



AllianceData

July 29, 2011

By Electronic mail

Department of the Treasury  
Office of the Comptroller of the Currency  
250 E Street, SW, Mail Stop 2-3  
Washington, DC 20219  
Docket Number OCC-2010-0002

Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090  
Attn.: Elizabeth M. Murphy, Secretary  
File Number S7-14-11

Board of Governors of the Federal Reserve  
System  
20<sup>th</sup> Street and Constitution Avenue, NW  
Washington, DC 20551  
Attn.: Jennifer J. Johnson, Secretary  
Docket No. R-1411

Federal Housing Finance Agency  
Fourth Floor  
1700 G Street, NW  
Washington, DC 20552  
Attn.: Alfred M. Pollard, General Counsel  
RIN 2590-AA43

Federal Deposit Insurance Corporation  
550 17<sup>th</sup> Street, NW  
Washington, DC 20429  
Attn.: Comments, Robert E. Feldman,  
Executive Secretary  
RIN 3064-AD74

Department of Housing and Urban  
Development  
Regulations Division  
Office of General Counsel  
451 7<sup>th</sup> Street, SW  
Room 10276  
Washington, DC 20410-0500

**Re: Credit Risk Retention**

Ladies and Gentlemen:

Alliance Data Systems Corporation (“ADSC”) is a leading provider of data-driven and transaction-based marketing and customer loyalty solutions. ADSC’s Private Label Services and Credit segment provides account origination and funding services for more than 100 private label and co-brand retail credit card programs through its credit card bank subsidiary, World Financial Network National Bank, a national banking association (“WFN”), and its industrial bank subsidiary, World Financial Capital Bank (“WFCB”; and together with WFN, the “ADSC Banks”).

ADSC is submitting this letter in response to the request of the Department of the Treasury, Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Securities and Exchange Commission, the Federal Housing Finance Agency, and the Department of Housing and Urban Development (collectively the “Agencies”) for comments on the Notice of Proposed Rulemaking (the “NPR”)

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proposing rules (the “Proposed Rule”) to implement the credit risk retention requirements of Section 15G of the Securities Exchange Act of 1934 (15 U.S.C. §78o-11) (“Section 15G”).

As the Agencies have acknowledged in the NPR, the securitization market is an important source of credit to U.S. households and businesses and provides economic benefits that lower the cost of credit to households and businesses.<sup>1</sup> Historically the ADSC Banks have utilized securitization as their primary funding vehicle for retail credit card receivables, and the ADSC Banks’ ability to continue to offer retail credit depends to a large extent on a stable and efficient securitization market. Therefore, the ADSC Banks appreciate the opportunity to comment on the Proposed Rule, which has significant implications for the cost of raising capital in the securitization market.

The ADSC Banks sponsor six credit card master trusts that have outstanding series of asset-backed securities:

- World Financial Network Credit Card Master Trust (“WFN Certificate Trust I”),
- World Financial Network Credit Card Master Note Trust (“WFN Note Trust I”),
- World Financial Network Credit Card Master Trust II (“WFN Certificate Trust II”),
- World Financial Network Credit Card Master Note Trust II (“WFN Note Trust II”),
- World Financial Network Credit Card Master Trust III (“WFN Certificate Trust III”), and
- World Financial Capital Master Note Trust (“WFCB Note Trust”).

A description of the WFN and WFCB master trusts is included in Appendix A to this letter, with diagrams illustrating the structure of each master trust. The master trust structures used by the ADSC Banks are typical of the structures most commonly used in credit card securitizations.<sup>2</sup>

We appreciate the effort by the Agencies to accommodate master trust securitizations by proposing to allow master trusts to meet the base risk retention requirements through retention of a five percent seller’s interest. We are also encouraged by the statement in the Proposed Rule that the definitions of seller’s interest and revolving asset master trust are intended to be consistent with market practices. However, we have identified several aspects of the proposed definition of seller’s interest and other features of the seller’s interest option that are fundamentally inconsistent with the master trust structures used by the ADSC Banks and virtually all other issuers of credit card ABS.

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<sup>1</sup> See NPR at 24095.

<sup>2</sup> WFN Certificate Trust I, WFN Certificate Trust II, WFN Certificate Trust III and WFCB Note Trust are typical of the structures described in illustration 1 to Exhibit E of the American Securitization Forum’s comment letter on the Proposed Rule, dated June 10, 2011 (the “ASF Risk Retention Comment Letter”). WFN Note Trust I and WFN Note Trust II are issuance trusts that hold collateral certificates issued by other master trusts, which is a common structure illustrated in Exhibit G to the ASF Risk Retention Comment Letter.

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In addition, like many bank sponsors, the ADSC Banks do not directly hold the seller's interests in their sponsored master trusts. In each of the WFN and WFCB securitization platforms, the seller's interest is held by a special purpose entity that is a wholly-owned subsidiary of the sponsoring Bank. Moreover, WFN uses issuance trust structures (discussed in more detail below) for two of its securitization platforms. In these issuance trust structures, the securitized credit card receivables are held by a master trust that issues a collateral certificate to a separate issuing entity, which then issues asset-backed notes secured by the collateral certificate. In such structures, the interest in the securitized receivables that would constitute the seller's interest is an ABS interest issued by the intermediate master trust rather than the issuing entity. As a result, such interest would not qualify as a "seller's interest" under the Proposed Rule.

In order for the seller's interest option to be a viable risk retention method for the WFN and WFCB securitization programs:

- the definition of seller's interest in the Proposed Rule must be revised to better align with the definition of seller's interest as commonly used in the ABS market;
- the Proposed Rule must be revised to allow a depositor to initially hold the seller's interest;
- the Proposed Rule must be revised to accommodate issuance trust structures, which are prevalent in the credit card ABS market; and
- the premium capture cash reserve account provisions must be eliminated or substantially redrafted so as not require funding of premium cash reserve accounts in master trust structures that do not monetize excess spread.

We also urge the Agencies to revise the risk retention rules to allow for greater flexibility to combine risk retention options, and to revise the alternative risk retention options, such as the eligible horizontal residual interest and the horizontal cash reserve account options, to better align with master trust structures. Further, the Agencies should provide sponsors with the flexibility to change the retention method used to satisfy the risk retention rules from time to time.

Lastly, we ask that the seller's interest option for revolving asset master trusts and the alternative risk retention options (to the extent such other risk retention options are revised in the final rule to be viable alternatives for master trusts) not be applied on a retroactive basis to ABS interests issued by a master trust prior to the effective date of the final risk retention rules.

