



National Association
of Bond Lawyers

PHONE 202-682-1498 601 Thirteenth Street, N.W.
FAX 202-637-0217 Suite 800 South
www.nabl.org Washington, D.C. 20005

President
WALTER J. ST. ONGE III
Boston, MA

President-Elect
CAROL L. LEW
Newport Beach, CA

Secretary
WILLIAM A. HOLEY
Atlanta, GA

Treasurer
J. FOSTER CLARK
Birmingham, AL

Directors:

SCOTT R. LILIENTHAL
Washington, DC

KATHLEEN CRUM MCKINNEY
Greenville, SC

JOHN M. MCNALLY
Washington, DC

EDWIN G. OSWALD
Washington, DC

CHARLES F. SHIMER
Richmond, VA

JOHN O. SWENDSEID
Reno, NV

CYNTHIA M. WEED
Seattle, WA

Immediate Past President
MONTY G. HUMBLE
Dallas, TX

Honorary Director
FREDERICK O. KIEL
Cincinnati, OH

*Director of
Governmental Affairs*
ELIZABETH WAGNER
Washington, DC

Executive Director
KENNETH J. LUURS
230 West Monroe Street
Suite 320
Chicago, IL 60606-4715
Phone 312-648-9590
Fax 312-648-9588

June 16, 2006

Ms. Susan Gaffney
Director, Federal Liaison Center
Government Finance Officers Association
1301 Pennsylvania Avenue, NW, Suite 309
Washington, D.C. 20004

Re: GFOA Derivatives Checklist

Dear Susan:

On behalf of the National Association of Bond Lawyers ("NABL"), I am enclosing NABL comments on the May 2006 draft Derivatives Checklist, prepared by the Government Finance Officers Association (GFOA) Debt Committee. A list of NABL Task Force members (Task Force) who participated in the preparation of the enclosed recommendations is also enclosed.

In an attempt to make the NABL comments as clear as possible, the Task Force has taken the liberty to insert annotations into the GFOA Derivatives Checklist. Also, the Task Force has limited the scope to legal comments rather than attempting to make recommendations for "best practices" in this area.

In addition to the enclosed comments, the Task Force identified one issue not addressed in the current draft of the GFOA Derivatives Checklist that relates to the documentation and/or record keeping for conduit issuers. A conduit borrower who is "integrating" a derivative into the yield of its bond issue for tax purposes needs the involvement of the governmental conduit issuer of the bonds. While some "traditional" conduit issuers, such as industrial development finance authorities, may be outside the purview of the GFOA Debt Committee, the Task Force also identified a number of circumstances involving governmental bond issuers acting in a conduit role. The Task Force members suggest that either the GFOA Derivatives Checklist or a separate, but similar, checklist include "best practices" for conduit issues.

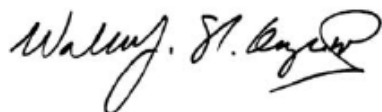
Ms. Susan Gaffney
Page 2 of 2



If you have questions, please contact me at 617/239-0389 or through email at wstonge@eapdlaw.com, or Elizabeth Wagner, Director, Governmental Affairs, at 202/682-1498 or through email at ewagner@nabl.org. Also, if a follow-up conference call with members of the NABL Task Force to discuss these comments would be helpful to the drafters of the GFOA Derivatives Checklist, please let us know.

Thank you for the opportunity to submit NABL's recommendations on the GFOA draft Derivatives Checklist. We look forward to working further with you.

Sincerely,



Walter J. St. Onge III

Enclosures

cc: NABL Task Force members

The GFOA’s Debt Committee is seeking comments regarding a Derivatives Checklist for issuers to use prior to entering into a derivatives transaction. Comments should be sent to Susan Gaffney, sgaffney@gfoa.org, no later than June 9, 2006.

APPENDIX A

This checklist is a supplement to the Recommended Practice on “Use of Debt-Related Derivatives Products and the Development of a Derivatives Policy (2003 and 2005) (DEBT)” and is designed to be an attachment to a government issuer’s derivatives policy. It is designed to be used prior to entering into any derivatives transaction. This checklist presumes an issuer’s compliance with the Recommended Practice—to wit, that the issuer has adopted a derivatives policy and that the issuer’s staff has been trained in the evaluation and use of derivative products. An issuer that cannot answer the questions in this checklist is advised to continue its training prior to completing a derivatives transaction. Many of the capitalized terms used in this checklist are used as defined in International Swaps and Derivatives Association, Inc. (“ISDA”) documents, and this checklist presumes that an issuer is familiar with such documents.

