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December 26, 2007

Internal Revenue Service
CC:PA:LPD:PR (REG-106143-07)
PO Box 7604
Ben Franklin Station
Washington, DC 20044

RE: REG-106143-07: Arbitrage Guidance for Tax-Exempt Bonds

Ladies and Gentlemen:

The National Association of Bond Lawyers (NABL) respectfully submits the enclosed comments in response to your request in the Federal Register on September 26, 2007 (REG-106143-07), relating to arbitrage guidance for tax-exempt bonds (Proposed Regulations).

NABL appreciates both the significant effort of the Department of the Treasury and the Internal Revenue Service in the preparation of the Proposed Regulations as well as the request for and consideration of NABL's submission.

Primary drafting responsibilities for these comments were assumed by Douglas A. Bird, McKee Nelson LLP. Substantial contributions were made by other NABL members identified in Appendix B.

NABL believes that participating in the guidance process supports clarification of and facilitates compliance with the tax law and regulations. Accordingly, NABL members would welcome the opportunity to discuss these recommendations to achieve clarity, certainty and administrability in this area of the law.

If you have any questions, please contact me at 205/226-3482 or through email at fclark@balch.com, or Douglas A. Bird at 212/556-2281 or through email at dbird@mckeenelson.com or Elizabeth Wagner, Director of Governmental Affairs, at 202/682-1498 or through email at ewagner@nabl.org.

Thank you again for the opportunity to submit NABL's comments.

Sincerely,

J. Foster Clark

Enclosures

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December 26, 2007

CC:PA:LPD:PR (REG-106143-07)
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PO Box 7604
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Re: National Association of Bond Lawyers — Comments to Proposed Regulations on the Arbitrage Restrictions under Section 148 of the Internal Revenue Code

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The following comments are submitted on behalf of the National Association of Bond Lawyers ("NABL"). These comments relate to the proposed regulations on the arbitrage restrictions under Section 148 of the Internal Revenue Code published in the Federal Register on September 26, 2007 (the "Proposed Regulations"). Specifically, the comments address certain provisions of the Proposed Regulations relating to the "qualified hedge" rules contained in Treasury Regulation §1.148-4(h) and certain related provisions.

1. Section 1.148-4(h)(4)(i)(C) – Fixed yield treatment of hedged bonds. The Proposed Regulations add a new sentence to the end of §1.148-4(h)(4)(i)(C) that would prohibit fixed yield treatment of bonds subject to a floating-to-fixed rate hedge where the floating payments under the hedge are based on a taxable interest rate or interest rate index (*e.g.*, London Interbank Offering Rate ("LIBOR")). As noted in the preamble to the Proposed Regulations, the Internal Revenue Service ("IRS") and the Department of the Treasury ("Treasury") believe that fixed yield treatment of the hedged bonds is inappropriate in this instance because of an insufficient correlation between tax-exempt bond interest rates and taxable market interest rate indices.

The preamble to the Proposed Regulations also notes, however, that issuers have recently issued bonds bearing interest at variable rates determined by reference to a taxable interest rate index, and that special accommodation regarding fixed yield treatment of such bonds may be appropriate. Bonds of this type generally bear interest at a fixed percentage of a specified index such as LIBOR, but in some cases may bear interest at a rate equal to a specified index (or a fixed percentage of a specified index) plus a fixed spread (*e.g.*, the Consumer Price Index ("CPI") plus a fixed number of basis points). If the floating rate under the hedge is identical to the floating rate on the bonds, or if the floating rate on the hedge is identical to the index (or percentage thereof) used to determine the floating rate on the bonds and the difference between the two rates is merely a fixed spread, fixed yield treatment of the bonds should not be prohibited. In

either case, the concern raised by the IRS and Treasury does not exist because the rates are either identical or determined using the same index, and any fixed spread is identifiable and can be offset against the fixed payer rate.

In order to accommodate the foregoing (and to correct an apparent omission in the proposed language relating to anticipatory hedges), NABL recommends that the new sentence proposed to be added to §1.148-4(h)(4)(i)(C) be revised to read as follows (changes underlined):

> (C) *** Except for <u>(1)</u> an anticipatory hedge that is terminated or otherwise closed substantially contemporaneously with the <u>issuance of the</u> hedged bond in accordance with paragraph (h)(5)(ii) or (h)(5)(iii) of this section, <u>or (2) a hedge under which the periodic payments to be made to the issuer by the hedge counterparty are determined using either (x) a rate that is identical to the rate on the hedged bonds or (y) an index that is identical to the index (or percentage thereof) used to determine the floating rate on the hedged bonds and the difference between the two rates is fixed and determinable</u>, a hedge based on a taxable interest rate or taxable interest index (for example, the London Interbank Offered Rate or LIBOR) does not meet the requirements of this paragraph (C).