**I. Seller's Interest Option for Revolving Asset Master Trusts**

**A. Flexibility for Depositors and other Consolidated Affiliates To Hold Retained Risk Initially**

In order to accommodate existing structures that are widely used in credit card securitizations (as well as securitizations for other asset classes), the Proposed Rule should allow consolidated affiliates (as defined in the Proposed Rule) to hold the required risk exposure upon initial issuance, and the sponsor should be permitted to offset its own risk retention requirement by the amount of the credit risk retained by its consolidated affiliates. The Proposed Rule would, as a general matter, require the sponsor of a securitization transaction to retain the credit risk of the securitized assets as required by the Proposed Rule. The Proposed Rule would permit the sponsor of a securitization to transfer the credit risk that it is required to retain to one or more consolidated affiliates. However, the flexibility in the Proposed Rule allowing for transfer of the risk exposure from a sponsor to a consolidated affiliate is not sufficient to make the Proposed Rule workable for most master trusts for a number of reasons.

First, for existing master trusts, the seller's interest is an ABS interest that has been in existence since the formation of the master trust, and for many master trusts, including the WFN and WFCB master trusts, the seller's interest is currently held by the depositor upon initial issuance and has not been issued to the sponsor and then subsequently transferred to the depositor. As described in more detail in Appendix A, in the WFN and WFCB securitization programs, each Bank transfers receivables to a bankruptcy-remote subsidiary (either WFN Credit or WFC Credit), which in turn transfers receivables to a master trust. With respect to each master trust, the seller's interest is held by an intermediate special purpose entity, which is the depositor to the master trust. The seller's interest is not held by the sponsor at any time.

Second, it would not be possible to amend existing master trust transactions to comply with the Proposed Rule because the retention by the sponsor of the seller's interest would be inconsistent with the structuring of the transactions as "true sales" for commercial law purposes. In addition, nearly all existing master trusts—including all of the WFN and WFCB master trusts—currently rely on the grandfathering provision of the FDIC safe harbor for securitizations that requires the master trusts to satisfy the requirements for sale accounting treatment under generally accepted accounting principles in effect for reporting periods before November 15, 2009.<sup>3</sup> One of the conditions for such sale accounting treatment is the delivery of a legal opinion that the transferred assets have been isolated from the transferor, even in bankruptcy or other receivership. As a result, in order for the WFN and WFCB securitizations, as well as many other securitizations sponsored by insured depository institutions, to continue to rely on the grandfathering provisions of the FDIC safe harbor, the securitizations must continue to be structured as true sales, which will require the seller's interest in the master trusts to be held by the intermediate depositors for each master trust, rather than the sponsors.

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<sup>3</sup>75 Fed. Reg. 60287.

Allowing the depositor (rather than the sponsor) to satisfy the risk retention requirements would also be consistent with the statutory directive of Section 15G, which provides for the Agencies to apply the risk retention requirements of the statute to a “securitizer” of ABS, which would include an issuer or sponsor of the ABS. The NPR notes that the Agencies interpret the reference in Section 15G(a)(3)(A) to an “issuer of an asset-backed security” as referring to the depositor of the ABS.<sup>4</sup> In addition, the Agencies have already provided flexibility in the Proposed Rule for a sponsor to transfer its risk exposure to a consolidated affiliate, and the NPR states that this flexibility has been allowed “because the required risk exposure would remain within the consolidated organization, and thus, would not reduce the organization’s financial exposure to the credit risk of the securitized assets.”<sup>5</sup> Likewise, allowing the depositor or other consolidated affiliate of the sponsor to hold the required credit exposure as an initial matter, rather than as a result of the transfer of such exposure from the sponsor, would not reduce the organization’s financial exposure to the credit risk of the securitized assets, and should be permitted in the final risk retention rules.

## **B. Clarifying Proposed Rule for Issuance Trust Structures**

As discussed in more detail below, credit card securitizations often use structures involving multiple master trusts (often called “issuance trust structures”), and the Proposed Rule is not designed to accommodate such structures, which will (i) prevent many existing master trusts from using the seller’s interest option for revolving asset master trusts, and (ii) result in duplicative risk retention requirements being imposed with respect to a single issuance of ABS. We therefore request that the Proposed Rule be clarified to take into account these very commonly used issuance trust structures.

Three of the existing WFN master trusts were established during the 1990’s. At the time those trusts were created, master trusts were typically formed as common law trusts under pooling agreements, pursuant to which asset-backed certificates, representing undivided interests in the master trust, were issued to investors. Over time, it became common to form master trusts as statutory trusts under applicable state law and to issue asset-backed notes under indentures, which facilitated treatment of the asset-backed securities as debt instruments for tax and ERISA purposes. Like many issuers, WFN desired to issue asset-backed notes secured by the same pool of credit card receivables that already secured the outstanding series of asset-backed certificates previously issued by its common law master trusts.

In the case of WFN Certificate Trust I, this was accomplished by the issuance of an investor certificate—referred to as a collateral certificate—representing an undivided interest in the credit card receivables and other assets of WFN Certificate Trust I to WFN Credit. WFN Credit has transferred such collateral certificate to WFN Note Trust I, which periodically issues asset-backed notes secured by the collateral certificate.

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<sup>4</sup> See NPR at 24099.

<sup>5</sup> See NPR at 24116.

With respect to asset-backed notes issued by WFN Note Trust I, the related seller's interest is held by WFN Credit, as depositor to WFN Certificate Trust I, and the seller's interest is therefore an ABS interest issued by WFN Certificate Trust I, rather than the issuing entity (WFN Note Trust I). Such seller's interest is a proportional retained interest in all securitized receivables securing the investor certificates issued by WFN Certificate Trust I, including the collateral certificate held by WFN Note Trust I. Under the Proposed Rule, the "seller's interest" is defined as an ABS interest, which is an "interest or obligation issued by an issuing entity", so it is unclear whether a seller's interest in the assets of the underlying master trust (as opposed to the issuing entity) would satisfy the definition of a seller's interest under the Proposed Rule.

We request that the Proposed Rule be revised to accommodate issuance trust structures as follows:

- The Proposed Rule should be clarified to avoid imposing duplicative risk retention requirements for both the collateral certificate issued by the underlying master trust, as well as the ABS interests issued by the issuance trust that are secured by the collateral certificate;
- The Proposed Rule should be revised to treat the underlying master trust and the issuance trust as a single "issuing entity" for purposes of the risk retention requirements; and, in particular, a sponsor should be permitted to satisfy its risk retention requirement relating to ABS issued by an issuance trust by holding a seller's interest in the credit card receivables owned by the underlying master trust; and
- The Proposed Rule should specifically exclude issuance trust structures from the requirements applicable to resecuritizations under § \_\_.21(a)(5) of the Proposed Rule.

### **C. Conforming "Seller's Interest" Definition to Market Practice**

The Proposed Rule states that the definition of "seller's interest" is intended to be consistent with market practice;<sup>6</sup> however, additional clarifications are needed to ensure that the definition of seller's interest is consistent with the most common forms of seller's interests used in credit card securitizations.

