

**Morgan Keegan Response to State of Tennessee
Proposed “Guidelines for Interest Rate and Forward
Purchase Agreements”
May 2009**

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Morgan Keegan applauds the State’s continued efforts to ensure that Governmental Entities in the State of Tennessee use derivatives instruments in a prudent and responsible manner, and that officials of these Entities possess the requisite skill and knowledge to execute and maintain these instruments over their economic life. Morgan Keegan believes that derivative instruments serve as an important balance sheet management tool for Governmental Entities, enabling these Entities to achieve efficient financing by allowing them to separate their funding decision from their liability management decision. Used prudently, derivative instruments should be available as a balance sheet management tool for all Governmental Entities.

Morgan Keegan welcomes the opportunity to comment on the State’s proposed “Guidelines for Interest Rate and Forward Purchase Agreements” (“Guidelines”). While we agree with many of the proposed provisions of the Guidelines, especially the State’s desire to establish minimum professional standards for a Governmental Entity’s staff and Advisors involved in derivative transactions, and a strong oversight and reporting framework, in general we believe that the State’s efforts to “bright-line” several of the provisions in the proposed Guidelines may limit some Governmental Entities ability to execute derivative transactions which may be risk-reducing and economically beneficial to them , and that some of the reporting requirements that would be imposed on Governmental Entities using derivative instruments may be overly burdensome, without providing any corresponding benefit. We believe that Governmental Entities should maintain the ability to determine the appropriateness of the use of derivatives transactions, based upon their possessing the requisite skill and knowledge of these transactions. We believe that Policy Guidelines related to derivative transactions would better serve Governmental Entities by not providing “bright-line” tests which are arbitrary, but rather by providing Governmental Entities with policy guidance relating to various aspects of derivative instruments to Governmental Entities, formulated by reference to best practices in the industry. This guidance could be implemented by requiring the Governmental Entity to review each risk or other issue and to make appropriate findings consistent with its review of these aspects of derivative transactions. This should be supplemented by a strong oversight and reporting framework which the proposed Guidelines takes a strong step in addressing. Further, we suggest that existing derivatives transactions in the State be “grandfathered” under the current derivatives guidelines. Imposing new and somewhat more restrictive guidelines on issuers who have existing swap transactions would place an undue burden on many smaller Governmental Entities who have executed derivative transactions under the existing guidelines. Imposing the new proposed guidelines on existing derivative transactions may also have the unintended consequence of discouraging Governmental Entities from either assigning existing swap transactions to more highly-rated providers, or terminating swaps outright, both which may be ultimately beneficial and of a risk-reducing nature to Governmental Entities.

To the extent that the State is proposing these guidelines in order to address the significant issues that some Governmental Entities in the State have encountered in connection with their variable rate debt, we believe that it is important to keep in mind the scope and causes of the issues these Entities have encountered. First, the problem has occurred for Governmental Entities throughout the United States and, indeed, for countless governmental and private entities and individuals around the world as a result of wholly unprecedented financial and economic conditions. To our knowledge, none of the issues encountered by Tennessee

municipalities were caused by any unusual features of interest rate swap agreements or even by issues unique to the municipal swap market. The interest rate swap agreements of which we are aware contained market standard provisions that were routinely accepted by the most sophisticated Governmental Entities throughout the United States. Rather than being caused by the interest rate swap agreements or a lack of sophistication in negotiating these contracts, the first wave of issues was caused by rating downgrades of monoline insurers that had provided credit support for variable rate bond issues. The second wave of issues arose when worldwide credit and liquidity markets precipitously slowed in Summer 2008 and then essentially froze as exposure to subprime mortgage securitizations led to the bankruptcy of Lehman Brothers entities in September 2008 and the near collapse of several other of the largest banks and investment banks in the following weeks. In both instances, these factors caused the problems confronting Tennessee municipalities by adversely affecting the anticipated operation of their variable rate debt programs. Without sufficient availability of adequate credit and liquidity support, variable rate debt interest rates unexpectedly rose significantly. The interest rate swap agreements operated as agreed upon by the parties, and the agreements of the parties (even of the smallest Tennessee Governmental Entities) were typical of the arrangements agreed upon by the nation's most sophisticated municipal entities.

