust (SPT). The SPT will in turn issue credit card Asset Backed Certificates (Asset Backed Securities [ABS]) which shall be sold to the public.

A credit card account is to be considered transactional if a credit card account holder pays the entire amount due to the credit card company on or before the due date as provided in the user's statement of account. On the other hand, a credit card account whose holder or user pays only a minimum amount required on the due date is called a revolving account.
It was likewise stated in your letter that a selection criteria will be formulated to determine the credit card accounts which will form part of the receivables (asset pool) that will be transferred to the SPT. Such criteria will be provided in the Pooling and Servicing Agreement. Initially, the sample criteria for the transfer of said credit card accounts would be as follows:

1. Transactional users for the last three (3) months;
2. Individual balances to exceed a certain amount; and
3. Account seasoning requirements (referring to a certain period of time during which an account holder or user is considered a transactional user.)

The foregoing criteria are intended to ensure that only credit worthy receivables shall be included in the asset pool. Furthermore, as a form of credit enhancement, there would be an over collateralization of the ABS, wherein the value of the credit card receivables conveyed to the SPT shall exceed the amount of the ABS to be issued by the SPT.

The following provisions of R.A. 9267 (The Securitization Act of 2004) is instructive on the matter, to wit:

SECTION 3. Definition of Terms. – For purposes of this Act, the term

(a) "Securitization" means the process by which assets are sold on a without recourse basis by the Seller to a Special Purpose Entity (SPE) and the issuance of asset-backed securities (ABS) by the SPE which depend, for their payment, on the cash flow from the assets so sold and in accordance with the Plan.

(b) "Asset-backed securities (ABS)" refer to the certificates issued by an SPE, the repayment of which shall be derived from the cash flow of the assets in accordance with the Plan.

(c) "Assets", whether used alone or in the term "asset-backed securities," refer to loans or receivables or other similar financial assets with an expected cash payment stream. The term "Assets" shall include, but shall not be limited to, receivables, mortgage loans and other debt instruments: Provided, That receivables that are to arise in the future and other receivables of similar nature shall be subject to approval by the Securities and Exchange Commission (SEC) or the Bangko Sentral ng Pilipinas (BSP), as the case may be: Provided, further, That the term "Assets" shall exclude receivables from future expectation of revenues by government, national or local, arising from royalties, fees or imposts. [emphasis supplied]

Considering that credit card receivables are in the nature of loans, receivables or financial assets of the credit card issuer with an expected cash payment from the user of such credit card, it is clear from the foregoing, that credit card receivables fall within the context of the term “assets” as defined under R.A. 9267.
Moreover, the provision governing Asset Backed Securities under the Manual of Regulations for Banks issued by the Bangko Sentral ng Pilipinas further confirms that credit card receivables fall squarely within the context of the term “assets” that may be subject to securitization:

SECTION X651. Asset-Backed Securities. - xxx

SUBSECTION X651.1 - Definition of Terms. —

a. Assets shall mean loans or receivables existing in the books of the originator prior to securitization. Such assets are generated in the ordinary course of business of the originator and may include mortgage loans, consumption loans, trade receivables, lease receivables, credit card receivables and other similar financial assets. [emphasis supplied]

Thus, by reason of the foregoing discussion, the Commission, as hereby represented, confirms that credit card receivables arising from transactional credit card accounts, pre-selected by the transferor, may be classified as “assets”, as contemplated in Republic Act 9267, otherwise known as “the Securitization Act of 2004”. Consequently, such receivables can be subject to securitization upon compliance with the mandatory requirements under the same law.

Very Truly Yours,

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General Counsel