Clause (1) of the definition of seller's interest defines a seller's interest as "an ABS interest (1) In all of the assets that: (i) are owned or held by the issuing entity; and (ii) Do not collateralize any other ABS interests issued by the issuing entity."

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<sup>6</sup> See NPR at 24104.

The seller's interest in a master trust represents a proportional retained interest in all of the securitized receivables in a master trust. The amount of the seller's interest is most typically defined in securitization transaction documents as the excess of the principal amount of receivables (plus the amount on deposit in the excess funding account),<sup>7</sup> over the aggregate investor interest. In particular, we note that an issuing entity may hold certain assets that are not typically considered part of the seller's interest. For example, an issuing entity may hold reserve accounts and cash collateral accounts that provide credit enhancement to ABS interests, prefunding accounts pledged solely for the benefit of particular investor interests, and other forms of credit enhancement, including derivatives, which are not typically considered part of the seller's interest. Therefore, it would not be consistent with market practice to define a seller's interest as an interest in "all of the assets" of the master trust, and the Proposed Rule should be revised to define a seller's interest as an interest in the securitized receivables and any excess funding account or similar account.

Clause (2) of the definition further defines a seller's interest as an ABS interest "[t]hat is *pari passu* with all other ABS interests issued by the issuing entity with respect to allocation of all payments and losses prior to an early amortization event." Although the seller's interest typically receives a *pro rata* allocation of losses and collections of finance charges on the credit card receivables, during any amortization period for a series of ABS a portion of the seller's interest in principal collections becomes subordinated to the amortizing series. This occurs through what is commonly called the "fixing" of principal allocations to amortizing series, which means the series that is amortizing will continue to receive an allocation of principal collections based on the principal amount of the series at the time it begins amortizing, rather than on the current amortized principal amount of the series. This common structural feature allows securities to be paid off more quickly during amortization periods. Essentially, the payment of principal collections to the seller's interest is subordinated until the amortizing series is paid in full. The Proposed Rule should therefore be revised to define a seller's interest as an ABS interest that is *pari passu* with or subordinate to other ABS interests.

#### **D. General Risk Retention Requirement for Revolving Asset Master Trusts and Transition Issues**

The Proposed Rule would require a sponsor to retain a seller's interest equal to 5% of the "unpaid principal balance of all the assets owned or held by the issuing entity." The requirement to base the 5% test on the principal balance of "all assets," as opposed to the principal balance of all securitized receivables, is inconsistent with market practice. The seller's interest in credit card securitization structures primarily serves to absorb expected fluctuations in the principal balance of the receivables in the master trust, whether due to dilution (for example, returns of

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<sup>7</sup> The purpose of the excess funding account in a credit card securitization is to set aside collections or proceeds from the issuance of asset-backed securities by the issuing entity that would otherwise be distributable to the holder of the seller's interest in a trust account at any time that the seller's interest is less than the minimum required seller's interest. Such accounts are sometimes called "special funding accounts."

merchandise) and seasonality (for example, increased use of credit cards between Thanksgiving and Christmas, followed by January returns), so the minimum seller's interest test in securitization transaction documents is often based on a percentage of the principal amount of receivables held by the master trust. In no case would the principal amount of assets other than principal receivables be included in the calculation of the minimum seller's interest. For example, cash reserve accounts and other forms of credit enhancement are not subject to dilution and therefore would not be included in calculating the minimum seller's interest. Therefore, if the Agencies retain a risk retention requirement based on the principal balance of the assets in the master trust, we request that the final rules be revised to refer to the unpaid principal balance of securitized receivables, rather than all assets.

Another common method of calculating the minimum seller's interest in securitization transactions documents would be to multiply the aggregate investor interest by the required seller interest percentage. We urge the Agencies to consider a general risk retention requirement based on the aggregate investor interest because we believe it is important that the risk retention requirement differentiate between investor interests issued before the risk retention rules become effective and those investor interests issued after effectiveness. Under the Proposed Rule, a sponsor will be required to hold at least 5% of credit risk for all assets held by the issuing entity, whether or not the related ABS interests secured by such assets were issued prior to or after effectiveness of the risk retention rules. In the case of ABS issued in amortizing structures, there is no similar requirement to retroactively apply the risk retention rules to ABS issued prior to effectiveness. We therefore urge the Agencies to consider a general risk requirement for revolving asset master trusts that is based on the principal amount of outstanding investor interests issued after the effectiveness of the risk retention rules, rather than on either the principal balance of all assets owned by the master trust or the par amount of all ABS interest issued by the master trust.

#### **E. Proposal for Alternative Definition of Seller's Interest**

In light of the Proposed Rule's unintentional divergence from market practice as discussed above, we would suggest the following alternative definition of seller's interest, which we believe would be consistent with market practice for existing credit card securitization documents. As noted above, a seller's interest is typically defined as the principal balance of receivables, plus cash in any excess funding account, minus the aggregate investor interest.<sup>8</sup> The "investor interest" represents an ABS interest's claim on the principal balance of securitized receivables and is typically the amount used to allocate collections and losses to a particular ABS interest.<sup>9</sup>

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<sup>8</sup> Some master trusts use other terms, such as "collateral amount" or "nominal liquidation amount," in lieu of the term "investor interest."

<sup>9</sup> This general rule is subject to the exception discussed above with respect to the "fixed" allocation of principal collections during amortization. As noted above, the investor interest used in the numerator for purposes of

Therefore, we propose the following definition of “seller’s interest” for consideration by the Agencies:

“Seller’s interest” means an undivided interest in the entire pool of securitized receivables owned by the master trust, which is *pari passu* with or subordinate to other ABS interests issued by the master trust, in an amount equal to the excess of:

(1) the sum of:

(a) the aggregate of the principal balances of the securitized receivables; *plus*

(b) to the extent not deducted from the aggregate investor interest in clause (2), funds held in trust accounts owned by the issuing entity that have been set aside to pay the principal amount of outstanding ABS interests, including collections set aside in trust accounts owned by the issuing entity to maintain the minimum asset balance for the master trust;

*over*

(2) the aggregate investor interest in the master trust.

We propose that the general risk retention requirement in clause (a) of § \_\_.7 be revised as follows:

“General Requirement. At the closing of the securitization transaction and until all ABS interests (other than ABS interests held by the sponsor and its consolidated affiliates) are paid in full, the sponsor retains a seller’s interest of not less than five percent of the then current aggregate investor interest, excluding any ABS interests issued prior to the effective date of the [risk retention rules].”

#### **F. Premium Capture Cash Reserve Account**

For a sponsor that relies on the seller’s interest method of risk retention, the premium capture cash reserve account provision in § \_\_.12 requires the funding of an account in an amount equal to:

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calculating the principal allocation percentage during amortization is typically “fixed” – meaning the investor interest as of the end of the revolving period will be used to determine the principal allocation percentage rather than the amortized amount of the investor interest.