Our comments are organized by reference to the Section number of the proposed Guidelines; where we do not comment on a Section, it is so noted. Morgan Keegan would be pleased to discuss our comments further with the State, and stands ready to assist the State in any way possible in ensuring that a clear, consistent set of Guidelines related to derivative transactions be available to all Governmental Entities in the State.

I. **BACKGROUND.** The Background states that the Guidelines do not relate to the appropriateness of the transactions when in fact, as reformulated, the guidelines have deemed a broad array of potential transactions as inappropriate, depending both upon the Entity and the type of transaction. If this approach is retained, this could be cured by referring to the appropriateness of any "permitted" transaction. As noted in our response, we do not think it is best to adopt this approach of having "bright-line" guidance, but if it is retained, we suggest that the Comptroller be given the ability, upon request by a Governmental Entity, to waive any such "bright-line" rules, because it would be unfortunate if a transaction that makes sense to all concerned could not be effected without promulgation of new Guidelines.

II. **DEFINITIONS.**

"Accountant". The definition of Accountant should be changed to mean a professional staff member of the Governmental Entity possessing at least a bachelor's degree or higher in Business Administration, or other non-business bachelor's degree or higher possessing a Tennessee CPA. If the professional staff member does not meet these requirements, the Governmental Entity should be required to engage an outside Accountant possessing these minimum qualification levels.

“Debt Management Report”. For purposes of providing guidelines relating to the prudent use of derivative instruments, the submission of a “Debt Management Report” may prove useful in ensuring that Governmental Entities properly understand the underlying debt that they are attempting to hedge with a derivative instrument. While the emphasis of the report seems to be on analyzing the impact of rising interest rates on variable rate debt, the report does not address potential credit events related to the variable rate debt that may cause an increase in a Governmental Entity’s potential borrowing costs including information on credit enhancement, ratings of insurer or letter of credit provider, term of the letter of credit facility, and maximum rate should the bonds not be able to be remarketed. Further, as these risks are inherent in a debt financing whether or not a Governmental Entity executes a derivatives requiring Governmental Entities to compile and file this report only when executing a derivatives transaction would be inconsistent.

“Derivative Management Report”. The requirements for testing are overly broad, and are subject to issuer interpretation. If the State is attempting to ensure that Governmental Entities adequately understand the risks associated with its derivative transactions, it would better serve Governmental entities by providing specific guidelines as to risks to be tested, by reference to best practices in the industry.

The requirement to provide an update on the method and assumptions for determining market/termination values is overly burdensome. The termination value will be determined either through a competitive bidding process, or through a negotiated process under the auspices of an independent financial advisor. In either case, the termination value will be determined by an established market methodology.

“Independent Swap Advisor”. We agree with the State’s efforts to impose some minimum qualification levels on key participants involved in executing derivatives transactions. While the State imposes qualification levels on the Chief Financial Officer and the Accountant, it does not impose minimum qualification levels on the Independent Swap Advisor. As much of the burden for education, preparation of reports, and providing advice on derivatives transactions is put on an Independent Swap Advisor under the proposed Guidelines, there should be minimum qualification levels that should apply to the Swap Advisor. The State may wish to issue guidelines to Governmental Entities on selecting a Swap Advisor based upon best practices in the industry.