2. <u>Section 1.148-4(h)(2)(v)(B) – Twenty-five basis points tests for simple integration</u>. For purposes of simple integration of a floating-to-fixed rate hedge where the floating rate under the hedge is based on a taxable interest rate or a taxable interest rate index, the Proposed Regulations add a two-part test for determining whether the floating rate under the hedge and the floating rate on the hedged bonds are substantially the same. As a general matter, considering the limitations contained in the existing rules and those added by the Proposed Regulations, the need for a rate correlation test to establish that a hedge is "interest-based" should be reexamined. For instance, Treasury Regulation §1.148-4(h)(2)(v)(B) in its current form requires that, as a result of treating all payments on (and receipts from) the hedge contract as additional payments on (and receipts from) the hedged bond, the resulting bond be substantially similar to either a fixed rate bond, a variable rate debt instrument or an inflation-indexed debt instrument. The Proposed Regulations further clarify this limitation by specifically excluding the use of an equity index (as opposed to a debt index) for the hedge and add a separate prohibition on "over-hedging." With the inclusion of the foregoing, it is not clear that the rate correlation tests for simple integration serve any purpose not otherwise addressed.

If some form of rate correlation test is retained, however, it should be flexible and not too restrictive. Based on discussions with practitioners and dealers in the municipal swap market, market conditions may in many instances cause common, non-abusive hedging arrangements, such as a hedge under which the floating rate is simply a fixed percentage (*e.g.*, 67%) of one-month LIBOR, to fail one or both of the tests contained in the Proposed Regulations. As a result, the floating rate would have to be adjusted in some manner (*e.g.*, by changing the percentage and adding a fixed spread) in order to achieve compliance. These types of adjustments would serve no purpose other than adherence with both parts of the new test.

Although a trade date or similar type of "snap-shot" test is consistent with the general goal of simplification and provides some assurance of rough equivalency of rates, near-term abnormalities in the tax-exempt market or the taxable market, or in the relationship between the two markets, can make that type of test difficult to satisfy if the issuer also has to demonstrate compliance with a historical test for a specific period. Provided there is sufficient flexibility and clarity as to its application, NABL believes that a historical test by itself is a better alternative. A historical test provides a more meaningful comparison of rates, better allows issuers to consider and manage the potential basis differential between the floating rate on their bonds and the floating rate on a related hedge, and provides the IRS and Treasury a reasonable assurance of correlation. Such a test should:

(i) provide for a comparison of rates over a historical period of no less than 3 years, ending on a date no more than 15 days prior to the date the hedge is entered into, using:

(a) the interest rates on other bonds of the issuer, or bonds of another issuer having comparable credit (taking into account any qualified guarantee) and other characteristics (*e.g.*, the state in which the issuer is located) as the bonds to be issued by the issuer, in either case that were outstanding during the entire period for which the comparison is made, or

(b) a tax-exempt interest rate index (such as the Securities Industry and Financial Markets Association ("SIFMA") Municipal Swap Index) in effect during the period for which the comparison is made, adjusted as necessary by a fixed spread determined based on the issuer's reasonable expectations as to rates on its bonds as compared to such index during the term of the hedge (taking into account any interest rate history of comparable bonds, if any, under (a) above); and

(ii) permit the sampling of such rates or index to be made at any reasonable, consistently applied interval during the applicable period, such as (a) each reset date for such rates or index, or (b) a specific day of each month (*e.g.*, the 1st or the 15th).