DERIVATIVES CHECKLIST

General Information

1. Name of Governmental Issuer: _____

2. Type of Derivative: _____

3. (a) Names of Official and Backup(s) Responsible for Procurement of Derivative:

~~(b) Describe the nature and extent of their~~ (b) Have the individuals received derivatives training? Yes or No. If yes, describe.

4. (a) Names of Official and Backup(s) Responsible for Monitoring Derivative:

~~(b) Describe the nature and extent of their~~ (b) Have the individuals received derivatives training? Yes or No. If yes, describe.

5. Independent Derivatives Advisor, if any:

6. Independent Derivatives Monitor, if any:

7. Counterparty/ies: _____

Authority

1. General Authority/Approval for Entering into Derivatives:

2. Date(s) of Specific or Local Approval(s) for this derivative:

3. Date of most recent update to Issuer's Derivatives Policy: _____

Purpose

1. Identify the purpose(s) of entering into the derivative.

- ~~Reduce~~Modify the exposure to changes in interest rates with respect to a borrowing
- ~~Reduce~~Modify the net cost of a borrowing
- Increase refunding savings
- Receive upfront payment for refunding value
- Provide a better match of interest rate exposures on assets and liabilities
- Offset, in whole or in part, a prior derivative (e.g., swap LIBOR for BMA)
- Hedge the anticipated costs of future borrowing(s)
- Optimize the mix of variable to fixed (or synthetic fixed) rate borrowings
- Other(s) _____

2. What debt, or assets, is the derivative being used to hedge? _____

3. Describe the derivative and explain how purpose(s) indicated above will be achieved.

4. Were other means considered for achieving such purpose(s)?

- Yes
- No

If yes, what other options were considered?

If yes, why is the derivative the best option? _____

Terms

1. (a) Expected Trade Date: _____
(b) Effective Date: _____
(c) Scheduled Termination Date: _____
(d) If derivative is an option, Exercise Date(s): _____

2. (a) Notional Amount: _____
(b) Principal amount of debt, or assets, being hedged: _____
(c) If debt, will the derivative amortize on the same schedule as the debt?
 Yes
 No

If no, on what basis was the notional amount (schedule) determined?

(d) If debt is callable, will the derivative potentially interfere with the objective of the call feature?

- Yes
 No

If yes, explain:

3. Issuer will make payments based on: fixed ___ floating ___ rate
If floating rate:

(a) BMA ___ LIBOR ___ Other (describe) _____

(b) ~~Will payments be based on a~~ Identify the basis on which payments will be made:

A percentage of an index?

~~Yes~~

~~No.~~ If yes, what percentage? ____

~~(e) Will payments be based on a~~ A spread to an index?

~~Yes~~

~~No.~~ If yes, what spread? ____

A percentage of an index AND a spread to an index. If yes, what percentage (___ %) and what spread? _____. (E.g., 67% of LIBOR and 20 bps)

(c) Frequency of payments: _____ How closely do they correspond to debt, or assets, being hedged?

- (d) Can future market conditions cause the basis of these payments to change?

- Yes
 No

If yes, explain: _____

(e) Are any nonperiodic payments being made by either party?

Yes

No

If _____ **yes,** _____ **explain:**

4. Counterparty/ies will make payments based on: fixed ___ floating ___ rate

If floating rate:

(a) BMA ___ LIBOR ___ Other (describe) _____

(b) Will payments be based on a percentage of an index?

Yes

No

If yes, what percentage? ___

(c) Will payments be based on a spread to an index?

Yes

No

If yes, what spread? ___

(d) Can future market conditions cause the basis of these payments to change?