We also believe that the definition limiting “Independent Swap Advisors” to entities providing only advisory services is unnecessary and inconsistent with other areas related to Financial Advisory services in the State. While we agree with the State’s desire to ensure that individuals or firms providing swap advisory services do not serve multiple roles at once and that no conflict of interest arises in relation to serving Governmental Entities, we believe current MSRB rules related to financial advisory services adequately addresses these concerns, and should be applied to swap advisory services in the State. Current MSRB guidelines allow entities such as banks and broker/dealers to serve in a financial advisory

capacity to Governmental Entities as long as the role is properly disclosed, the roles are not overlapping, and there is no conflict of interest. The limitation of Independent Swap Advisor as currently drafted would be inconsistent with the provision of other Financial Advisory services in the State. The definition should be re-drafted to require “Independent Swap Advisors” to adhere to MSRB regulations, and should drop the requirement to limit “Independent Swap Advisors” to entities which only provide advisory services. Further, the limitation of Independent Swap Advisors to entities providing only advisory services may have the unintentional consequence of excluding firms who have the best knowledge of the Governmental Entity’s history of debt financing, thereby limiting the firm’s access to those entities best able to advise them.

“Monitor”. The definition and requirement for a Governmental Entity to have a “Monitor” should be clarified to make clear that the Monitor can be either the Governmental Entity’s CFO or Accountant. The requirement to have a Monitor on its staff in addition to a Governmental Entity’s CFO or Accountant would be overly burdensome, costly and unnecessary, especially as the Governmental Entity’s CFO and Accountant will be required to have minimum professional qualification standards, and the Governmental Entity will be required to engage an Independent Swap Advisor and Swap Counsel as part of the transaction, which should adequately allow it to perform adequately the required monitoring function.

III. PROCEDURE FOR SUBMISSION AND COMPLIANCE REPORTING

- A. **Form of Submission.** No comments
- B. **Acknowledgment by Comptroller.** No comments
- C. **Identification of Authorizing Statute.** No comments
- D. **Conditions for Entering Into an Interest Rate or Forward Purchase Agreements**
 - 1. **Qualifying Debt Structure.** Defining qualifying debt as level debt service or debt relating to a project with a construction period of no more than three years is arbitrary and overly restrictive. There may be many instances where hedging debt with characteristics other than those defined a qualifying under the proposed Guidelines may be beneficial to Governmental Entities. Ability to enter into derivative transactions should be based upon possession of the requisite knowledge to properly understand, execute and monitor the risks of the transaction, which should be ensured by the various requirements imposed in the proposed guidelines.
 - 2. **Governmental Entity’s Financial Statements.** This requirement would eliminate the Division of County Audit, thereby introducing numerous new audit formats that investors are not

accustomed to and potentially limiting Governmental Entities ability to issue debt in an efficient and cost-effective manner.

3. Required Full-time Staff. If the Entity's CFO possesses a CPA designation, the Entity should not be required to also have a full-time accountant on staff. If the Entity's CFO does not possess a CPA designation, the requirement to have a full-time Accountant on staff should be broadened to include either an internal Accountant or an outside Accountant that the Entity has hired.
4. Audit Committee. No comments
5. Debt Management & Derivative Policies. No comments

E. **Report by Comptroller.** No comments

F. **Appeals Process.** No comments

G. **Reporting**

1. Execution. No comments
2. Option. Appears to be inconsistent as Swaptions are specifically forbidden under IV. 5. h of the Proposed Guidelines
3. Material Events. All of these events outlined in (a)-(l) are already required to be included in either the annual audited financial statements of the Governmental Entity and/or in official Material Event Notices. As relates to (m), the State is already made aware of any Governmental Entity that does not file its annual financial information. Further, in relation to (a), upon the change in the position or role of monitor, the new Monitor may be unaware of the rules and regulations governing the position they have inherited. We believe the proposed 5 business day reporting requirement be extended in this situation to give the new Monitor time to "get up to speed."
4. Quarterly. The requirement to submit reports to the Local Governing Body and the State Director of Local Finance at different intervals is overly burdensome. The timing of the report to the Local Governing Body should be consistent with the timing of the report to the State Director of Local Finance, submission being quarterly.
5. Annually. The January 15 reporting deadline is arbitrary and unrealistic, especially given that the Division of County conducts the audits for the majority of Counties in the State and the Comptroller's Office determines when the audits will be completed, which is often not until well after January 15.
6. Termination. The requirement to include the methods and underlying assumptions, data used in the actual calculation of the amount of such payments made or received by the parties to the Agreement, and a summary analysis of the transaction and its effectiveness is overly burdensome. Should the State wish to ensure that Entities practice prudent financial management when terminating derivatives transactions, it

should issue guidelines to Entities by reference to best practices in the industry.