NABL believes that the best way to clarify the application of the foregoing is through the use of an example. NABL, therefore, recommends adding the following (either as part of §1.148-4(h)(v) or as a new §1.148-4(h)(7)):

"*Example (1). Floating rate on the hedge and variable rate on the hedged bonds treated as substantially the same for purposes of §1.148-4(h)(2)(v)(B)(1).* In anticipation of its planned issuance of weekly variable demand bonds, on Date 1 City A enters into a forward starting, floating-to-fixed rate swap. The floating rate to be received by City A under the swap is 70% of the one-month London Interbank Offering Rate ("one-month LIBOR"). City A does not on

Date 1 or any day prior to Date 1 have any weekly variable rate demand bonds outstanding. City B, located in the same state, has had weekly variable rate demand bonds outstanding at all times during the past 4 years. The credit quality of City A (taking into account any qualified guarantee of such bonds under §1.148-4(f)) is very similar to that of City B, and City A has concluded, taking into consideration the advice of its underwriters and other advisors, that City A's bonds will trade at interest rates comparable to the interest rates on the outstanding bonds of City B. The impact of state income tax rates and other relevant factors have resulted in a historical average interest rate on the outstanding bonds of City B equal to the Securities Industry and Financial Markets Association Municipal Swap Index (or the predecessor to such index, The Bond Market Association Municipal Swap Index, each of which is referred to in this example as "SIFMA") minus 0.03% for the past 4 years. In addition, the interest rates on the outstanding weekly variable rate bonds of City B have never been greater than SIFMA, nor less than SIFMA minus 0.08%. Compliance with the requirements of §1.148-4(h)(2)(v)(B)(1) may be demonstrated by City A by showing that:

(i) over a historical period selected by City A of not less than 3 years and ending not more than 15 days prior to Date 1, the average difference between the rate on the outstanding weekly variable rate demand bonds of City B and 70% of one-month LIBOR over such period, as such rates were in effect on (i) the actual dates on which such rates were reset, or (ii) such other monthly interval as may be reasonably selected by City A, is not more than 0.25%; or

(ii) over a historical period selected by City A of not less than 3 years and ending not more than 15 days prior to Date 1, the average difference between SIFMA minus 0.03% and 70% of one-month LIBOR over such period, as such rates were in effect on any of (a) the actual dates on which SIFMA was reset, or (b) such other monthly interval as may be reasonably selected by City A, is not more than 0.25%.

For purposes of calculating such average difference, the numerical values of each rate are subtracted and the resulting difference is averaged for the full-term of the applicable period."

3. Section 1.148-4(h)(2)(v) – Prohibition on Over-Hedging. The Proposed Regulations add a new provision to §1.148-4(h)(2)(v) limiting the size and scope of a qualified hedge, including a statement that the hedge must be based on "…the issuer's principal amount of bonds…". NABL recommends that this provision be revised to state "…the issuer's principal amount of hedged bonds…" in order to avoid any question that a qualified hedge may relate to less than all bonds of an issue.

4. Section 1.148-5(c)(3)(ix) – Yield Reduction Payments. In order to address the potential yield implications of basis differences between a qualified hedge and the

hedged bonds during the life of an advance refunding escrow, §1.148-5(c)(3)(ix) of the Proposed Regulations permits issuers to make yield reduction payments, assuming compliance with the requirements of that section. The Proposed Regulations permit issuers to apply this provision to escrow investments purchased on or after the date of publication of the Proposed Regulations in the Federal Register. Although this provision is extremely helpful and certainly a welcome addition, NABL believes that two issues should be considered.

First, §1.148-5(c)(3)(ix)(A) of the Proposed Regulations requires that "[t]he issuer has entered into a qualified hedge under §1.148-4(h)(2) with respect to all of the variable yield bonds of the issue *allocable to the yield restricted escrow*…". The inclusion of the highlighted language is potentially confusing in connection with a multipurpose issue. Under existing rules, a multipurpose issue has a single yield, regardless of the fact that proceeds are allocated to different purposes. As a result, unless the existing rule regarding the calculation of yield on a multipurpose issue is intended to be changed, application of the new yield reduction payment rule to a variable rate multipurpose issue would, as a practical matter, require that the entire issue be subject to the hedge. Consequently, NABL recommends that the foregoing language of §1.148-5(c)(3)(ix)(A) of the Proposed Regulations be revised to read as follows: "(A) The issuer has entered into a qualified hedge under §1.148-4(h)(2) with respect to all of the variable yield bonds of the hedged bond issue…". (The term "hedged bond issue" is defined in the lead-in of paragraph (ix)).

