UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
Southern Division

CASE NO.: CV-08-B-0761-S

SECURITIES AND EXCHANGE COMMISSION,	:
Plaintiff,	:
v.	:
LARRY P. LANGFORD, WILLIAM B. BLOUNT, BLOUNT PARRISH & CO., INC, AND ALBERT W. LAPIERRE,	:
Defendant.	:

MOTION OF THE SECURITIES INDUSTRY AND FINANCIAL MARKETS ASSOCIATION FOR LEAVE TO FILE A BRIEF *AMICUS CURIAE*

Ira D. Hammerman
Kevin M. Carroll
SECURITIES INDUSTRY AND FINANCIAL MARKETS ASSOCIATION
1101 New York Avenue, N.W.
Washington, DC 20005
Telephone: (202) 962-7382

Crawford S. McGivaren, Jr.
CABANISS, JOHNSTON, GARDNER, DUMAS & O'NEAL LLP
2001 Park Place, North,
Suite 700
Birmingham, Alabama 35203
Telephone: (205) 716-5200

Leslie M. Norwood
SECURITIES INDUSTRY AND FINANCIAL MARKETS ASSOCIATION
360 Madison Avenue
New York, NY 10017
Telephone: (212) 313-1130

Jonathan M. Hoff
Lary Stromfeld
Maurine Bartlett
Tom M. Fini
CADWALADER WICKERSHAM & TAFT LLP
One World Financial Center
New York, NY 10287
Telephone: (212) 504-6000

The Securities Industry and Financial Markets Association ("SIFMA") hereby moves this Court for leave to file the attached proposed brief *amicus curiae*, for the limited purpose of addressing the issue of the application of Section 17(a) of the Securities Act of 1933 (the "Securities Act") and Section 10(b) (the "Exchange Act") of the Securities Exchange Act of 1934 to certain interest rate swap transactions alleged in the Complaint. This issue is the subject of a motion to dismiss the Complaint, filed in this action by defendants William B. Blount and Blount Parrish & Co., Inc. dated June 27, 2008 (Doc. 12). SIFMA does not address any other issue that is the subject of defendants' motion to dismiss, and, in particular, does not challenge the Court's jurisdiction with respect to alleged violations of the federal securities laws in connection with certain bonds issued by Jefferson County, Alabama. SIFMA does not take a position with respect to the merits of the allegations in the Complaint or defendants' defenses thereto. SIFMA's submission should not be construed as supporting any defense or argument advanced by the defendants as to the merits of the Complaint, but only as SIFMA's position with respect to the limited issue of the application of Section 17(a) and Section 10(b) to the swap transactions that are alleged in the Complaint.[1]

---

[1] On or about June 19, 2008, counsel for SIFMA contacted counsel of record for the Securities and Exchange Commission (the "SEC"), and advised the SEC that SIFMA intended to seek permission to file a brief *amicus curiae*. Subsequently, on July 1 and July 7, 2008, counsel for SIFMA contacted the Court's chambers to advise the Court that SIFMA intended to seek permission to file a brief *amicus curiae*. The Court's law clerk indicated to SIFMA's counsel that, after the Court entered an order establishing a briefing schedule with respect to the defendants' pending motion to dismiss, SIFMA could file its motion for leave to file a brief *amicus curiae* prior to the completion of the parties' briefing on the pending motion to dismiss. Prior to the Court's entry of its scheduling order, the SEC filed its opposition brief on July 14, 2008, prior to the time it was due. Later that same day, the Court entered its July 14, 2008 scheduling order, which provided that the SEC had until August 7, 2008 to file its brief, which

It is undisputed that swap agreements are not "securities" for purposes of the Securities Act and the Exchange Act, and that claims based on Section 17(a) and Section 10(b) can be brought with respect to swap agreements only where fraud is alleged to have occurred with respect to "security-based swap agreements." The Complaint asserts that the defendants' alleged conduct falls within the proscriptions of Section 17(a) and Section 10(b) in respect of the interest rate swap agreements at issue because the swap agreements in this case are purportedly "security-based swap agreements." According to the Complaint, payments made under the swap agreements at issue were based on the SIFMA Municipal Swap Index (the "SIFMA Swap Index"). The Complaint then alleges that the SIFMA Swap Index is an "index of securities," and that a material term of the swap agreements was based on the value of the SIFMA Swap Index.