H. **Failure to Meet Guidelines.** No comments

IV. **GUIDELINES SPECIFIC TO INTEREST RATE AGREEMENTS**

A. **Condition to Entering Into Interest Rate Agreements.**

1. Size. Defining minimum size of \$50 million is arbitrary and overly restrictive. Governmental Entities should maintain the ability to determine the feasibility of executing a derivative transaction regardless of size, in consultation with its Swap Advisor, under the provisions of the proposed Guidelines. There may be instances where smaller Governmental Entities possess this knowledge and other instances where much larger Governmental Entities do not. Placing an arbitrary size limit to derivative transactions in no way ensures that derivative instruments are used by those possessing the requisite knowledge to understand, execute and monitor the transactions.
2. Type. Reporting guidelines for variable and fixed-rate debt are confusing as currently drafted. The reporting requirements should be re-drafted with more specifics as to disclosure requirements.
3. Governmental Entity Staffing. As we noted in our comments to II. "Definitions: Monitor" above, the definition of Monitor should be changed to allow a Governmental Entity's CFO or Accountant to act as Monitor. The requirement to have a Monitor in addition to a Governmental Entity's CFO or Accountant is overly burdensome, costly and unnecessary.

The requirement that an additional Independent Swap Advisor, not involved in the transaction be engaged to gauge the knowledge level of the Monitor is overly burdensome, costly, and duplicative. Under the proposed Guidelines, the Governmental Entity will be required to engage an Independent Swap Advisor, who, by definition, has a fiduciary responsibility only to the Governmental Entity. The Independent Swap Advisor will be more than able to perform this function as part of its duties without compromising its independence.

4. Permitted business purposes.
 - a. With Respect to Outstanding Debt

1. Variable-rate Debt. The requirement for a decrease of at least 100 basis points is vague, arbitrary and potentially at cross-purposes with the prudent use of a derivative transaction to protect a Governmental Entity from an increase in the interest rate related to its variable-rate debt. Should the State wish to issue guidelines to Governmental Entities related to this evaluation, it should provide guidelines on the risk evaluation of the alternatives based upon best practices in the industry. While the comparison of the potential savings from creating synthetic fixed rate debt to traditional fixed rate debt is a prudent, common practice for most Governmental Entities for New-Issue Debt, it does not make sense to impose this arbitrary standard to Outstanding Variable-rate Debt. For example, for a Governmental Entity wishing to hedge its outstanding variable rate debt against a potential rise in interest rates, the cost of hedging this exposure by use of a swap, cap or collar will often result in an increase in the Governmental Entity's initial borrowing cost vis-à-vis their existing variable interest rate. In almost all instances, this requirement would prohibit Governmental Entity's from protecting themselves against an increase in interest rates. If the purpose of this provision is to ensure that the Governmental Entity converts outstanding variable rate debt to a fixed rate at 100 basis points below the current market for comparable fixed rate debt, this provision may in many instances prohibit Governmental Entities from protecting their outstanding variable rate debt from an increase in interest rates by imposing an arbitrary savings target. For example, it may be prudent for a Governmental Entity with outstanding variable rate debt to hedge itself against a rise in interest rates, even if the current savings is less than 100 basis points. Should a Governmental Entity be prohibited from protecting itself against rising rates on its outstanding variable rate debt because of an arbitrary savings target, it may expose the issuer to significant risk in the form of higher interest rates. Even in those instances where an issuer can decrease their cost by 100 basis points, the provision is not specific enough as to whether these 100 basis points would be for the current period, a specific period of time, or over the life of the expected transaction.

