

SWAP Guidelines

Bonds Supported By State Appropriations

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FOR CONSIDERATION
September 24, 2002

TO: Bond Financing Committee
FROM: Frances A. Walton *FAW*
SUBJECT: Guidelines for Use of Interest Rate Exchange or Similar Agreements
REQUEST FOR: Authorization to Adopt Guidelines for Use of Interest Rate Exchange or Similar Agreements

I. INTRODUCTION/BACKGROUND

Certain Bonds issued by the Corporation, and any other State supported debt issued by a state public corporation, are subject to the recently enacted Article 5-D of the State Finance Law entitled Variable Rate Debt Instruments ("Article 5D").

Article 5D sets forth limitations on the total amount of variable rate debt issued, permits variable rate and interest rate exchange bonds and sets forth numerous conditions and limitations upon such issuances. Article 5D also requires the Corporation to adopt guidelines for the use of interest rate exchange or similar agreements (the "Guidelines") which govern the procurement, terms, reporting and collateralization of such agreements (A copy of such Guidelines as approved by the Division of the Budget is attached).

II. REQUESTED ACTION

At this time you are being requested to approve the adoption of the attached Guidelines.

Attachments

Resolution
Application to the PACB with Resolution

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September 24 , 2002

RESOLUTION APPROVING ADOPTION OF GUIDELINES FOR USE OF
INTEREST RATE EXCHANGE OR SIMILAR AGREEMENTS

WHEREAS, in accordance with Article 5D of the State Finance Laws, the Corporation is required to adopt guidelines for the use of interest rate exchange or similar agreements prior to authorizing the approval of such agreements.

NOW THEREFORE, this Bond Financing Committee, in the name and on behalf of the Corporation, hereby adopts the following:

RESOLVED, that in connection with the sale of the any bonds by the Corporation which are supported by state appropriations, the Corporation hereby adopts the guidelines for the use of interest rate exchange or similar agreements substantially in the form attached to this resolution.

RESOLVED, that all actions heretofore taken in regard to the adoption of guidelines for use of interest rate exchange or similar agreements by authorized officers and staff of the Corporation, are hereby ratified, confirmed and approved.

GUIDELINES FOR INTEREST RATE EXCHANGE AGREEMENTS

Authorization

Subject to the provisions of Article 5-D of the State Finance Law ("Article 5-D"), the _____ (the "Authority/Corporation/Agency") and certain other public authorities (collectively, the "Authorized Issuers") are authorized to enter into interest rate exchange and similar agreements (commonly referred to as "swaps") in connection with State-supported debt. Subject to certain requirements and procedures, the maximum total notional amount of interest rate exchange and similar agreements (other than Excluded Agreements, as defined in Article 5-D) that can be entered into by all of the Authorized Issuers under Article 5-D shall not exceed fifteen percent of total outstanding State-supported debt. In addition, the maximum total amount of Variable Rate Debt Instruments, also as defined in Article 5-D, which includes interest rate exchange and similar agreements which result in an Authorized Issuer effectively paying interest at a rate or rates which varies from time to time, are further limited by Article 5-D to an amount that shall not exceed fifteen percent of total outstanding State-supported debt. These policy, procedures, reporting and control guidelines (the "Guidelines") establish the requirements to be met and the process to be used by the Authority when entering into interest rate exchange agreements in connection with State-supported debt.

Purpose of Agreement

The Authority may enter into an interest rate exchange or similar agreement(s), based on the International Swap and Derivatives Association ("ISDA") Master Agreement as further described in the section "**Form of Agreements**", in connection with State-supported debt obligations (the "Agreement") if the Agreement is reasonably expected to:

- A. reduce or hedge an exposure to changes in interest rates;
- B. result in a lower net cost of borrowing with respect to the State-supported debt obligations; or
- C. provide benefits and/or flexibility to the State or the Authority with respect to financial exposure or financial position.

The Authority shall not enter into an Agreement unless the Agreement is reasonably expected to achieve one or more of the objectives listed above. In addition, before entering into an Agreement, the Authority, in consultation with the Division of the Budget (the "Division") shall consider the Agreement's impact on other swap agreements entered into in connection with other State-supported debt, and periodically evaluate such Agreements entered into by the Authority for risks and exposures including, but not limited to, the following categories:

- counterparty risk;
- termination risk;
- rollover risk;
- basis risk;
- tax event risk; and
- amortization risk.

The Authority, in consultation with the Division, shall also consider the long-term implications associated with entering into such agreements including, but not limited to, the following:

- costs of borrowing;
- historical trends;
- use of capacity for variable rate bonds and related credit enhancements; and
- any potential impact on the future ability to call bonds, including opportunities to refund related debt obligations.

Under an Agreement, the Authority may be either the floating rate or fixed rate payor. The Agreement may also provide for the establishment of maximum or minimum interest rates (or both), payable thereunder and contain any other protections designed to limit exposure to changes in interest rates.

The Authority shall not enter into any Agreement for the purpose of speculation.

Term of the Agreement

The term of any Agreement shall not exceed the final maturity of the bonds, notes or other obligations of the Authority issued or outstanding in connection with such agreement.

Selection of Counterparties and Other Procurements

The Authority shall select counterparties through an evaluation of qualifications based upon a Request for Qualifications solicited from interested providers. The evaluation of prospective counterparties shall include consideration of the following criteria:

- A. the requirements of Article 5-D;
- B. substantial and significant experience and presence in the municipal swap market;
- C. maintenance of a two-way swap book which facilitates hedging of exposure,
- D. demonstrated capability to develop creative and innovative ideas,

- E. relationship with and understanding of the needs of the Authority and the State; and
- F. other factors deemed appropriate by the Authority.