As explained in SIFMA's proposed brief *amicus curiae*, the SIFMA Swap Index, however, is an index of interest rates, not an index of securities. Moreover, swap agreements under which payments are based on the SIFMA Swap Index are not based on "the price, yield, value or volatility of any security or any group or index of securities." As explained in SIFMA's proposed amicus brief, for each of these reasons, swap agreements under which payments are based on the SIFMA Swap Index, such as the swap agreements at issue in this action, are not "security-based swap agreements." Accordingly, the swap agreements here are not

---

the SEC had already filed. The Court subsequently entered an additional scheduling order dated July 17, 2008, which modified the briefing schedule for the pending motions to dismiss and provides that the deadline for the defendants to file their reply briefs is August 18, 2008.

subject to Sections 17(a) and 10(b), and, thus, there is no basis for the claims asserted in the Complaint with respect to the swap transactions.

SIFMA is an industry trade group representing more than 650 securities firms, banks, and asset management companies in the United States, Europe and Asia. As noted, the claims against the defendants with respect to the swap agreements are based on certain assumptions concerning the SIFMA Swap Index, which assumptions, respectfully, are not accurate. As the entity that created and maintains the SIFMA Swap Index, SIFMA has a critical interest in ensuring that the purpose, structure and application of the SIFMA Swap Index is accurately presented to the Court. Moreover, SIFMA has an interest in ensuring that the nature of the SIFMA Swap Index is not characterized in a manner that would support an inappropriate expansion of Section 17(a) and Section 10(b) over swap agreements based on indices of interest rates, when such jurisdiction clearly was not intended under the CFMA.

The issue of the nature of the SIFMA Swap Index is relevant to one aspect of the current motion to dismiss and both parties have attempted to characterize the Index in their briefs. SIFMA believes that it would be helpful to the Court for SIFMA to clarify the nature of the Index. In that regard, the SEC cited to SIFMA's website in its opposition brief, advocating that SIFMA's explanation of the Index was authoritative. SEC Opp. Brief at 47-48.

In light of the above circumstances, SIFMA respectfully submits that it would be appropriate and helpful to the Court for SIFMA's motion for leave to file its brief *amicus curiae* to be granted. It is widely held that a trial court has broad discretion over the decision whether to allow a non-party to participate as an

amicus curiae. E.g., DeJulio v. State of Georgia, 127 F. Supp. 2d 1274, 1284 (N.D. Ga.) ("The decision whether to allow a non-party to participate as an *amicus curiae* is solely within the broad discretion of the Court."), aff'd in part, rev'd in part on other grounds, 276 F. 3d 1244 (11th Cir. 2001). "District courts frequently welcome amicus briefs from non-parties concerning legal issues that have potential ramifications beyond the parties directly involved or if the amicus has 'unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide.'" NGV Gaming, Ltd. v. Upstream Point Molate, LLC, 355 F. Supp. 2d 1061, 1067 (N.D. Cal. 2005). In light of the relevance of SIFMA's Index to the claims asserted in the Complaint with respect to the swap transactions, and the information and unique perspective that SIFMA has concerning its own Index, these standards are easily met in this case. Moreover, as noted below, all parties to this action have consented to SIFMA filing a brief *amicus curiae*.

Compliance With Section IV.B of Uniform Initial Order

Counsel hereby certifies that prior to filing this motion, counsel to the proposed *amicus curiae* contacted counsel for each of the defendants and the SEC to inquire whether the parties would consent to the relief sought in this motion. Counsel to the defendants consent to SIFMA's motion. The SEC also consents to SIFMA's motion. The SEC also requested that SIFMA note that the SEC had not received a copy of SIFMA's brief *amicus curiae* prior to its filing, and anticipates that it may respond to SIFMA's brief *amicus curiae*.

CONCLUSION

For the foregoing reasons, SIFMA respectfully requests that the Court grant this motion for leave to file the attached brief *amicus curiae*.

Dated: Birmingham, Alabama
August 7, 2008

/s/ Crawford S. McGivaren, Jr.

Crawford S. McGivaren, Jr. MCG008
CABANISS, JOHNSTON, GARDNER, DUMAS & O'NEAL LLP
2011 Park Place North
Suite 700
Birmingham, Alabama 35203
Telephone: (205) 716-5200

Jonathan M. Hoff (admission pending)
Lary Stromfeld
Maurine Bartlett
Tom M. Fini (admission pending)
CADWALADER, WICKERSHAM & TAFT LLP
One World Financial Center
New York, NY 10281
Telephone: (212) 504-6000

Attorneys for *Amicus Curiae* Securities Industry And Financial Markets Association

OF COUNSEL:

Ira D. Hammerman
Kevin M. Carroll
SECURITIES INDUSTRY AND FINANCIAL MARKETS ASSOCIATION
1101 New York Avenue, NW
Washington, DC 20005
Telephone: (202) 962-7382

Leslie M. Norwood
SECURITIES INDUSTRY AND FINANCIAL MARKETS ASSOCIATION
360 Madison Avenue
New York, NY 10017
Telephone: (212) 313-1130