2. Fixed-Rate Debt. The requirement for a decrease in interest rate payments of at least 200 basis points is vague and arbitrary. Should the State wish to issue guidelines to Governmental Entities related to this evaluation, it should provide guidelines relating on the risk evaluation of the alternatives based upon best practices in the industry. The provision is unclear as to whether this 200 basis point requirement would be for the current period, a specific period of time, or over the life of the expected transaction. If over a period of time or the life of the transaction, it is unclear how a Governmental Entity would be able to show that it could be expected to save 200 basis points as the future path of floating interest rates is unknown. Governmental Entities should maintain the ability to determine the feasibility of executing a derivative transaction against existing fixed-rate debt in consultation with its Swap Advisor, under the provisions of the proposed Guidelines. Also, as synthetic floating rate debt would be limited to the amount of investments a Governmental Entity has outstanding, the same limitations should be imposed for all Governmental Entities issuing traditional variable rate debt.
- b. With Respect to New Issue Debt
 1. Variable-rate Debt. While it is customary and prudent financial management to compare the savings achievable from synthetic fixed rate debt to traditional fixed rate debt, the requirement for a decrease of at least 100 basis points is vague and arbitrary. Governmental Entities, in consultation with their Swap Advisor, should be able to independently determine if a synthetic fixed rate transaction is justified versus a fixed rate transaction. Should the State wish to issue guidelines to Governmental Entities related to this evaluation, it should provide guidelines relating on the risk evaluation of the alternatives based upon best practices in the industry.
 2. Fixed-Rate Debt. While it is customary and prudent financial management to compare the savings achievable from synthetic floating rate debt to traditional floating rate debt, the requirement for a decrease in interest rate payments of at least 200 basis points is vague and arbitrary. The provision is unclear as to whether this 200 basis point requirement would be for the current period, a

specific period of time, or over the life of the expected transaction. If over a period of time or the life of the transaction, it is unclear how a Governmental Entity would be able to show that it could be expected to save 200 basis points as the future path of floating interest rates is unknown. Governmental Entities should maintain the ability to determine the feasibility of executing a derivative transaction against New-issue fixed-rate debt in consultation with its Swap Advisor, under the provision of the proposed Guidelines. Should the State wish to issue guidelines to Governmental Entities related to this evaluation, it should provide guidelines relating on the risk evaluation of the alternatives based upon best practices in the industry.

3. The determination of appropriate fixed/floating mix for a Governmental Entity is part of prudent financial management. The limitation of the amount of synthetic floating rate debt is arbitrary. Governmental Entities should maintain the ability to determine the appropriate mix of fixed to floating rate debt. Should the State wish to provide guidelines to Governmental Entities as to the determination of fixed/floating rate debt, it should do so with reference to best practices in the industry. Also, as synthetic floating rate debt would be limited to the amount of investments a Governmental Entity has outstanding, the same limitations should be imposed for all Governmental Entities issuing traditional variable rate debt. The imposition of this requirement to issuers achieving floating rate debt through the use of a derivative instrument is inconsistent.
5. General Interest Rate Agreement Requirements.
 - a. No comments
 - b. The requirement that Interest Rate Agreements not extend beyond 5 years is arbitrary, and may act at cross-purposes to reducing risk to Governmental Entities. For example, for Governmental Entities with variable rate debt with a maturity greater than 5 years, only allowing the Governmental Entity to hedge the first 5 years of the debt potentially exposes that Governmental Entity to an increase in interest rate should interest rates rise at the expiration of the 5 year contract. Governmental Entities should maintain the ability to determine the appropriate tenor of its derivative transactions. Should the State wish to

provide guidelines to Governmental Entities as to the determination of tenor, it should do so with reference to best practices in the industry.

- c. The proposed guidelines are unclear as to whether or not the notional and principal amounts must match exactly. Unless it is intended that there be no ability to hedge a portion of a bond issue with one Interest Rate Agreement (as when an issuer wants to reduce counterparty risk by splitting up the hedge or wants to remain unhedged on a portion of the bond issue), the language should be revised to make it clear that the notional amount of an Interest Rate Agreement can at no time be greater than the principal amount of the bonds to which it relates.
- d. While theory expounds that the value of an interest rate agreement should be zero at the inception of a contract, the reality is that an interest rate agreement will in almost all cases be other than zero as the contract will reflect the hedging, liquidity, credit, and dealer profit associated with the transaction. This provision should be re-worded to say that the contract shall be done at market at inception, incorporating the customary hedging, liquidity, credit and profit associated with the transaction.

