

**From:** "Andy Mathes" <amathes@duncanw.com>  
**To:** <comptroller.web@tn.gov>, "Ann Butterworth" <Ann.Butterworth@tn.gov>  
**CC:** "Buddy Carihfield" <bcarihfield@duncanw.com>, "Wayne Breunig" <wbreunig@du...>  
**Date:** 5/29/2009 12:37 PM  
**Subject:** Comments to the Draft Swap Guidelines

Greetings from Memphis - I hope that your week is going well. I imagine you have received quite a few comments to the draft Guidelines for Interest Rate and Forward Purchase Agreements. I'm going to keep my thought brief and please call me at your convenience with any questions. I hope that these are helpful for you.

- 1) I would suggest that you require clear disclosure (in dollars) of all fees/commissions/etc relative to interest rate swaps - both ongoing (if any) and upfront.
- 2) Require the use of an advisor for unwinding existing swap agreements.
- 3) The definition of "Independent Swap Advisor" states that this entity must ONLY provide swap advisory services. I would suggest that you clarify that this is the only role they play in the underwriting. As an example, I work as a financial advisor and have clients that I sell securities for their investment needs. I do not ONLY work as a swap advisor so would I be precluded from providing swap advisory services as a service to an issuer? I assume the goal is to limit the advisor from serving in multiple roles on the particular transaction rather than preclude broker dealers from serving in the role of swap advisor. If I'm mistaken then you are guaranteeing that the only a limited number of firms can possibly fill the role. Most firms that only provide swap advisory services are NOT regulated by the SEC/MSRB/FINRA currently so this seems a poor choice in my book.
- 4) I would suggest you specifically require the Independent Swap Advisor be regulated by the SEC/MSRB/FINRA. Firms regulated by these bodies are precluded from "paying to play". You want to work with regulated entities.
- 5) When discussing "Forward Purchase Agreements" you are covering forward settled bond issues. The same term is used for a conservative investment alternative for bond proceeds. Many issuers have employed forward delivery contracts for investing debt service reserve funds. I would suggest you exclude these from the guidelines.
- 6) In section D, a requirement is put forward for level debt service. Perhaps add a provision that the debt service of a specific transaction is not required to be level if it will help make the overall debt service of the issuer level.
- 7) On the requirement of fulltime staff, if the CFO is an accountant, do they meet the minimum number of staff?
- 8) On the reporting front, when comparing synthetic fixed rate debt (page 8) to a fixed rate bond issue, specify that the issue be at par or the arbitrage yield. The coupon can be manipulated...
- 9) Why require independent swap counsel - this seems like an additional legal bill from hell. Bond counsel will have a duty to review the swap documents already. This seems like a suggestion of a law firm that should be omitted. Perhaps require swap counsel in the event that bond counsel does not have a swap specialist on staff.
- 10) With regard to the Permitted Business Purpose, rather than using a savings in basis points, I would suggest you use savings percentages. I additionally would recommend adding language that states these savings be calculated net of all fees and ongoing costs.
- 11) On page 11 the General Interest Rate Agreement Requirements, the

life is limited to 5 years. This should be 30 years.

- d. The termination value of a swap is not 0.00 on the date the agreement is entered. Why? The swap dealer made money so inherently it's not possible for it to be 0.00...
- e. Basis risk is not verifiable - that's the reason it is a risk.
- g. Since only one interest rate agreement is allowed, would this accidentally catch an investment agreement for the reserve fund as well. I would suggest you scratch this provision for multiple reasons.
- Swaptions are commonly not speculative. They allow issuers to refinance bonds that can not be advance refunded and meet pre-determined savings thresholds. Disallowing a swaption would be a mistake in my book.

12) F. There is not a single AAA bank left that I'm aware of. The requirement of AAA providers is in most subsequent sections and should be changed. England may not be AAA in a few months - I suggest you change this. If you require the swap counterparty to collateralize, why not lower the permitted rating to A? If it's collateralized the exposure is limited. I would additionally suggest you add collateral that has the full faith and credit of the United States. This would put FHLB and other agency securities in the mix. Direct Obligations limits you to treasuries and GNMA's. If you would like to see what other entities like the City of New York allow as an example, please let me know.

13) Financial Monitoring: most entities will value collateral as often as you wish but weekly termination calcs may be problematic. The Independent Swap Advisor would be willing to do this but you might require it be available as often as requested (weekly) but reported in writing monthly. The Trustee or Custodian should report the value of the collateral, not the swap advisor. They should do this already as a part of their services.

I hope that these comments are helpful. Please call me with any questions and have a good weekend! -Andy

Andy Mathes

Duncan-Williams, Inc.

6750 Poplar Ave. Suite 300

Memphis, TN 38138

901-260-6801

901-260-6901 Fax

800-827-0827 Toll Free

amathes@duncanw.com

[www.duncanw.com](http://www.duncanw.com)

DISCLAIMER: SIPC Member, FINRA; Although the above information and statistics are not guaranteed, they have been obtained from reliable sources and are believed to be accurate. All information is subject to market conditions and/or prior sale. The information contained in this e-mail message, and any attachment thereto, is confidential and may not be disclosed without our express permission. If you are not the intended recipient or an employee or agent responsible for delivering this message to the intended recipient, you are hereby notified that you have received this message in error and that any review, dissemination, distribution or copying of this message, or any attachment thereto, in whole or in part, is strictly prohibited. If you have received this message in error, please immediately notify us by telephone, fax or e-mail and delete the message and all of its attachments. Thank you.