CERTIFICATE OF SERVICE

I hereby certify that on 7th day of August, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Mr. Jason R Berkowitz
Mr. Robert K Levenson
US SECURITIES & EXCHANGE COMMISSION
Southeast Regional Office
801 Bricknell Avenue, Suite 1800
Miami, FL 33131
305-982-6300
305-536-4146 (fax)
berkowitzj@sec.gov

Mr. Thomas E Baddley, Jr
BADDLEY & MAURO, LLC
2545 Highland Avenue, Suite 201
Birmingham, AL 35205
939-0090
eveblue@baddleymauro.com

Mr. Joseph A Fawal
FAWAL & SPINA
1330 21st Way South, Suite 200
Birmingham, AL 35205
939-1330
933-0101 (fax)
jfawal@bellsouth.net

Ms. Caroline Smith Gidiere
CAMPBELL WALLER & POER LLC
2100-A Southbridge Parkway, Suite 450
Birmingham, AL 35209
205-803-0051
205-803-0053 (fax)
cgidiere@cwp-law.com

/s/ Crawford S. McGivaren, Jr.
OF COUNSEL

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
Southern Division

CASE NO.: CV-08-B-0761-S

SECURITIES AND EXCHANGE COMMISSION,	:
Plaintiff,	:
v.	:
LARRY P. LANGFORD, WILLIAM B. BLOUNT, BLOUNT PARRISH & CO., INC, AND ALBERT W. LAPIERRE,	:
Defendant.	:

BRIEF OF *AMICUS CURIAE* SECURITIES INDUSTRY AND FINANCIAL MARKETS ASSOCIATION

Ira D. Hammerman
Kevin M. Carroll
SECURITIES INDUSTRY AND FINANCIAL MARKETS ASSOCIATION
1101 New York Avenue, N.W.
Washington, DC 20005
Telephone: (202) 962-7382

Crawford S. McGivaren, Jr.
CABANISS, JOHNSTON, GARDNER, DUMAS & O'NEAL LLP
2001 Park Place, North,
Suite 700
Birmingham, Alabama 35203
Telephone: (205) 716-5200

Leslie M. Norwood
SECURITIES INDUSTRY AND FINANCIAL MARKETS ASSOCIATION
360 Madison Avenue
New York, NY 10017
Telephone: (212) 313-1130

Jonathan M. Hoff
Lary Stromfeld
Maurine Bartlett
Tom M. Fini
CADWALADER WICKERSHAM &TAFT LLP
One World Financial Center
New York, NY 10287
Telephone: (212) 504-6000

TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES ii

STATEMENT OF INTEREST AND PRELIMINARY STATEMENT 1

STATEMENT OF FACTS 5

A. The Complaint 5

B. The SIFMA Municipal Swap Index 6

ARGUMENT 11

POINT I THE COURT MAY TAKE JUDICIAL NOTICE OF THE INFORMATION REGARDING THE NATURE OF THE SIFMA SWAP INDEX AND OTHER INFORMATION THAT IS CAPABLE OF READY DETERMINATION BY SOURCES WHOSE ACCURACY CANNOT BE REASONABLY QUESTIONED 11

POINT II SWAP AGREEMENTS UNDER WHICH PAYMENTS ARE BASED UPON THE SIFMA SWAP INDEX ARE NOT "SECURITY-BASED SWAP AGREEMENTS" 14

1. The SIFMA Swap Index Is Not An "Index of Securities" 18

2. The Material Terms of the Swaps At Issue Were Not Based On The "Price, Yield, Value Or Volatility" Of the SIFMA Swap Index 23

POINT III THE COMPLAINT CANNOT STATE A CLAIM FOR VIOLATIONS OF SECTION 17(a) OR SECTION 10(b) BASED ON THE THEORY THAT THE SWAP AGREEMENTS WERE ENTERED INTO "SIMULTANEOUSLY WITH" SECURITIES TRANSACTIONS 25

CONCLUSION 30

TABLE OF AUTHORITIES

PAGE(S)

CASES:

Acierno v. Haggerty,
No. Civ. A. 04-1376-KAJ, 2005 WL 3134060 (D. Del. Nov. 23, 2005) 13

Doron Precision Sys., Inc. v. FAAC, Inc.,
423 F. Supp. 2d 173 (S.D.N.Y. 2006) 11

Fin. Planning Ass'n v. SEC,
482 F.3d 481 (D.C. Cir. 2007).....17

In re Merck & Co., Sec. Litig.,
432 F.3d 261 (3d Cir. 2005) 11

In re Snell and LeCroy,
No. 3-12359, 2007 WL 1297008 (S.E.C. May 3, 2007) 28

International Brotherhood of Teamsters v. Daniel,
439 U.S. 551 (1979).....17

K3C Inc. v. Bank of America, N.A.,
204 Fed. Appx. 455 (5th Cir. 2006).....7, 21

Lawrence v. Dunbar,
919 F.2d 1525 (11th Cir. 1990) 13

Lehman Bros. Commercial Corp. v. Minmetals Int'l Non-Ferrous Metals Trading Co.,
179 F. Supp. 2d 159 (S.D.N.Y. 2001) 21