(1) The gross proceeds, net of closing costs paid by the sponsor(s) or issuing entity to unaffiliated parties, received by the issuing entity from the sale of ABS interests in the issuing entity to persons other than the retaining sponsor;<sup>10</sup> and

(2) ...95% of the par value of all ABS interests in the issuing entity<sup>11</sup> issued as part of the securitization transaction.

Although § \_\_.12 appears to apply to revolving asset master trusts that utilize the seller's interest option,<sup>12</sup> it is unclear how the provision would be applied in the context of a master trust transaction. First, although the seller's interest in a master trust is an ABS interest issued by the issuing entity (or an intermediate master trust that transfers a collateral certificate to the issuing entity), the seller's interest is not issued in connection with any particular issuance of ABS interests by the master trust, so it is unclear whether the seller's interest was intended to be included in clause (2) of the above calculation. Second, the seller's interest option for revolving asset master trusts currently requires a retained interest equal to not less than five percent of the unpaid principal balance of the assets. Given that the risk retention requirement is based on principal balances of the assets and the premium capture provision utilizes a calculation based on "95% of the par value of all ABS interests", there is an inherent mismatch between the two provisions, and it is unclear whether the par value of the seller's interest for purposes of § \_\_.12 is intended to be different than unpaid principal balance of the assets referenced in § \_\_.7 of the Proposed Rule.

The NPR indicates that the "[premium recapture] proposal would not require a sponsor to establish and fund a premium capture cash reserve account if the sponsor does not structure the securitization to immediately monetize excess spread, thus resulting in no "premium" that would be captured by the calculations described above."<sup>13</sup> Given this intent, we believe it is necessary for the Agencies to eliminate or substantially redraft the premium recapture provisions so that a master trust sponsor that uses the seller's interest option and that has not sought to monetize excess spread, is able to apply the calculation in § \_\_.12 with the clear result that no funding of a premium capture cash reserve account would be necessary.

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<sup>10</sup> As discussed above, we request that the Proposed Rule be revised to allow the seller's interest (or any other form of retained credit risk) to be retained by a consolidated affiliate upon initial issuance and we note that a corresponding change should be made in this provision to refer to the sponsor and its consolidated affiliates.

<sup>11</sup> As discussed in subsection B. above, references to issuing entity throughout the Proposed Rule are problematic for master trusts. If the seller's interest in a master trust is intended to be included in clause (2), to the extent the seller's interest in a particular master trust is an interest in receivables held by an intermediate master trust rather than the issuing entity, the reference to issuing entity in clause (2) would preclude such seller's interest from being included in the calculation.

<sup>12</sup> § \_\_.12(a)(2)(i) references securitization transactions for which the seller has relied on the risk retention option for revolving asset master trusts found in § \_\_.7.

<sup>13</sup> See NPR at 24113.

## **II. Additional Forms of Risk Retention**

### **A. Combining Risk Retention Methods**

The Proposed Rule should be revised to allow greater flexibility to combine different forms of risk retention. In particular, we request that master trust sponsors be permitted to combine the seller's interest and eligible horizontal residual interest approaches. In addition, we request that sponsors be permitted to satisfy their risk retention requirements through a combination of the eligible horizontal residual interest and horizontal cash reserve account options.

Each of the WFN and WFCB master trusts has issued subordinate tranches of securities that are held by the ADSC Banks and/or consolidated affiliates of the ADSC Banks, and, except in the case of WFN Trust II, the ADSC Banks have also established cash reserve accounts for each series that are used to fund shortfalls in payments to investors. As a result, the ADSC Banks and their affiliates are holding substantial subordinated interests on top of their retained seller's interests. Such risk retention far exceeds 5% of the credit risk of the securitized assets or 5% of the principal amount of asset-backed securities. Appendix B to this letter includes a summary of the outstanding series of asset backed securities issued by WFN Note Trust I in the public and 144A markets, indicating for each series, the various forms of credit risk retained by WFN and its consolidated affiliates.<sup>14</sup> We believe the substantial credit risk retained by WFN in these securitization transactions provides a compelling illustration of why it would be inequitable not to allow the seller's interest approach to be combined with other forms of risk retention.

In the case of WFN Note Trust I, there are currently 9 outstanding series of ABS. For each series of notes, a cash collateral account has been established in an amount equal to either 3.50% or 4.00% of the outstanding principal amount of the ABS. In addition, for each series issued after Series 2006-A, WFN and/or its consolidated affiliates, hold the most junior classes of ABS in the series, with such retained interests ranging between 12.5% and 20.5% of the outstanding principal amount of the issued ABS in each series. In addition, the most junior class of each series (Class C) benefits from a spread account that may be funded from collections depending on the level of excess spread for the series. The right to excess spread is retained by the depositor to each master trust and absorbs losses before any other interests. The minimum seller's interest requirement ranges from 4.0-6.0% depending on the month to reflect typical seasonal fluctuations in the receivables balance.

Under the Proposed Rule, if WFN were to rely on the seller's interest method of risk retention for revolving asset master trusts, for certain months WFN would need to increase the minimum level of the seller's interest in WFN Note Trust I from 4% to 5%, despite its otherwise

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<sup>14</sup> The ADSC Banks also retain substantial residual interests in the other WFN and WFCB master trusts. We have not included the capital structures for such securitization transactions in Appendix B because the related securities are issued in confidential, private placements.

significant amount of retained credit risk in the related securitized assets. Alternatively, if WFN were to rely on the horizontal cash reserve account method of risk retention, it would need to increase the required cash collateral account percentages from 4.00% to 5.00%, notwithstanding its seller's interest of not less than 4% and the retention of significant subordinated tranches of notes and its retained interest in the excess spread. We therefore request that the Agencies grant greater flexibility to combine risk retention options, and in particular, to allow the seller's interest option to be combined with the eligible horizontal residual interest option and the horizontal cash reserve option (effectively providing an "L-shaped" method of risk retention for revolving assets master trusts). We suggest that a sponsor be allowed to offset against its required risk retention requirement under the seller's interest option, the unpaid principal amount of any outstanding eligible horizontal residual interests held by the sponsor and/or its consolidated affiliates, as well as the amount of funds held in horizontal cash reserve accounts.