This provision is also vague in relation to assignments and novations of existing transactions, which are customarily transacted at an off-market rate, reflecting the economics of a pre-existing transaction. The Guidelines should be revised to allow assignments and novations of existing transactions which may be done at “off-market” rates, as these transactions are necessary to provide an active secondary market for interest rate swap transactions, and may in many cases be beneficial to Governmental Entities. For example, prohibiting assignments and novations which are “off-market” would have the adverse effect of prohibiting such transactions as having a new Counterparty take over an existing Counterparty’s position with the Governmental Entity, which may be beneficial to the Governmental Entity if it seeks to replace a weaker-rated swap dealer with a stronger-rated dealer without having to make a termination payment from funds on hand. Perhaps the provision should be re-written to apply to new transactions only, and specifically exclude assignments of existing transactions.

- e. No comments
- f. We believe this requirement would be unduly burdensome and unnecessary for simple amendments of existing transactions. We suggest the Governmental Entity just be able to submit a letter to the State stating the terms they wish to change, and the rationale for wishing to change the terms. Upon review of the letter, should the State determine that further disclosure is necessary, it can always require the Governmental Entity to file a new request for a report of compliance.
- g. There may be instances where it may be in a Governmental Entity's best interest to have more than one Interest Rate agreement outstanding at a time for a specific identifiable indebtedness. For example, one way that a swap can be terminated would be to overlay a reverse mirror swap on top of an existing swap, allowing the Governmental Entity to pay the termination value of a swap over time, as opposed to making a termination payment all at one time. This type of transaction may be advantageous to a Governmental Entity experiencing a current cash flow shortfall.
- h. Governmental Entities should maintain the ability to determine which instruments are appropriate in consultation with its Independent Swap Advisor. The prohibition of the instruments outlined in this section is arbitrary. Should the State wish to provide guidelines to Governmental Entities as to limitation of instruments which may be deemed speculative, it should do so with reference to best practices in the industry as opposed to arbitrarily prohibiting certain derivative instruments. We believe that the instruments cited in this Section, while capable of being used for speculative purposes (as are any derivative or other instruments if not properly used), can actually serve as an appropriate hedging and risk-reducing strategy for Governmental Entities. The prohibition of all basis swaps is arbitrary, and should be allowed so long as an issuer and its swap advisor have determined that the swap has potential economic benefits for the Governmental Entity, and that the Governmental Entity is capable of understanding and monitoring the risks of the transaction. For example, basis swaps can be used as an overlay strategy which may more correctly hedge a Governmental Entity's floating rate exposure as market conditions change (for example to hedge "compression risk" when rates are very low). The prohibition of Fixed to Variable Swaps is inconsistent with the Guidelines addressing these types of swaps under IV. A.4.a.2.) and IV. A.4.b.2). Fixed to

variable swaps can actually be a risk-reducing strategy for Governmental Entities as it allows a Governmental Entity to achieve floating rate debt while eliminating the credit, liquidity, and renewal risks associated with traditional credit-enhanced variable rate debt, and should not be a prohibited instrument. The prohibition of Swaptions may actually increase the risk to Governmental Entities by taking away their ability to hedge risks associated with their proposed or existing debt. Should the State wish to specifically prohibit the use of swaptions, the State may wish to apply this prohibition only to swaptions which do not hedge an identifiable risk associated with a Governmental Entity's proposed or existing debt.