Morrison v. Amway Corp.,
323 F.3d 920 (11th Cir. 2003) 13

OJO v. Farmers Group, Inc.,
No. CV 05-5818-JFW, 2006 WL 4552707 (C.D. Cal. Mar. 7, 2006).....13

Procter & Gamble Co. v. Bankers Trust Co.,
925 F. Supp. 1270 (S.D. Ohio 1996) 21

TABLE OF AUTHORITIES (cont'd)

PAGE(S)

SEC v. Gane,
No. 03-61553-Civ-SEITZ, 2005 WL 90154 (S.D. Fla. Jan. 4, 2005) 14

SEC v. Zandford,
535 U.S. 813 (2002)..... 28-29

St. Matthews Baptist Church v. Wachovia Bank,
No. Civ. A. 04-4540 (FLW), 2005 WL 1199045 (D. N.J. May 18, 2005) .passim

Termarsch v. Argent Mortgage Company, LLC,
No. 8:07-CV-1725-T-30TBM, 2008 WL 1776592 (M.D. Fla. April 16, 2008) 11

Transamerica Mortgage Advisors, Inc. v. Lewis,
444 U.S. 11 (1979).....26

United States v. Kinard,
472 F.3d 1294 (11th Cir. 2006) 26

STATUTES & OTHER AUTHORITIES:

17 C.F.R. § 240.10b-5.....14

Pub. Law No.
106-554 § 2A(a), 114 Stat. 2763, 2763A-451 .....15, 16
106-554 § 2A(b), 114 Stat. 2763, 2763A-452.....16
106-554 § 2A(b)(1), 114 Stat. 2763, 2763A-451 15
106-554 § 2A(b)(3)(B), 114 Stat. 2763, 2763A-452.....26
106-554 § 3A(a), 114 Stat. 2763, 2763A-451 16
106-554 § 3A(a), 114 Stat. 2763, 2763A-452 15
106-554 § 3A(b), 114 Stat. 2763, 2763A-453-54.....16
106-554 § 3A(b)(1), 114 Stat. 2763, 2763A-452 15
106-554 § 3A(b)(2), 114 Stat. 2763, 2763A-452-53.....15
106-554 § 3A(b)(3)(B), 114 Stat. 2763, 2763A-453.....26
106-554 § 3A(d), 114 Stat. 2763, 2763A-454.....16
106-554 § 3A(e), 114 Stat. 2763, 2763A-454-55.....16
106-554 § 3A(g), 114 Stat. 2763, 2763A-455-56.....16

TABLE OF AUTHORITIES (cont'd)

PAGE(S)

106-554 § 3A(i), 114 Stat. 2763, 2763A-456 16
106-554 § 3A(k), 114 Stat. 2763, 2763A-456-57 16
106-554 § 206A(a)(1)-(5), 114 Stat. 2763, 2763A-449-450 15
106-554 § 206B, 114 Stat. 2763, 2763A-451 ..... 15, 16, 18, 23
106-554 § 206C, 114 Stat. 2763, 2763A-451 ..... 15, 16,17
106-554 § 302(b) 26
106-554 § 303(b)(1) 26

Fed. R. Evid.
201(b) 11
201(f) 14, 15

Guy-P. Lander, 14 U.S. Securities Law for International Financial Transactions and Capital Markets § 1:32 at 1-79 to 1-84 (2007 Thomson/West) 26

About SIFMA, http://www.sifma.org/about/about.html (last visited June 26, 2008) 4, 8

Brian O'Keefe, *Hedging Considerations in CDO Transactions*, Financial Services Industry, http://findarticles.com/p/articles/mi_m0MTK/is_1-4_5/ai_n25060165 (last visited July 9, 2008) 7, 27

Tom Crescenzi, *Get to Know VRDOs*, The Street (February 13, 2008), *available at* http://www.thestreet.com/story/10403338/2/get-to-know-vrdos.html 9

Dow Jones Indexes, Corporate Bond Index FAQ, http://www.djindexes.com/mdsidx/index.cfm?event=showCorpBondFaq (last visited July 9, 2008) 24

FinCAD, *Tax Exempt (Municipal) Swap Curve*, http://www.fincad.com/support/developerFunc/mathref/BMASwapCrv.htm (last visited July 2, 2008) 8

International Swaps and Derivatives Association ("ISDA"), Product Descriptions and Frequently Asked Questions, http://www.isda.org/educat/faqs.html#9 (last visited July 1, 2008) 6