**B. Eligible Horizontal Residual Interest and Horizontal Cash Reserve Account Options Are Functionally Unavailable to Master Trusts**

**1. *Eligible horizontal residual interest option***

As noted above, many master trust sponsors and their consolidated affiliates currently retain the most subordinated classes or tranches of securities issued by their sponsored master trusts. Such subordinated securities typically absorb losses that would otherwise be allocated to the more senior securities of the same series and are subordinated to the senior securities of the same series in right of payment of interest and principal. Such subordinated securities are therefore an effective means of aligning the interests of the sponsor with those of investors. However, the definition of eligible horizontal residual interest in the Proposed Rule does not accommodate the typical master trust credit enhancement structure in which subordinated securities provide credit enhancement only to securities of the same series, as opposed to all other ABS interests on a trust-wide basis. In order for the eligible horizontal residual interest method of risk retention to be a viable option for credit card master trusts, the definition of eligible horizontal residual interest would need to be revised to take into account the unique features of master trusts. In this section, we describe the current aspects of the definition of eligible horizontal residual interest that are problematic for master trusts.

**a. *Requirement that eligible horizontal residual interest be allocated "all losses"***

In order for an ABS interest to be an eligible horizontal residual interest it must be allocated "all losses" on the securitized assets until the par value of the eligible horizontal residual interest is reduced to zero. In the case of each of the WFN and WFCB master trusts and every other credit card master trust, the seller's interest will be allocated a portion of losses, so no retained subordinated class held by the ADSC Banks and their consolidated affiliates could ever satisfy the definition of eligible horizontal residual interest.

Second, for all master trusts, a subordinated tranche of securities will only provide credit enhancement for particular senior tranches of securities. For example, in the case of the WFN and WFCB master trusts, a subordinated class of ABS of a particular series would only serve as credit enhancement for senior classes of ABS of the same series and would not absorb losses allocated to ABS of other series issued by the master trust. The definition of eligible horizontal residual interest should therefore be clarified to allow for series-specific eligible horizontal residual interests, as we suggest in Section I.B.1.d. below.

Third, investors in credit card ABS often have the benefit of cash collateral accounts and spread accounts, the funds in which may be used to make interest and/or principal payments on the ABS issued by the master trust, and may in some cases be used to cover losses that would otherwise be allocated to investors. As illustrated in Appendix B, each series of ABS issued by WFN Note Trust I has the benefit of a cash collateral account, and each series of Class C notes (the most subordinated class) also has the benefit of a spread account that is used to pay interest and principal on the Class C notes. These cash collateral accounts and spread accounts are also exposed to the credit losses on the securitized assets and therefore may arguably prevent all retained tranches from satisfying the “allocated all losses” requirement. That would be an illogical result given that these cash accounts increase WFN’s exposure to credit risk in the securitization transactions and provide a further incentive for WFN to act in a manner that reduces losses on the securitized assets. The definition that we propose in Section I.B.1.d. below would address these concerns.

***b. Requirement that eligible horizontal residual interest have the “most subordinated claim to payments of both principal and interest”***

Another requirement for an eligible horizontal residual interest is that the ABS interest must have the most subordinated claim to payments of both principal and interest by the issuing entity. In terms of principal payments, master trusts typically provide for subordinated classes of ABS to receive payments of principal, so long as required levels of subordination are maintained for the senior classes of ABS that benefit from the credit enhancement provided by that particular class of subordinated ABS. As noted above, in many master trust structures, subordinated classes of a particular series will only provide credit enhancement for the senior ABS of the same series, so principal payments on the subordinated notes would not be subordinated to principal payments of all ABS interests. Instead, only the senior classes of ABS of the same series are entitled to the benefits of such subordination. Similarly, for many master trusts, including the WFN and WFCB master trusts, interest payments on subordinated classes of ABS are only subordinated to senior classes of ABS of the same series, so a retained subordinated class of a separate series of ABS held by the sponsor would not qualify as an eligible horizontal residual interest. The definition of eligible horizontal residual interest should therefore be revised to provide that an eligible horizontal residual interest for a master trust need only be subordinated in terms of principal and interest payments to ABS interests of the same series.

***c. Inapplicability of scheduled payments of principal***

The third requirement for an eligible horizontal interest is that until all other ABS interests in the issuing entity are paid in full, such ABS interest must not be entitled to receive any payments of principal made on the securitized asset; provided that an eligible horizontal residual interest may receive its current proportionate share of scheduled payments of principal received on the securitized assets in accordance with the transaction documents. For credit card receivables and other assets traditionally securitized using master trust structures, there are no “scheduled payments” associated with the assets, so there would be no way to apply this requirement to master trusts. The Proposed Rule thus should indicate that this requirement does not apply to credit card securitizations.

***d. Proposal for alternative definition of eligible horizontal residual interest***

To address the concerns described above, we suggest the Agencies adopt a definition of eligible horizontal residual interest specifically for revolving asset master trusts and suggest the following definition for consideration by the Agencies:

Eligible horizontal residual interest means, with respect to any revolving asset master trust, an ABS interest in the issuing entity that:

(1) Provides credit enhancement to one or more senior series, classes or tranches of ABS interests issued by the issuing entity by absorbing losses allocated to such senior ABS interests; provided that:

(i) such ABS interest does not itself benefit from credit enhancement designed to protect such ABS interest from credit losses on the securitized assets, other than any credit enhancement in the form of an ABS interest held solely by the sponsor or its consolidated affiliates, including any cash collateral account or other trust account, the residual interest in which is held solely by the sponsor or its consolidated affiliates; and

(ii) the sponsor and/or its consolidated affiliates hold the seller’s interest and any other residual interests issued by the issuing entity, including the right to receive excess spread on the securitized assets;

(2) Has the most subordinated claim to payments of interest payable by the issuing entity on any interest payment date (excluding any interest payments on other eligible horizontal residual interests); provided, however, with respect to any ABS interest issued as part of a separate series, such requirement shall be met if the ABS interest has the most subordinated claim to interest payable by the issuing entity to ABS interests of such series (excluding any interest payments on other eligible horizontal residual interests), or is a tranche of the class that has the most subordinated claim to interest payable by the issuing entity to ABS interests of such series (excluding any interest payments on other eligible horizontal residual interests); provided,

further, an ABS interest may meet the requirements of this clause (2) notwithstanding the availability of a reserve account, spread account or similar trust account to fund shortfalls in interest payments to such ABS interest, even if such ABS interest has a claim to such funds that is senior to other ABS interests of the same series, so long as the residual interest in such trust account is held solely by the sponsor or its consolidated affiliates; and

(3) Has the most subordinated claim to payments of principal payable by the issuing entity on any principal payment date (excluding any principal payments on other eligible horizontal residual interests); provided, however, with respect to any ABS interest issued as part of a separate series, such requirement shall be met if the ABS interest has the most subordinated claim to principal payable by the issuing entity to ABS interests of such series (excluding any principal payments on other eligible horizontal residual interests), or is a tranche of the class that has the most subordinated claim to principal payable by the issuing entity to ABS interests of such series on such payment date (excluding any principal payments on other eligible horizontal residual interests); provided, further, an ABS interest may meet the requirements of this clause (2) notwithstanding the availability of a reserve account, spread account or similar trust account to fund shortfalls in principal payments to such ABS interest, even if such ABS interest has a claim to such funds that is senior to other ABS interests of the same series, so long as the residual interest in such trust account is held solely by the sponsor or its consolidated affiliates.