Upon the completion of the evaluations, a list of approved counterparties shall be prepared. Such list may include senior and other counterparty designations. Such Request for Qualifications may establish maximum limits to any one approved counterparty, such as a maximum notional amount per firm. The Authority shall consult with the Division of Budget on the notional amount limit for each counterparty. In no event shall the aggregate notional amount of outstanding interest rate exchange agreements with the approved counterparties (other than Excluded Agreements, as defined by Article 5-D) exceed the maximum notional amount permitted under Article 5-D.

The counterparty for a particular transaction will be selected from the approved list in accordance with the procedures provided in this section and in accordance with a competitive process based on the lowest overall net cost of the transaction, and such additional factors as the Authority deems pertinent. Alternatively, the Authority shall have the option to negotiate agreements or use a bidding process involving a combination of competitive bids and negotiations with counterparties to effectuate other sound business purposes.

The Authority shall also procure credit enhancement, liquidity facilities, and establish reserves in connection with such agreements, if necessary or advisable, with the same standards and using the same methods as it employs for the selection of credit enhancement, liquidity facilities, and the determination for the establishment of reserves for its bonds, notes, or other obligations.

Credit Ratings of Counterparties

As required by Article 5-D, a counterparty shall have credit ratings from at least one nationally recognized statistical rating agency that is within the two highest investment grade categories and ratings which are obtained from any other nationally recognized statistical rating agencies for such counterparty shall also be within the three highest investment grade categories, or the payment obligations of the counterparty shall be unconditionally guaranteed by an entity with such credit ratings.

In the event a counterparty is downgraded or the Authority is notified of the termination of an Agreement by the counterparty, the Authority will promptly provide the Director of the Division of the Budget (the "Director") with notification of such downgrade or termination in writing and, if applicable, comply with the collateralization provisions in Article 5-D.

Collateralization

Pursuant to the provisions of Article 5-D, in the event that the rating of any counterparty, or of the entity unconditionally guaranteeing its payment obligations, is downgraded so that the counterparty, or such guarantor if applicable, does not have credit ratings meeting the criteria contained in the section **“Credit Ratings of Counterparties”** above, the Authority shall require the counterparty to deposit collateral with the Authority or a custodian acting on its behalf pursuant to a written collateral agreement. Such collateral shall consist of direct obligations of, or obligations the principal and interest on which are guaranteed by, the United States of America (including cash) with a net market value of at least one hundred two percent of the net market value of the contract to the Authority (“collateral requirement”). Any collateral agreement shall require that the net market value of the contract and the collateral be marked-to-market periodically, but not less than once each month. If the market value of the collateral shall be found to be less than one hundred two percent of the net market value of the contract to the Authority, than the counterparty shall be required to post additional collateral to meet such requirement.

Form of Agreements and Approvals

The Authority shall enter into written Agreements based on the ISDA Master Agreement and Schedule to the Master Agreement (the “Master Agreement”) with each approved counterparty. Each Agreement, including the modification or termination thereof, shall be subject to the approval of the Authority’s governing board. This may include the approval as to form of such Master Agreement, and delegations to staff of such matters as deemed necessary or desirable to effectuate the purposes of Article 5-D, these Guidelines, and a particular swap transaction, provided that they do not alter or amend the requirements of these Guidelines. Transactions entered into under the Master Agreement shall be evidenced by written Confirmations.

Monitoring and Reporting Requirements

Pursuant to the provisions of Article 5-D, the Authority shall monitor its interest rate exchange program and all transactions made thereunder with respect to the items listed below. On or before the 15th of each month, the Authority will report to the Director of the Division of the Budget, the chairs of the Senate Finance Committee and the Assembly Ways and Means Committee, and the State Comptroller, with respect to:

- A. the value of the Bond Market Association (BMA) index and/or such other indices applicable to the Authority’s Agreements;
- B. payments required to be paid and received, and payments actually paid and received under each agreement;
- C. the status of individual Agreements in effect, including a summary of the terms and conditions thereto, such as notional amounts, rates, terms, bases or indices employed, a description of each counterparty thereto and their respective credit ratings, and the method of their procurement;

- D. the status of any credit enhancement, liquidity facility or reserves associated with the Agreement including an accounting of all costs and expenses incurred, whether or not incurred in conjunction with the procurement of such credit enhancement or liquidity facilities;
- E. the mark-to-market valuations of each Agreement, and an assessment of counterparty risk, termination risk, and other associated risks, and the amount of collateral which has been required to be posted, if any, and the amount which has been actually posted;
- F. identification of each transaction placed in the preceding month, including a summary of the terms and conditions thereof; and

A copy of these Guidelines shall also be included with the monthly report submitted following their adoption and/or any subsequent modification thereto.

Based on information provided by the Authority and other Authorized Issuers, the Division of Budget will provide the Authority with a monthly report of the total outstanding swap agreements and the current value of the swap cap as set forth in Article 5-D.

The Authority's annual financial statements and annual report shall include a discussion and accounting of each existing Agreement in accordance with generally accepted accounting principles. If not otherwise required, the Authority shall also include a brief general description of each such Agreement, including their terms and conditions, in such reports.

Execution

To assist the State in monitoring the impact, including the costs and risks, of Agreements entered into by the Authority and other Authorized Issuers on the overall portfolio of State-supported debt, each such Agreement, including provisions and actions regarding extensions, reversals, options and terminations of such Agreement, shall be entered into in consultation with the Division of the Budget and shall be subject to the written approval of the Director.

Each Agreement shall also be subject to a written independent finding that the terms and conditions reflect a fair market value of such Agreement as of the date of its execution, regardless of whether such Agreement was solicited on a competitive or negotiated basis.