TABLE OF AUTHORITIES (cont'd)

PAGE(S)

International Swaps and Derivatives Association ("ISDA"), Product Descriptions and Frequently Asked Questions, http://www.isda.org/educat/faqs.html#10, (last visited July 7, 2008).....7

Investment News, *SIA & BMA Merge into SIFMA*, (November 1, 2006), http://www.investmentnews.com/apps/pbcs.dll/article?AID=/20061101/REG/611010715/-1/BreakingNews04.....8

Lehman Brothers, U.S. Corporate Floating Rate Note Index, http://www.lehman.com/fi/indices/pdf/US_Corporate_FRN_Index.pdf (April 2008) 20

Municipal Securities Rule Making Board, Glossary of Municipal Securities Terms, *http://www.msrb.org/msrb1/glossary/* (last visited August 1, 2008) 24

Municipal Securities Rule Making Board, *Request for Comment Plan for Increasing Information Available for Variable Rate Demand Obligations*, (May 23, 2008), *available at* http://www.msrb.org/msrb1/whatsnew/2008-24.asp.....9

Proposed Statement of the Governmental Accounting Standards Board: Plain Language Supplemental, Governmental Accounting Standards Board of the Financial Accounting Foundations, http://www.nabl.org/AM/Template.cfm?section=Gen_Municipal_Bond_Material&template=/MembersOnly.cfm&ContentID=7140&q=%22interest%20rate%20swap%22 (June 29, 2007) 27

Stan Provus, *Basis Risk with Interest Rate Swaps*, Council of Development Finance Agencies, http://www.cdfa.net/cdfa/cdfaweb.nsf/pages/feb2005tlc.html (last visited July 2, 2008).....9

Reuter's Financial Glossary, Contract For Difference, http://glossary.reuters.com/index.php/Contract_for_Difference (last visited July 9, 2008); Max Hotopf, *Contract for Difference*, Citywire Personal Investor Edition http://www.citywire.co.uk/personal/investment-guides/contracts-for-difference.aspx (April 12, 2007).....20

TABLE OF AUTHORITIES (cont'd)

PAGE(S)

Securities Industry and Financial Markets Association Municipal Swap Index,https://www.tm3.com/refer/usermanual/docs/BMA.pdf (last visited June 26, 2008).....8

SIFMA, Answering Your Questions About The Securities Industry and Financial Markets Association (SIFMA) Municipal Swap Index, http://www.sifma.org/capital_markets/swapindex.shtml (last visited June 26, 2008) 8, 9,10, 19

Swap Monitoring Report, Jefferson County Alabama, *available at* http://jeffco.jccal.org/pls/portal/docs/PAGE/FINANCE_PAGE_GROUP/INVESTOR_RELATIONS/TAB60915/SWAP%20ASSET%20MANAGEMENT%20REPORT%20-%20013107%20-%20LIBRARY.PDF (January 31, 2007) 22

The Securities Industry and Financial Markets Association ("SIFMA") respectfully submits this brief as amicus curiae, for the limited purpose of addressing the issue of the application of Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934 to certain interest rate swap transactions alleged in the Complaint. This issue is the subject of a motion to dismiss the Complaint, filed in this action by defendants William B. Blount and Blount Parrish & Co., Inc. dated June 27, 2008 (Doc. 12). SIFMA does not address any other issue that is the subject of defendants' motion to dismiss, and, in particular, does not challenge the Court's jurisdiction with respect to alleged violations of the federal securities laws in connection with certain bonds issued by Jefferson County, Alabama. SIFMA does not take a position with respect to the merits of the allegations in the Complaint or defendants' defenses thereto. SIFMA's submission should not be construed as supporting any defense or argument advanced by the defendants as to the merits of the Complaint, but only as SIFMA's position with respect to the limited issue of the application of Section 17(a) and Section 10(b) to the swap transactions that are alleged in the Complaint.

STATEMENT OF INTEREST AND PRELIMINARY STATEMENT

In this action, plaintiff the Securities and Exchange Commission (the "SEC") alleges that Larry Langford, the mayor of Birmingham, Alabama, accepted undisclosed payments and benefits from defendant William B. Blount, chairman of a broker-dealer, defendant Blount Parrish & Co., Inc. (together, "Blount Parrish"), in connection with the offer, purchase and sale of approximately $2.9 billion of Jefferson County, Alabama municipal bonds. The Complaint also alleges that

Langford accepted undisclosed payments and benefits from Blount Parrish with respect to four interest rate swap transactions that the County entered into with two financial institutions.