Second, NABL recommends that issuers be permitted to apply the new yield reduction payment rule retroactively, such that yield reduction payments could be made with respect to escrow investments purchased prior to the date permitted under the Proposed Regulations. Further, NABL believes that such retroactive application should be conditioned upon compliance with (i) the requirements for application of this new rule contained in §1.148-5(c)(3)(ix) of the Proposed Regulations, and (ii) the requirements for simple integration of a hedge contained in §1.148-4(h) of the Treasury Regulations as in effect prior to the effectiveness of the changes contained in the Proposed Regulations. This change would eliminate costly and burdensome alternatives currently being used by issuers to assure yield restriction compliance in these types of transactions.

5. Section 1.148-4(h)(2)(viii) – Reasonably Contemporaneous Identification. The burden of complying with the requirement to identify a qualified hedge has been lightened considerably by the extension of the period for identification to 15 days. NABL recommends, however, that two further modifications be considered. First, the 15-day period should commence on the date on which there is a binding written contract for the hedge. This modification would be consistent with the definition of "sale date" provided in Treasury Regulation §1.150-1(c)(6) and would provide greater certainty as to the date on which the parties "entered into" the hedge contract. Second, in order to better accommodate the identification of an anticipatory hedge entered into by a conduit borrower where more than one entity is authorized to issue the hedged bonds, provision should be made for the identification to be acknowledged or adopted by the actual issuer of the hedged bonds where the original identification was provided by another entity.

The foregoing modification should be permitted if (i) the entity that identified the hedge originally had or was reasonably believed to have the authority to issue the hedged bonds, and (ii) the entity that actually issues the hedged bonds acknowledges in writing the terms of the original identification.

6. Section 1.148-4(h)(3)(iv)(B) – Fair Market Value Termination – The Proposed Regulations add a sentence to the end of Treasury Regulation §1.148-4(h)(3)(iv)(B) that states: "The amount of the termination payment in a termination or deemed termination is equal to the fair market value of the qualified hedge on the date of termination." The preamble to the Proposed Regulations states that this added sentence is intended to clarify the existing regulatory framework for the arbitrage accounting treatment of the termination or deemed termination of a qualified hedge. Although the concept embodied in this language and the current practice regarding termination and deemed termination of a qualified hedge are consistent, the proposed additional language presents two concerns.

First, NABL believes that upon actual termination of a qualified hedge, the amount taken into account under §1.148-4(h)(3)(iv)(B) should be the amount actually paid to or received from the hedge counterparty in respect of such termination. As is the case with the interest cost of a debt issue, an issuer has a compelling economic incentive to minimize a termination payment made to a hedge provider or, conversely, to maximize a termination payment received from a hedge provider. In most cases, hedge termination payments are determined initially by the hedge provider based upon its pricing models and typically reflect the "bid side" of the hedge provider's hedge quotation system. Standard swap documents (nearly always an International Swaps and Derivatives Association ("ISDA") Master Agreement and related Schedule) generally provide for a market quotation procedure if the issuer disagrees with the termination amount and may also contain other provisions, such as the issuer's right to transfer the hedge, that provide additional price transparency for its termination value. In short, NABL believes that various protections of the fairness of market value of a qualified hedge are sufficient to permit issuers to use the actual amount paid or received in connection with such termination for their arbitrage calculations.

Second, and based in part upon the above, NABL believes the definition of fair market value in the context of a deemed termination should incorporate the concept of the "bid side" of the hedge provider's quotation rather than, for example, the mean between the bid and ask quotations. The bid side is the level at which a hedge would actually be terminated, and incorporating it into the definition of fair market value would provide greater consistency between the results of actual and deemed terminations. Therefore, NABL recommends that the Proposed Regulations be modified to provide that the amount to be taken into account by the issuer for purposes of §1.148-4(h)(3)(iv)(B) is:

(i) in the case of actual termination of a qualified hedge, the amount paid by or to the issuer in respect of such termination, and

(ii) in the case of deemed termination of a qualified hedge, the fair market value of such hedge (positive or negative), determined by the issuer (taking into account any quotation of such value obtained from the provider of such hedge and any quotation obtained from any reasonably comparable provider).

7. Section 1.148-4(h)(3)(iv) - Offsetting Hedges – In March 2007, NABL submitted a comment letter requesting guidance on deemed termination of a qualified hedge in connection with the acquisition of an offsetting hedge. A copy of an excerpt of that letter is attached as Appendix A. Although no changes are contained in the Proposed Regulations with respect to this issue, the preamble to the Proposed Regulations indicates that the IRS and Treasury are soliciting specific comments on the topic.