Yes

No

If yes, explain: _____

5. Identify any other embedded options in the derivative.

Knockout provisions

Cap

Floor

Other(s)

(a) Describe: _____

(b) Describe cost of such option(s) and reason(s) for inclusion: _____

6. **Does Derivative have an imbedded loan concept?**

Yes

No

If _____ **yes,** _____ **explain:**

7. Specified Entity, if any
- (a) For Issuer: _____
- (b) For Counterparty/ies: _____

- ~~7.~~8. Credit Support will be provided by:
- (a) Issuer Yes ___ No ___
If yes, name of provider: _____
- (b) Counterparty/ies Yes ___ No ___
If yes, name of provider: _____

~~8.~~ ~~Termination Payment methodology:~~ _____

9. Identify the methodology of determining any termination payments.

- First Method and Loss (1992 Master)
 - First Method and Market Quotation (1992 Master)
 - Second Method and Loss (1992 Master)
 - Second Method and Market Quotation (1992 Master)
 - Close-Out Amount (2002 Master)
 - Other
- _____
- _____

- ~~9.~~10. Will Counterparty/ies have the right of Optional Termination?
- Yes
- No
- If yes, explain: _____
- _____

~~10.~~11. What is the source for any termination payments owed by Issuer? _____

12. What is the maximum termination payment exposure? What, if any, sensitivity analysis was performed on potential termination payment amounts?

~~11.~~12. What is the priority for any termination payments, compared to bond payments, owed by Issuer? _____

Risks

1. Which of the following risks will the Issuer assume upon execution of the derivative?
- (a) Basis Risk Yes ___ No ___
- (b) Tax Risk Yes ___ No ___

- (c) Interest Rate Risk Yes ___ No ___
- (d) Counterparty Risk Yes ___ No ___
- (e) Termination Risk Yes ___ No ___
- (f) Market-access Risk Yes ___ No ___
- (g) Rollover Risk Yes ___ No ___
- (h) Credit Risk Yes ___ No ___
- (i) Other Yes ___ No ___**

If yes, explain: _____

2. How much of the value, if any, of entering into the derivative will come from assuming **any particular** tax risk? _____

3. Will the derivative leverage any risks?

- Yes
- No

If yes, explain: _____

4. Has Issuer run **or obtained** stress tests on how the derivative could affect Issuer's budget and financial position under various market conditions?

- Yes
- No

If yes, describe: _____

5. Explain how the risks being assumed will be mitigated. _____

6. How do the benefits of entering into the derivative outweigh the risks being assumed?

7. (a) Upon execution of this derivative,

(i) How many derivatives will Issuer have outstanding? _____

(ii) What is the total notional amount of those derivatives? _____

(iii) Does the total in (ii) net out offsetting positions?

- Yes**
- No**

If yes, explain: _____

- (b) That total notional amount is what percentage of Issuer's:
- (i) total long-term debt? _____
 - (ii) liquid assets? _____

8. Explain any impact of this derivative on the Issuer's credit standing.

Documentation

1. Which ISDA documentation will be executed in connection with the derivative?
- Master Agreement
 - 1992
 - 2002
 - Schedule
 - Credit Support Annex
 - Confirm
 - Other _____
2. (a) Governing Law: _____
(b) Did Issuer consent to jurisdiction?
- Yes
 - No
- If yes, where: _____
3. Will Issuer waive sovereign immunity?
- Yes
 - No
4. Will Issuer waive its right to jury trial?
- Yes
 - No
5. Who will deliver the legal opinion as to due authorization and legal enforceability for:
- a. Issuer _____
 - b. Counterparty/ies _____

Counterparty/ies

1. On what basis did Issuer select Counterparty/ies?
- Competitive
 - Negotiated
2. If competitive,

- (a) Who was bidding agent? _____
- (b) How many firms were invited to bid? _____
- (c) How many firms bid? _____
- (d) Is bidding agent providing a closing certificate?
 - Yes
 - No

(d) Were bids uniform?

- Yes
- No

If no, how was the winning provider selected?

(e) Will the issuer keep the bidding documents and results as part of permanent file?

- Yes
- No

(f) How was bidding agent compensated?

In what amount? Was this compensation separately stated?

- Yes
- No

3. If negotiated,

- (a) State reasons for negotiating derivative: _____
- (b) State reasons for choosing Counterparty/ies: _____
- (c) Is **Independent** Derivatives Advisor providing a certificate as to fair market valuation?
 - Yes
 - No

If no, what comfort will Issuer receive that the terms for the derivative are commercially reasonable? _____

(d) Does Counterparty have another role in the transaction (e.g., underwriter)?

- Yes
- No

If yes, what comfort will Issuer receive that the terms for the Derivative are independently determined without regard to Counterparty's other role?

4. Does Counterparty/ies have:

- (a) a counterparty, a long-term debt, or a claims paying rating of "A+/A1" or better from a nationally recognized statistical ratings service?
 - Yes
 - No
- (b) minimum capitalization of at least \$100 million?