The Complaint alleges that the defendants violated Section 17(a) of the Securities Act of 1933 (the "Securities Act") and Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") (including Rule 10b-5 promulgated by the SEC thereunder) with respect to the four swap transactions. In general, in order to assert claims under those provisions, the Complaint must allege that a defendant made a material misrepresentation or omission in the offer and sale of a security or in connection with the purchase or sale of a security. In the Commodity Futures Modernization Act of 2000 (the "CFMA"), Congress made clear that "swap agreements" (as defined in the CFMA) are not securities for purposes of these statutes and that the SEC is prohibited from registering, or requiring the registration of, swap agreements, or imposing reporting or recordkeeping requirements or other procedures or standards as preventative measures against fraud, manipulation or insider trading with respect to swap agreements.

The CFMA did provide, however, that certain swap agreements -- "security-based swap agreements" -- are subject to the anti-fraud, anti-manipulation and insider trading provisions of Section 17(a) and Section 10(b). In that regard, the CFMA defines a "security-based swap agreement" as an agreement "of which a material term is based on the price, yield, value or volatility of any security or any group or index of securities, or any interest therein."

The Complaint asserts that the defendants' alleged conduct falls within the proscriptions of Section 17(a) and Section 10(b) in respect of the interest rate swap agreements at issue because the swap agreements in this case are purportedly "security-based swap agreements." According to the Complaint, payments made under the swap agreements at issue were based on the SIFMA Municipal Swap Index (the "SIFMA Swap Index"). The Complaint then alleges that the SIFMA Swap Index is an "index of securities," and that a material term of the swap agreements was based on the value of the SIFMA Swap Index.

The SIFMA Swap Index, however, is an index of interest rates, not an index of securities. Moreover, swap agreements under which payments are based on the SIFMA Swap Index are not based on "the price, yield, value or volatility of any security or any group or index of securities." For each of these reasons, swap agreements under which payments are based on the SIFMA Swap Index, such as the swap agreements at issue in this action, are not "security-based swap agreements." Accordingly, the swap agreements here are not subject to Sections 17(a) and 10(b), and, thus, there is no basis for the claims asserted in the Complaint with respect to the swap transactions. See Point II, infra.

The Complaint also asserts an alternative basis for its claims with respect to two of the four swap agreements at issue. Specifically, the Complaint asserts that even if the swap agreements are not security-based swap agreements, the SEC may still assert claims under Sections 17(a) and 10(b) with respect to these two swap agreements simply because they were entered into "simultaneously with" the bond offerings. As explained below, however, the Complaint's alternative theory is inconsistent with the plain text and purpose of the CFMA,

which carefully limited the antifraud provisions of the securities statutes only to swap agreements that are "security-based swap agreements." See Point III, infra.

SIFMA is an industry trade group representing more than 650 securities firms, banks, and asset management companies in the United States, Europe and Asia.[1] As noted, the claims against the defendants with respect to the swap agreements are based on certain assumptions concerning the SIFMA Swap Index, which assumptions, respectfully, are not accurate. As the entity that created and maintains the SIFMA Swap Index, SIFMA has a critical interest in ensuring that the purpose, structure and application of the SIFMA Swap Index are accurately presented to the Court. Moreover, SIFMA has an interest in ensuring that the nature of the SIFMA Swap Index is not characterized in a manner that would support an inappropriate expansion of Section 17(a) and Section 10(b) over swap agreements based on indices of interest rates, when such jurisdiction clearly was not intended under the CFMA.

Significantly, the issue of the nature of the SIFMA Swap Index is relevant to one aspect of the current motion to dismiss and both parties have attempted to characterize the Index in their briefs. SIFMA believes that it would be helpful to the Court for SIFMA to clarify the nature of the Index. In that regard, the SEC cited to SIFMA's website in its opposition brief, advocating that SIFMA's explanation of the Index was authoritative. SEC Opp. Brief at 47-48.[2]

---

[1] SIFMA, About SIFMA, http://www.sifma.org/about/about.html (last visited July 30, 2008). (Ex. A hereto).

[2] According to the SEC:

> A better place than the ISDA website for the Court to look for evidence of what that Municipal Swap Index really is would be

SIFMA stresses, again, that it does not challenge the SEC's claims with respect to the alleged fraudulent conduct that took place in connection with the purchase and sale of the Jefferson County municipal bonds (which are securities for purposes of the Securities Act and the Exchange Act), as alleged in Paragraph 14 of the Complaint.[3] Because the defendants' alleged wrongdoing in this action may legitimately fall within the scope of Section 17(a) and Section 10(b) based upon allegations of fraudulent conduct in connection with the bond offerings, the Court should not accept the Complaint's additional and expansive attempt to assert claims with respect to the swap agreements.