NABL reaffirms its recommendation that guidance be provided with respect to this issue, and recommends that guidance also be provided on the similar issue of deemed termination of a qualified hedge upon a refunding or reissuance of the hedged bonds. Specific language is proposed below. These changes are necessary to address the fact that, in each instance, a deemed termination of a qualified hedge is very likely to result in a deemed termination payment from one party to the other (except in the very unlikely case that, at the time of the deemed termination, the hedge is exactly on market), with the consequence that the deemed new hedge will have an investment element that may be prohibited.

This issue arises in three situations: (i) modification of an existing qualified hedge; (ii) the execution by the issuer of an additional hedge to further modify its interest rate exposure; and (iii) the retirement of the hedged bonds as a result of a current refunding or a deemed reissuance under Treasury Regulation §1.1001-3 or Notice 88-130. A fourth situation might also be identified, where a qualified hedge is terminated as a result of a counterparty default and the hedge is replaced with an identical hedge with another counterparty (*i.e.*, the situation addressed in Treasury Regulation §1.148-4(h)(4)(iii)(C) with respect to a super integrated hedge).

In each of these cases, if there is a deemed termination of the hedge, there would be a deemed termination payment by one party and a deemed acquisition payment by the other. This result can be illustrated as follows, considered in the context of the deemed termination of a qualified hedge under which the issuer pays a fixed rate and receives a floating rate:

- If the hedge is "out of the money" to the issuer, the issuer would be deemed to make a payment to the hedge provider in respect of such deemed termination, and the hedge provider would be deemed to make a payment back to the issuer in respect of the acquisition of the deemed new hedge. In this circumstance, the provider would certify as to the "on market" rate for the deemed new hedge for purposes of Treasury Regulation §1.148-4(h)(2)(i)(C), and the issuer would then be permitted to treat only that amount as a qualified hedge. The deemed termination payment would be taken into account in calculating the yield on the hedged bonds, with the result being nearly the same as before the deemed

termination, except for the effect of the discount rate used to calculate the termination payment.

- If the hedge is "in the money" to the issuer, the hedge provider would be deemed to make a payment to the issuer in respect of such deemed termination, and the issuer would be deemed to make a payment back to the hedge provider in respect of the acquisition of the deemed new hedge. In this circumstance, the new hedge will have an investment element that would not be permitted (unlike the "out of the money" circumstance described above, under which the issuer would be permitted to treat the "on market" portion of the new hedge as a qualified hedge). As a result, the hedge contract would need to be actually revised to provide for an on market fixed rate (which will be higher than the fixed rate previously in effect), which will then be taken into account as a qualified hedge. The termination payment would then need to be paid to the issuer in cash and taken into account in calculating the yield on the hedged bonds, and the issuer could invest these funds in order to offset the higher rate on the swap. Again, the issuer's circumstances would remain relatively unchanged, but actual discount rates, investment rates, etc. will cause some variations in the actual computations.

NABL believes that the foregoing is needlessly complex, particularly in light of uncertainties regarding the issuer's circumstances at the time a deemed termination occurs, fair market values of deemed terminations, discount rates and investment returns, and other relevant factors. Accordingly, NABL recommends the following modifications to the existing Treasury Regulations:

1. Section 1.148-4(h)(3)(iv)(A) should be amended as follows:

"(A) *Termination defined.*–A termination of a qualified hedge includes any sale or other disposition of the hedge by the issuer or the acquisition by the issuer of an offsetting hedge. A deemed termination occurs when the hedged bonds are redeemed or when a hedge ceases to be a qualified hedge of the hedged bonds. In the case of an assignment by a hedge provider of its remaining rights and obligations under the hedge to a third party or a modification of the hedging contract, the assignment or modification is treated as a termination with respect to the issuer only if it results in a deemed exchange of the hedge and a realization event under section 1001 to the issuer. <u>A deemed termination of a qualified hedge does not occur solely as a result of modifications to the hedge or the acquisition by the issuer of one or more other interest rate positions if the modified hedge (or the combination of the hedge and such other interest rate position(s)) is a qualified hedge, determined without regard to any deemed termination and acquisition payment that would otherwise be treated as made or received.</u>