- Yes
- No
- (c) a demonstrated record of successfully executing municipal derivatives transactions?
 - Yes
 - No

5. What percentage of Issuer's total notional amount of derivatives will be with the same Counterparty/ies? _____
6. If Issuer will have more than one derivatives contract with Counterparty or any of the Counterparties, are any of them offsetting?
 - Yes
 - No

Credit Support

1. If Issuer is providing Credit Support, is it coterminous with the derivative?
 - Yes
 - No
2. If Counterparty/ies is/are providing Credit Support, is it coterminous with the derivative?
 - Yes
 - No
3. Is Issuer pledging any revenues?
 - Yes
 - No
 If yes, describe: _____

4. Threshold Amount regarding Specified Indebtedness
 - a. For Issuer: _____
 - b. For Counterparty/ies: _____
5. What is Eligible Collateral? _____

6. Identify rating levels at which Issuer must post collateral and level of collateral required.

Rating _____	Collateral Required _____
Rating _____	Collateral Required _____
Rating _____	Collateral Required _____
7. Source for collateral, if required: _____

8. Identify rating levels at which Counterparty/ies must post collateral and level of collateral required.

Rating _____ Collateral Required _____

Rating _____ Collateral Required _____

Rating _____ Collateral Required _____

Is the collateral to be delivered consistent with Issuer's investment policy and applicable legal requirements?

9. How were the thresholds, ratings levels and posting amounts determined?

~~9.~~10. Describe procedures for delivery, valuation and safekeeping of collateral.

~~10.~~11. What is the frequency of valuation of collateral?

- Daily
- Weekly
- Monthly
- Other _____

~~11.~~12. Is a downgrade below a certain level an Additional Termination Event?

- Yes
 - No
- If yes, at what level? _____

Tax Issues

1. Tax counsel reviewing the documentation: _____

2. Will the derivative be integrated with a bond issue for tax purposes?

- Yes
- No

3. Is the Derivative is to be integrated with a bond issue for tax purposes, when will the bonds be/were the bonds issued?

4. What portion of the bond issue will be subject to the Derivative?
Explain:

5. Will the Derivative be identified on the Issuer's books and records within 3 days of entering into the derivative?

Yes

No

If _____ yes, _____ what _____ date: _____

6. Will the Counterparty/ies have a role (other than as the derivative counterparty/ies) in the bond issue?

Yes

No

If yes, explain: _____

7. Is the Derivative part of a transaction that expects or requires super-integrated yield treatment for tax purposes?

Yes

No

8. Are the bonds being issued to advance refund a prior issue? If so, and the derivative is not super-integrated, how does the Issuer expect to deal with yield compliance?

~~4.9.~~ Will the derivative's performance ~~or mark-to-market value~~ be included in arbitrage compliance calculations?

Yes

No

If yes, attach a copy.

10. Would early termination of the derivative result in a yield event for tax purposes?

Yes

No

If yes, explain: _____

~~5. Would early termination of the derivative result in a yield event for tax purposes?~~

~~Yes~~

~~No~~

~~If yes, explain: _____~~

~~6.11.~~ Will tax counsel deliver an opinion in connection with the derivative?

Yes

No

If yes, describe: _____

Operations and Monitoring

1. If the Expected Trade Date and the Effective Date are different, is the derivative part of a series of transactions?
 Yes
 No
If yes,
(a) Describe the subsequent transactions being considered: _____

(b) Describe how and when Issuer will decide next step: _____

(c) Describe provisions for paying expenses: _____
(d) Describe risks to completion or expected value: _____

2. Has Issuer discussed the appropriate accounting treatment for the derivative with its independent auditor?
 Yes
 No

3. Does the derivative qualify for hedge accounting?
 Yes
 No
If yes, has the issuer received or made arrangements to receive confirmation of hedge effectiveness?
 Yes
 No
If yes, from: _____