STATEMENT OF FACTS

A. The Complaint

The Complaint alleges that Langford, the mayor of Birmingham, Alabama, accepted undisclosed payments and benefits from Blount Parrish in connection with the offer, purchase and sale of approximately $2.9 billion of Jefferson County, Alabama municipal bonds. Doc. 1, ¶ 1. The five bond offerings that are the subject of the Complaint are (1) a $94 million capital improvement bond offering that closed on March 1, 2003 (the "2003-A bonds"); (2) a $1.1 billion sewer bond offering that closed on May 1, 2003 (the "2003-B bonds"); (3) a $1.05 billion sewer bond offering that closed on August 7, 2003 (the

---

> statements from the organization that created and maintains it – the Bond Market Association, now known as the Securities Industry and Financial Markets Association ("SIFMA").

SEC Opp. Brief at 47-48.

[3] Nor does SIFMA address any other aspects of defendants' motion pursuant to Fed. R. Civ. P. 12(b)(1) and (6).

"2003-C bonds"); (4) a $51 million general obligation bond offering that closed on August 1, 2004 (the "2004-A bonds"); and (5) a $650 million limited obligation school bond offering that closed on December 20, 2004. Doc. 1, ¶ 11.

The Complaint also alleges that Langford accepted undisclosed payments and benefits from Blount Parrish with respect to four interest rate swap transactions that the County entered into with two financial institutions. The interest rate swap transactions that are described in the Complaint are: (1) a $1.1 million swap transaction with JP Morgan Chase Bank ("JP Morgan"), which the SEC alleges was executed in connection with the 2003-B bonds; (2) a $789 million swap transaction with JP Morgan, which the Complaint alleges was executed in connection with the 2003-C bonds; (3) a $111 million swap agreement with JP Morgan with an effective date of May 1, 2004; and (4) a swap transaction with Bear, Stearns & Co. ("Bear Stearns") with an effective date of June 24, 2004. Doc. 1, at ¶ 12. These four swap transactions are referred to collectively herein as the "County Swap Agreements." SIFMA takes no position on the merits of the allegations of wrongdoing in the Complaint or the defendants' defenses thereto.

B. The SIFMA Municipal Swap Index

As the Complaint alleges, the County Swap Agreements in this action are commonly known as interest rate swap agreements.[4] An interest rate swap

[4] The general nature of interest rate swap agreements – which is not in dispute – is reflected in case law, as well as in definitions of swap agreements of which the Court may take judicial notice. See, e.g., St. Matthews Baptist Church v. Wachovia Bank, No. Civ. A. 04-4540 (FLW), 2005 WL 1199045, at *1 (D.N.J. May 18, 2005) (describing a typical interest rate swap agreement); see also International Swaps and Derivatives Association ("ISDA"), Product Descriptions and Frequently Asked Questions, http://www.isda.org/educat/faqs.html#9 (last visited July 30, 2008) (Ex. B hereto at 2). As discussed below, the Court may also take judicial

agreement is a contractual arrangement that enables parties to, among other things, protect themselves against the risk of fluctuating interest rates. See K3C Inc. v. Bank of America, N.A., 204 Fed. Appx. 455, 458 (5th Cir. 2006) (describing an interest rate swap as "a transaction by which a borrower can hedge against the risk of interest rate fluctuations"). The parties to such transactions agree to exchange interest payments on specific dates based on a defined principal amount for a fixed period of time and according to a predetermined formula. The principal amount, which is not exchanged, is referred to as the "notional" amount.[5] In a typical interest rate swap agreement, a series of payments, which are calculated by applying a fixed rate of interest to the notional amount, are exchanged for a series of payments, which are calculated on the basis of a specified floating rate of interest.[6] To establish the floating interest rate for a swap contract, the contract typically references an interest rate benchmark, such as LIBOR or the SIFMA Swap Index.

---

notice of the other information set forth herein, which is not subject to reasonable dispute, in that it is capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably questioned. See Point I, infra.

[5] ISDA, Product Descriptions and Frequently Asked Questions, http://www.isda.org/educat/faqs.html#10 (last visited July 30, 2008) (Ex. B hereto at 2). The notional amount is simply the basis for calculating interest payments – a "notional" concept.

[6] Technically, the two interest rates are compared and the net amount due to one party or the other is paid. Swap agreements are also commonly used to exchange payments based upon two different floating rates, such as the SIFMA Swap Index versus LIBOR. See, e.g., Brian O'Keefe, *Hedging Considerations in CDO Transactions*, Financial Services Industry, http://findarticles.com/p/articles/mi_m0MTK/is_1-4_5/ai_n25060165 (last visited July 30, 2008) ("Similarly, it may be necessary to employ a basis-risk swap where the collateral consists of floating-rate assets linked to one index, while the liabilities pay interest based on another.") (Ex. C hereto at 1).