2. Section 1.148-4(h)(3)(iv)(D) should be amended as follows:

(D) *Special rules for refundings.*–To the extent that the hedged bonds are redeemed using the proceeds of a refunding issue, the termination payment is accounted for under paragraph (h)(3)(iv)(B) of this section by treating it as a payment on the

refunding issue, rather than the hedged bonds. In addition, to the extent that the refunding issue is redeemed during the period to which the termination payment has been allocated to that issue, paragraph (h)(3)(iv)(C) of this section applies to the termination payment by treating it as a payment on the redeemed refunding issue. Notwithstanding paragraph (A), a deemed termination of a qualified hedge does not occur solely as a result of the redemption of the hedged bonds if the hedged bonds are redeemed with the proceeds of refunding bonds and the hedge is a qualified hedge with respect to the refunding bonds, determined as if the hedge were entered into on the issue date of the refunding issue but without regard to any deemed termination and acquisition payment that would otherwise be treated as made or received on that date.

National Association *of* Bond Lawyers

APPENDIX A

(Comments previously submitted by NABL regarding deemed termination)

Treasury Regulation §1.148-4(h)(3)(iv) contains rules regarding the accounting of termination payments relating to qualified hedges. The Treasury Regulations define what constitutes a "termination" and provides that a "termination of a qualified hedge includes any sale or other disposition of the hedge by the issuer or the acquisition by the issuer of an offsetting hedge. A deemed termination occurs when the hedged bonds are redeemed or when a hedge ceases to be a qualified hedge of the hedged bonds."

By treating the acquisition of an offsetting hedge as a deemed termination for Section 148 purposes, the arbitrage regulations adopt a different rule than the rule applicable generally to taxpayers. Code Sections 1092 (relating to straddles) and 1259 (relating to constructive sales of certain appreciated financial positions) would be superfluous if the acquisition of an offsetting position caused a realization event with respect to the original position. *See also* Private Letter Ruling 1988-18-010 (February 4, 1988) (taxpayer's execution of a reverse mirror swap did not cause a termination event with respect to the original swap).

Further, the deemed termination rule seems more punitive than the treatment of hedge terminations under the "super integration" rule of Treasury Regulation §1.148-4(h)(4). If a qualified hedge that is "super integrated" is terminated, the issuer can use any termination payment made or received to acquire a replacement hedge without affecting the bond yield. *See* Treas. Reg. § 1.148-4(h)(4)(iii)(C) (the general termination rule does not apply if "based on the facts and circumstances (*e.g.*, taking into account both the termination and any qualified hedge that immediately replaces the terminated hedge), there is no change in yield"). Thus, a "super integrated" swap can be terminated and replaced without adversely affecting the bond yield for arbitrage or rebate purposes.

One of the most difficult aspects of the deemed termination rules is that the term "offsetting hedge" is not defined in the Treasury Regulations under Section 148 (or elsewhere in the Code or Treasury Regulations). As a result, bond counsel are concerned that an issuer's execution of a second swap transaction to hedge interest rate risk on a hedged bond issue, where simple integration was utilized, will cause a deemed termination of the original swap. This concern is heightened because the consequences of a deemed termination are unclear. Bond counsel are concerned that a deemed termination payment made by the hedge counterparty to the issuer will effect bond yield. A deemed termination payment made by the issuer to the hedge counterparty could be treated as investment property. The fair market value rules set forth in Treasury Regulation § 1.148-5(d) are difficult to apply to deemed hedge termination payments.

These problems are particularly acute with respect to the acquisition of a “basis swap” to hedge a bond subject to a qualified hedge where the issuer makes fixed payments in return for receiving floating payments. Thus, NABL recommends that the IRS provide guidance as to the meaning of “offsetting hedge.”

There are few useful analogies in the Code to utilize in interpreting “offsetting hedge.” It might be possible to define “offsetting hedge” under a statistical approach. Certain derivative accounting is based upon a statistical analysis of negative correlation. If the values of two positions are expected to move inversely and have a high negative correlation they may receive a certain type of accounting treatment. Utilizing a statistical concept might be useful to define an offsetting hedge. NABL would be pleased to provide further information regarding this concept if requested.

In any event, it would be helpful if the Treasury Regulations (or other guidance) specifically provide that a “basis swap” is not treated as an “offsetting hedge” for this purpose.

National Association of Bond Lawyers

APPENDIX B

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