4. Describe Issuer's process for confirming payment amounts and making necessary payments. _____

5. What is the source for Issuer's regular payments? _____

6. How are such payments budgeted? _____

7. Describe the process for monitoring mark-to-market valuations.

8. What is the frequency of monitoring?
- Daily
 - Weekly
 - Monthly
 - Quarterly
 - Other _____
9. What is the frequency of reporting monitoring results to Chief Executive Officer/Chief Financial Officer?
- Daily
 - Weekly
 - Monthly
 - Quarterly
 - Other _____
10. What is the frequency of sharing monitoring results with independent auditor?
- Daily
 - Weekly
 - Monthly
 - Quarterly
 - Other _____
11. Has Issuer discussed this derivative with the rating agencies?
- Yes
 - No
12. Has the Issuer received a ~~DDP~~ Debt Derivative Profile score from Standard & Poor's?
- Yes
 - No
- If yes, _____
13. Debt and other covenants:
- (a) Has Issuer reviewed the appropriate treatment for the derivative under all applicable debt and other covenants?
- Yes
 - No
- Explain: _____
- (b) Is derivative permissible under all applicable debt and other covenants?
- Yes
 - No
- Explain: _____
- (c) Does derivative contain cross defaults with other debt documents?
- Yes
 - No
- If yes, explain: _____

14. Who is responsible for answering investors' questions about Issuer's derivatives exposure? _____

Information Provided By:

(signature)

**THIS CHECKLIST IS FOR INTERNAL USE ONLY AND MAY NOT BE RELIED ON
BY THIRD PARTIES.**

Document comparison done by Workshare Professional on Monday, June 05, 2006
1:40:36 PM

Input:	
Document 1	interwovenSite://BALTDMS/BALT2/4243807/1
Document 2	interwovenSite://BALTDMS/BALT2/4243807/3
Rendering set	DLAPiper

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	183
Deletions	31
Moved from	6
Moved to	6
Style change	0
Format changed	0
Total changes	226



National Association of Bond Lawyers

Members of the GFOA Checklist Task Force

Kristin H. R. Franceschi (Chair)
DLA Piper Rudnick Gray Cary US LLP
Baltimore, MD 21209-3626
(410) 580-4151
kristin.franceschi@dlapiper.com

Kathryn B. Ashton
Sonnenschein Nath & Rosenthal LLP
Chicago, IL 60606-6491
(312) 876-3157
kashton@sonnenschein.com

Kimberly C. Betterton
McKennon Shelton & Henn LLP
Baltimore, MD 21202-3003
(410) 843-3516
kimberly.betterton@mshllp.com

Walter R. Calvert
Venable LLP
Baltimore, MD 21201-2911
(410) 244-7726
wrcalvert@venable.com

David A. Caprera
Kutak Rock LLP
Denver, CO
(303) 297-2400
david.caprera@kutakrock.com

Gregory R. A. Dahlgren
DLA Piper Rudnick Gray Cary US LLP
Chicago, IL 60601-1263
(312) 368-4056
gregory.dahlgren@dlapiper.com

Linda L. D'Onofrio
Winstead Sechrest & Minick P.C.
New York, NY 10022-2606
(212) 307-3214
ldonofrio@winstead.com

Michael L. Larsen
Orrick, Herrington & Sutcliffe LLP
Washington, DC 20007-5135
(202) 339-8406
mlarsen@orrick.com

Scott R. Lilienthal
Hogan & Hartson L.L.P.
Washington, DC 20004-1109
(202) 637-5849
srlilienthal@hhlaw.com

John T. Lutz
McDermott, Will & Emery LLP
New York, NY 10020-1605
(212) 547-5605
jlutz@mwe.com

Kathleen Crum McKinney
Haynsworth Sinkler Boyd, P.A.
Greenville, SC 29602-2048
(864) 240-3243
kmckinney@hsblawfirm.com

William M. Musser
McNair Law Firm, P.A.
Columbia, SC 29211-1390
(803) 753-3273
bmusser@mcnair.net

S. Louise Rankin
Jones Day
San Francisco, CA 94104-1602
(415) 877-5777
srankin@jonesday.com

Davis V. R. Sherman
Venable LLP
Baltimore, MD 21201-2911
(410) 244-7810
dvsherman@venable.com

E. Tyler Smith
Haynsworth Sinkler Boyd, P.A.
Greenville, SC 29602-2048
(864) 240-4543
tsmith@hsblawfirm.com

Barron F. Wallace
Vinson & Elkins LLP
Houston, TX 77002-6710
(713) 758-4810
bwallace@velaw.com

Fredric A. Weber
Fulbright & Jaworski L.L.P.
Houston, TX 77010-3093
(713) 651-3628
fweber@fulbright.com

George G. Wolf
Orrick, Herrington & Sutcliffe LLP
San Francisco, CA 94105-2625
(415) 773-5988
ggwolfsr@orrick.com