## **2. *Horizontal cash reserve account option***

The Proposed Rule also allows a sponsor to satisfy its base risk retention requirement by funding a horizontal cash reserve account in lieu of holding a horizontal residual interest. Unfortunately, this provision as drafted also does not take into account the unique features of master trusts.

For each series of asset-backed notes issued by the WFN and WFCB master trusts, other than WFN Trust Certificate Trust II and WFN Certificate Trust III, the applicable depositor has established a cash collateral account with the related trustee for the ABS in an amount equal to either 3.50% or 4.00% of the outstanding principal amount of the ABS. Each cash collateral account is established solely for the benefit of a particular series of ABS, rather than all ABS issued by the related master trust. Funds on deposit in the cash collateral accounts are invested in highly rated short-term investments. On any payment date, funds may be withdrawn from the cash collateral account to cover shortfalls in interest payable on the related ABS, servicing fees and the related series' share of losses.

We have identified the following problems with the requirements of the Proposed Rule's horizontal cash reserve account option and suggest the following modifications:

- First, § \_\_.5(b)(3) requires that funds not to be released from the cash reserve account except as provided in that section until "all ABS interests in the issuing entity are paid in full." Such standard clearly was not

written with any regard to making the horizontal cash reserve option available to master trust issuers, since any cash reserve account in a master trust transaction will have been established only for the benefit of a specific series of ABS interests.

- Second, the only funds that may be released from a cash reserve account (other than certain releases of funds to the sponsor or other holder of the residual interest in the account) are amounts needed to “satisfy payments on ABS interests in the issuing entity on any payment date on which the issuing entity has insufficient funds from any source ... to satisfy an amount due on an ABS interest.” As noted above, cash collateral accounts in revolving asset master trust transactions typically may be used to pay servicing fees and in some cases, trustees fees, to the extent such fees would have a priority in payment that is higher than interest on the ABS in the finance charge waterfall. In addition, funds in cash collateral accounts are often used to cover losses allocated to a series of ABS in order to prevent the investor interest from being written-down. Therefore, the list of permitted uses of funds in a horizontal cash reserve account is far too narrow to describe the type of cash collateral account typically found in a credit card securitization.

In addition, as described above, the most junior class of a series typically has the benefit of an additional spread account solely for the benefit of the most junior class of notes (which we will refer to as a “Class C spread account”). This is problematic because funds can only be withdrawn from an eligible horizontal cash reserve account to the extent the issuing entity has “insufficient funds from any source.” Typically, funds on deposit in a Class C spread account are only used to the extent funds in the cash collateral account are exhausted. It is unclear why the availability of an additional spread account, which is funded solely by excess spread, should prevent the cash collateral account from satisfying the definition of a horizontal cash reserve account. Such additional Class C spread account simply increases the amount of credit risk retained by the sponsor and its consolidated affiliates, rather than reducing the sponsor’s economic exposure to funds in the cash collateral account.

- Third, § \_\_.5(b)(ii)(A) allows funds to be released to a sponsor or any other person “due to the receipt by the issuing entity of scheduled payments of principal on the securitized assets.” As discussed above, there are no scheduled payments of principal associated with credit card receivables and therefore there is no way to apply this requirement to a credit card securitization transaction. Further, the amount of funds to be

released would be determined based on the product of such scheduled payments to “[t]he ratio of the current balance in the horizontal cash reserve account to the aggregate remaining principal balance of all ABS interests in the issuing entity.” As previously noted, the reference to “all ABS interests in the issuing entity” does not make sense in the context of a series-specific cash reserve account. In addition, the reference to ABS interests is so broad that it would include the seller’s interest, the value of which will change on a daily basis, and should have no bearing on the release of funds from the horizontal reserve account.

- Fourth, § \_\_.5(b)(2) permits only very limited investment options for funds on deposit in a horizontal cash reserve account. As a result of investor demands and rating agency criteria, funds in all trust accounts for a securitization, including any cash reserve accounts, are typically invested in very short-term highly rated investments in certain categories specified in the related securitization documents. We request that the investment criteria for funds on deposit in any horizontal cash reserve account be limited only by the restrictions in the related securitization documents, provided that such restrictions are at least as stringent as the investment criteria for any other trust accounts for the securitization transaction.

### **C. Flexibility to Change Method of Risk Retention**

In addition to the ability to combine risk retention options, we request that the Proposed Rule be revised to permit a sponsor to change its method of satisfying the risk retention requirements at any time. As highlighted in Appendix B, during recent years, the ADSC Banks have retained a significant amount of subordinated classes of asset-backed securities. If, as we have requested, such subordinated classes meet the definition of eligible horizontal residual interest for purposes of the final risk retention rules, retaining such eligible horizontal residual interests might be a risk retention method that would be preferable to increasing the required seller’s interest. However, it would be inefficient to restrict a sponsor of a master trust from selling such retained subordinated tranches as market conditions change, so long as the sponsor otherwise satisfies its risk retention requirement through another method of risk retention, for example by increasing the amount of the seller’s interest.

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July 29, 2011  
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Thank you for this opportunity to comment on the Proposed Rule. Should you have any questions relating to our comments, please feel free to contact Ron Reed at ADSC at (614) 729-4000.

Yours truly,



Ronald C. Reed

Vice President of Treasury Operations and  
Assistant Treasurer  
Alliance Data Systems Corporation