- B. **Supporting Analysis.** The requirement to have the supporting analysis reviewed by an additional Independent Swap Advisor which is not serving as the Governmental Entity's Swap Advisor on the transaction is overly burdensome from both a financial and logistical standpoint. There is no reason that the Independent Swap Advisor serving as the Governmental Entity's transaction cannot serve this function.
- C. **Procurement of Interest Rate Contracts.** No comments
- D. **Form of Documentation.** It appears that the language requires the Comptroller to approve the final form of the swap documentation. It should be made clear whether the Comptroller intends to be in the position of approving swap documents generally, and the execution copies of swap documents in particular.
- E. **Risks Associated with Interest Rate Agreements.** No comments
- F. **Standards for Counterparty Selection and Security for Financial Interest.** The requirement for a Counterparty to be rated in the AA category should be clarified as to whether the Counterparty needs one rating in the AA category, or at least 2 ratings in the AA category. Swap providers do not typically have long-term debt or claims paying ratings so we would suggest that this section simply refer to a "long-term" rating or include financial strength as a modifier of rating. The requirement that a Counterparty have a guaranty, surety, or other credit enhancement in the AAA category is overly restrictive, and inconsistent with the Counterparty rating requirement. To the extent that a Counterparty has a guaranty, surety, or any other credit support, the same ratings requirement as applies to a Counterparty rating requirements under the proposed Guidelines (ie AA ratings category) should also apply to the guarantor or other enhancement or other credit support provider. Please note that we are suggesting that you use the terms credit support and credit support provider, as they have a commonly understood meaning under the ISDA documentation that may be broader than the term credit enhancement. The State may also wish to reconsider its requirements on collateral as these requirements are overly restrictive and costly.
- G. **Credit Enhancement, Liquidity and Reserves.** In the current market, there are very few AAA-rated bond insurers still extant. The market may adapt to where

AA insurance is the norm. We suggest the State consider this in drafting its guidelines, and provide flexibility to adapt to changing market norms.

The requirement that a Counterparty have a guaranty, surety, or other credit enhancement in the AAA category is overly restrictive, and inconsistent with the Counterparty rating requirement. To the extent that a Counterparty has a guaranty, surety, or any other credit support, the same ratings requirement as applies to a Counterparty rating requirements under the proposed Guidelines (ie AA ratings category) should also apply to the guarantor or other enhancement or other credit support provider. Please note that we are suggesting that you use the terms credit support and credit support provider, as they have a commonly understood meaning under the ISDA documentation that may be broader than the term credit enhancement.

- H. **Financial Monitoring.** The requirement of a Counterparty to provide at least weekly valuations is overly restrictive. The State may wish to consider changing this requirement to monthly, which is the market standard.
- I. **Application and Source of Payments.** No comments
- J. **Skill and Knowledge Requirements.** No comments
- K. **Information Sheet.** No comments

V. **GUIDELINES SPECIFIC TO FORWARD PURCHASE AGREEMENTS**

- A. **Condition to Entering Into Forward Purchase Agreements.**
 - 1. Defining the minimum size of \$25 million is arbitrary and overly restrictive. Ability to enter into forward purchase agreements should be based upon the ability of the Governmental Entity to possess the requisite knowledge to properly understand, execute and monitor the risks of the transaction, which should be ensured by the various requirements imposed in the proposed guidelines. There may be instances where smaller Governmental Entities possess this knowledge and other instances where much larger Governmental Entities do not. Placing an arbitrary size limit to forward purchase agreements in no way ensures that these agreements are used by those possessing the requisite knowledge to understand, execute and monitor the transactions.
- B. **Supporting Analysis.** The requirement to have the supporting analysis reviewed by another Independent Swap Advisor which is not serving as the Governmental Entity's Swap Advisor on the transaction is overly burdensome from both a financial and logistical standpoint. There is no reason that the Independent Swap Advisor serving as the Governmental Entity's transaction cannot serve this function.
- C. **Procurement of Forward Purchase Agreements.** No comments
- D. **Form of Documentation.** No comments
- E. **Risks Associated with Forward Purchase Agreements.** No comments
- F. **Standards for Selection.** No comments

- G. **Application and Source of Payments.** No comments
- H. **Skill and Knowledge Assignments.** No comments
- I. **Information Sheet.** No comments