**Description of the WFN and WFCB Master Trusts**

1. WFN Certificate Trust I and WFN Note Trust I

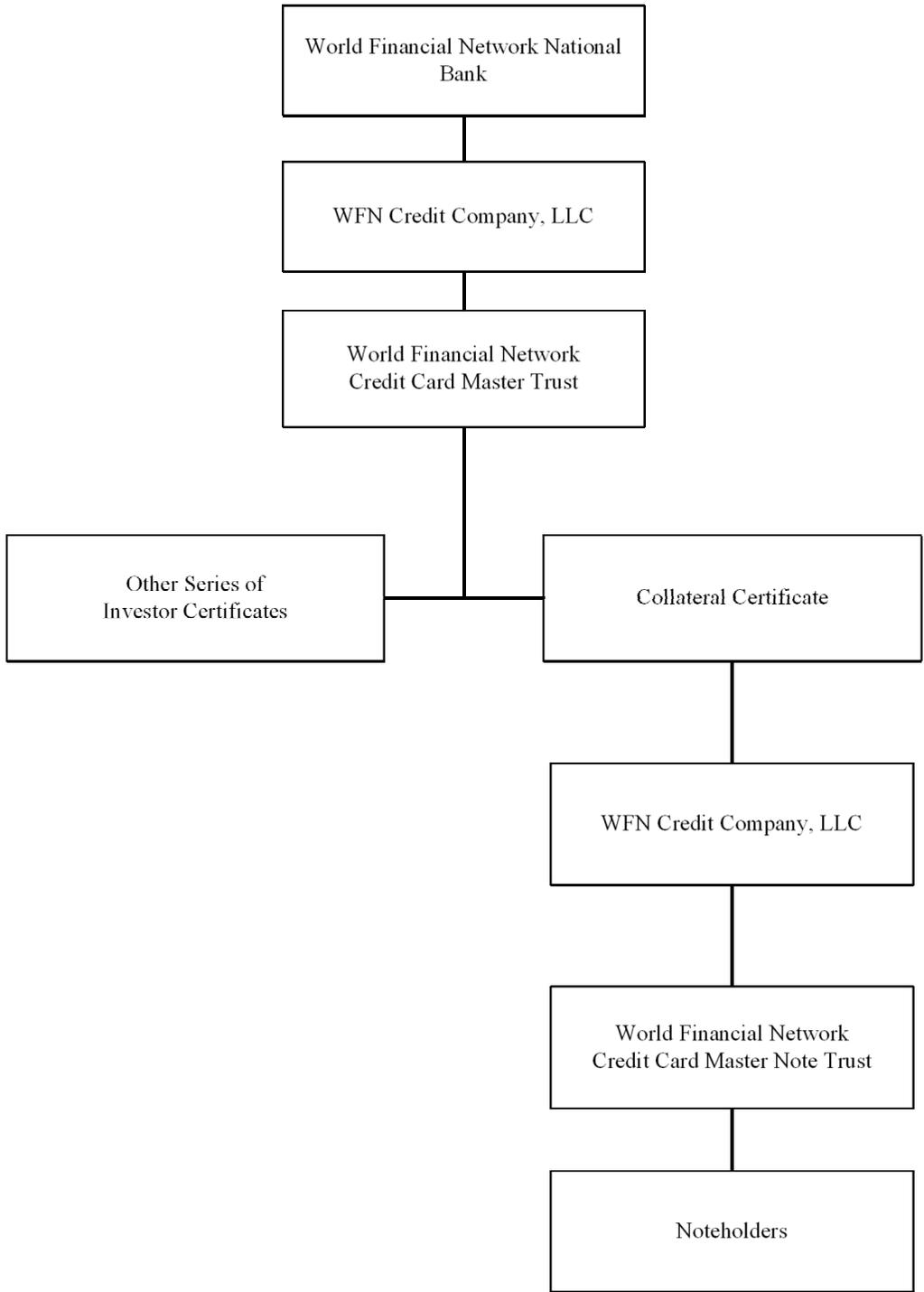
WFN is the originator of the credit card receivables transferred to WFN Certificate Trust I. Under a pooling and servicing agreement entered into by WFN in 1996, WFN, in its capacity as transferor, designated all eligible accounts from a number of merchant programs in its portfolio of private label credit card accounts and transferred the receivables in those accounts to WFN Certificate Trust I. WFN continued to transfer credit card receivables directly to WFN Certificate Trust I until August 2001, when the pooling and servicing agreement was amended. The amendment, among other things, designated WFN Credit Company, LLC (“WFN Credit”), a wholly-owned subsidiary of WFN, as the transferor of receivables to WFN Certificate Trust I, replacing WFN as transferor. Currently, WFN transfers receivables to WFN Credit, which in turn transfers such receivables to WFN Certificate Trust I. WFN Certificate Trust I has issued an investor certificate—referred to as a collateral certificate—representing an undivided interest in the credit card receivables and other assets of WFN Certificate Trust I to WFN Credit. Historically, WFN Certificate Trust I has issued other series of investor certificate from time to time and may in the future issue additional series of investor certificates. However, the collateral certificate is currently the only outstanding series of certificates issued by WFN Certificate Trust I. WFN Credit has transferred such collateral certificate to WFN Note Trust I, a master trust created in 2001, and WFN Note Trust I periodically issues asset-backed notes secured by the collateral certificate.

WFN Credit is the depositor to both WFN Certificate Trust I and WFN Note Trust I and is the holder of the seller’s interest in the credit card receivables.

The following diagram illustrates these relationships.

Structural Diagram

WFN Certificate Trust I and WFN Note Trust I



## 2 WFN Certificate Trust II and WFN Note Trust II

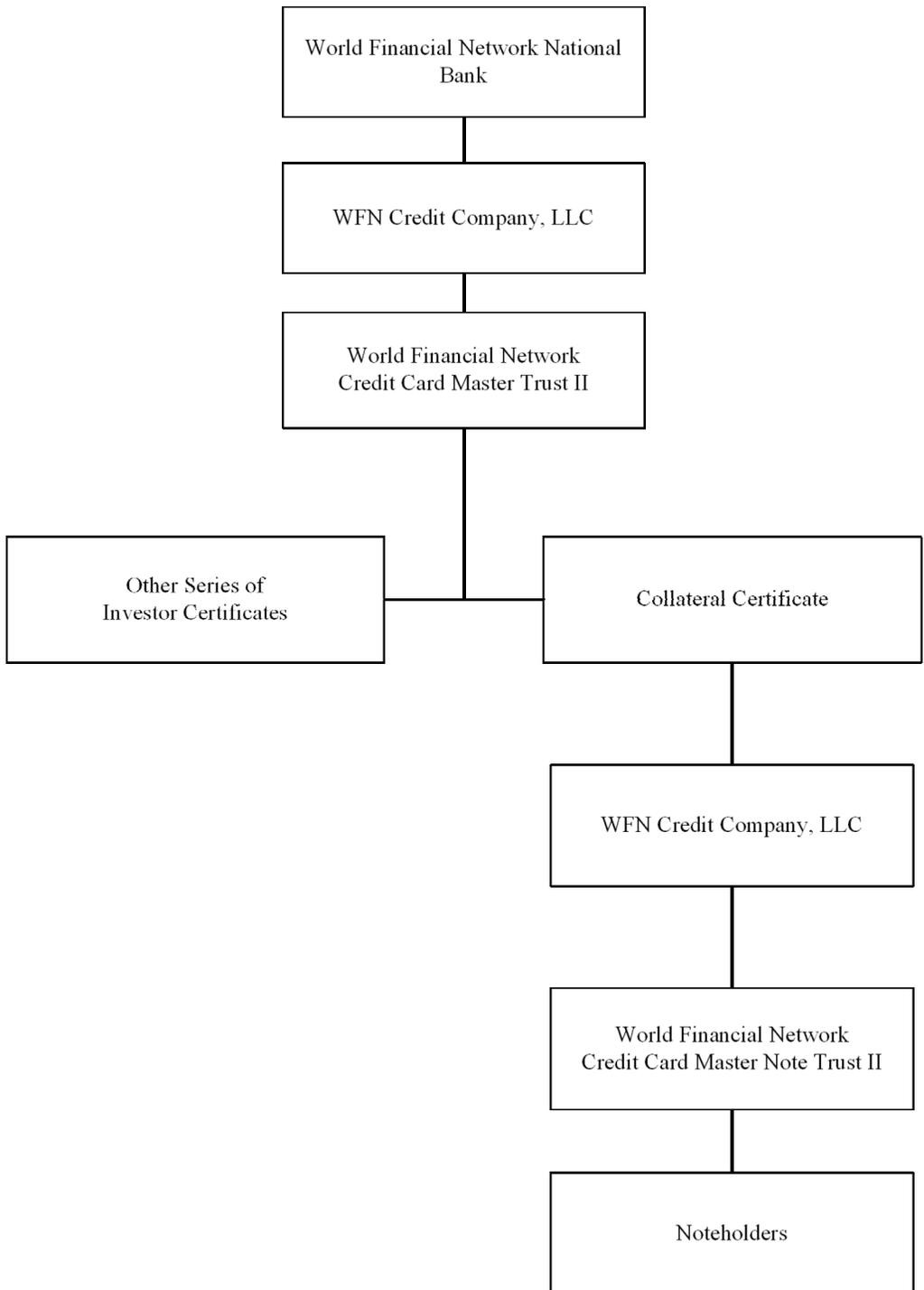
WFN Note Trust II is a master trust created in 2010 that has issued one series of asset-backed securities (Series 2010-1) backed by receivables arising in WFN's private label revolving credit card accounts for certain women's clothing retailers. WFN acquired these accounts from another banking institution in 2009.

WFN transfers these credit card receivables to WFN Credit, who transfers the receivables to WFN Certificate Trust II, which is a master trust that was formed in 1992 and was previously known as Charming Shoppes Master Trust. WFN Certificate Trust II has issued an investor certificate—referred to as the collateral certificate—representing an undivided interest in the receivables and other assets owned by WFN Certificate Trust II to WFN Credit. WFN Credit has in turn transferred this collateral certificate to WFN Note Trust II and the collateral certificate serves as collateral for the notes issued by WFN Note Trust II. In addition to the collateral certificate, WFN Certificate Trust II has issued other series of investor certificates from time to time. One other series of investor certificates issued by WFN Certificate Trust II remains outstanding and WFN Certificate Trust II may issue additional investor certificates in the future.

The following diagram illustrates these relationships.

Structural Diagram

WFN Certificate Trust II and WFN Note Trust II



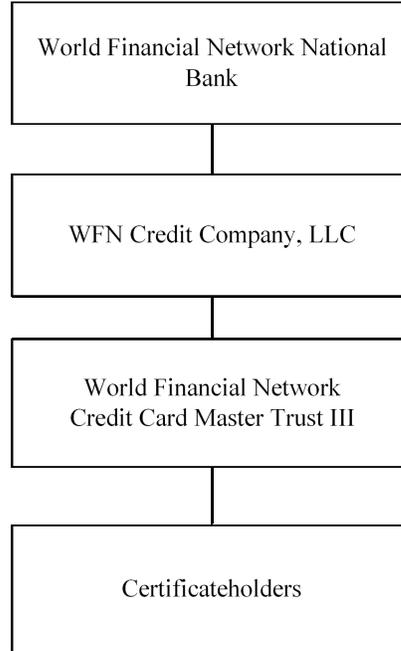
### 3. WFN Certificate Trust III

WFN Certificate Trust III is a master trust created in 1998 that has issued private series of investor certificates backed by receivables arising in WFN's private label revolving credit card accounts. WFN transfers these receivables to WFN Credit, which then transfers the receivables to WFN Certificate Trust III. WFN Certificate Trust III issues investor certificates from time to time.

The following diagram illustrates these relationships.

#### Structural Diagram

#### WFN Certificate Trust III

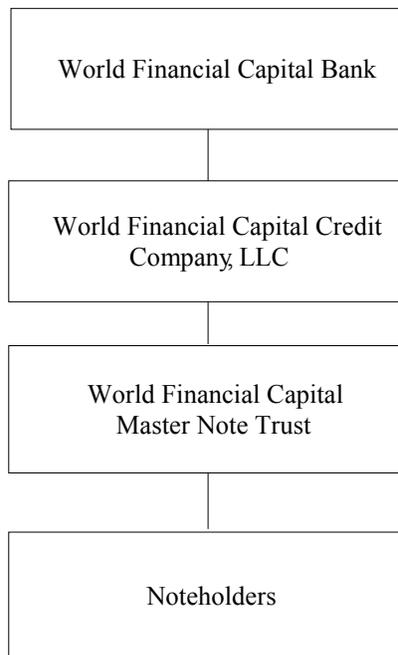


4. WFCB Note Trust

WFCB Note Trust is a master trust created in 2008 that periodically issues asset-backed securities secured by receivables arising in WFCB's open end credit accounts. WFCB transfers these receivables to World Financial Capital Credit Company, LLC ("WFC Credit") and WFC Credit transfers these receivables to WFCB Note Trust.

The following diagram illustrates these relationships.

Structural Diagram



**Outstanding Term Issuances**

= Retained by WFN or Consolidated Affiliate

WFN NOTE TRUST I

Minimum Seller's Interest Percentage = 4% to 6%

2004-C	2006-A	2008-A	2009-A
Class A 79%	Class A 79%	Class A 79%	Class A 79%
Class M 3.75%	Class M 3.75%	Class M 3.75%	Class M 3.75%
Class B 4.75%	Class B 4.75%	Class B 4.75%	Class B 4.75%
Class C 12.5%	Class C 12.5%	Class C 12.5%	Class C 12.5%
Cash Collateral Account 3.5%	Cash Collateral Account 3.5%	Cash Collateral Account 4.0%	Cash Collateral Account 4.0%
Spread Account	Spread Account	Spread Account	Spread Account
Excess Spread	Excess Spread	Excess Spread	Excess Spread

WFN NOTE TRUST I

Minimum Seller's Interest Percentage = 4% to 6%

2009-B	2009-C	2009-D	2010-A
Class A 79%	Class A 79%	Class A 79%	Class A 79%
Class M 3.75%	Class M 3.75%	Class M 3.75%	Class M 3.75%
Class B 4.75%	Class B 4.75%	Class B 4.75%	Class B 4.75%
Class C 12.5%	Class C 12.5%	Class C 12.5%	Class C 12.5%
Cash Collateral Account 4.0%	Cash Collateral Account 4.0%	Cash Collateral Account 4.0%	Cash Collateral Account 4.0%
Spread Account	Spread Account	Spread Account	Spread Account
Excess Spread	Excess Spread	Excess Spread	Excess Spread