SIFMA's[7] mission is to promote policies and practices that work to expand and perfect markets, foster the development of new products and services and create efficiencies for member firms, while preserving and enhancing the public's trust and confidence in the markets and the industry.[8] In that regard, SIFMA created the SIFMA Swap Index[9] in 1991 to serve as a benchmark floating interest rate for use in interest rate swap transactions.[10] The SIFMA Swap Index was designed to provide a consistent, superior means of tracking interest rate movements, as they occur, in the tax-exempt market.[11] It is well understood in the marketplace not only that the SIFMA Swap Index is an index of interest rates, but that it is the tax-exempt market equivalent of LIBOR, which is an index of the interest rates that banks expect to receive for loaning money to other banks for varying time periods.[12]

---

[7] SIFMA (formerly known as the Bond Market Association) was formed on November 1, 2006, through the merger of the Bond Market Association and the Securities Industry Association. See Investment News, *SIA & BMA Merge into SIFMA*, (November 1, 2006), http://www.investmentnews.com/apps/pbcs.dll/article?AID=/20061101/REG/611010715/-1/BreakingNews04 (Ex. D hereto).

[8] SIFMA, About SIFMA, http://www.sifma.org/about/about.html (last visited July 30, 2008) (Ex. A hereto).

[9] The SIFMA Municipal Swap Index was originally known as the Bond Market Association Municipal Swap Index. See, SIFMA, Answering Your Questions About The Securities Industry and Financial Markets Association (SIFMA) Municipal Swap Index, http://www.sifma.org/capital_markets/swapindex.shtml (last visited July 30, 2008) (Ex. E hereto at 1).

[10] Id. ("The Index serves as a benchmark floating rate . . . .") (Ex. E hereto at 1).

[11] Securities Industry and Financial Markets Association Municipal Swap Index, https://www.tm3.com/refer/usermanual/docs/BMA.pdf (last visited July 30, 2008) (Ex. F hereto at 3).

[12] See, e.g., FinCAD, *Tax Exempt (Municipal) Swap Curve*, http://www.fincad.com/support/developerFunc/mathref/BMASwapCrv.htm (last visited July 30, 2008) ("[The SIFMA Swap Index] is produced weekly, reflecting the average rate of issues of

The SIFMA Swap Index is calculated on a weekly basis by Municipal Market Data ("MMD") on behalf of SIFMA, and is determined by calculating "the standard deviation of the rates" collected on approximately 650 tax exempt variable rate demand notes.[13] Under the terms of each issue of variable rate demand notes, the interest rate is reset each week to reflect then-current market conditions as determined by a broker-dealer acting as remarketing agent for the issuer.[14] The interest rates reported to MMD for inclusion in the SIFMA Swap Index are collected only from variable rate demand notes meeting certain eligibility criteria. For example, the interest rates on the underlying notes must be reset each Wednesday, the notes must pay interest on a monthly basis, and the notes must have the highest short-term ratings from the rating agencies Moody's Investors Services or Standard & Poor's. Significantly, in calculating the SIFMA Swap Index, MMD (a) eliminates variable rate demand notes whose interest rates fall outside of +/- 1.0 standard deviations and (b) limits notes handled by a single

---

tax exempt variable rate debt, and serves as a benchmark floating rate in municipal swap transactions. The BMA [SIFMA Swap] index is usually 65%-70% of its taxable equivalent 1-month LIBOR.") (Ex. G hereto at 1); Stan Provus, *Basis Risk with Interest Rate Swaps*, Council of Development Finance Agencies, http://www.cdfa.net/cdfa/cdfaweb.nsf/pages/feb2005tlc.html (last visited July 30, 2008) (describing the SIFMA Swap index as "the market benchmark for short-term, tax-exempt rates.") (Ex. H hereto at 1).

[13] SIFMA, Answering Your Questions About The Securities Industry and Financial Markets Association (SIFMA) Municipal Swap Index, http://www.sifma.org/capital_markets/swapindex.shtml (last visited July 30, 2008) (Ex. E hereto at 2).

[14] See, e.g., Tom Crescenzi, *Get to Know VRDOs*, The Street (February 13, 2008), *available at* http://www.thestreet.com/story/10403338/2/get-to-know-vrdos.html (Ex. I hereto at 1); Municipal Securities Rule Making Board, *Request for Comment Plan for Increasing Information Available for Variable Rate Demand Obligations* (May 23, 2008), *available at* http://www.msrb.org/msrb1/whatsnew/2008-24.asp (Ex. J hereto at 1).

remarketing agent to no more than 15% of the SIFMA Swap Index.[15] To provide the data necessary to calculate the SIFMA Swap Index, "over 80 remarketing agents (representing 90% of the market) download daily rate change information for their issues" to a database controlled by MMD.[16] MMD's database contains current and historical rates regarding more than 15,000 variable rate demand obligations.[17]

SIFMA publishes the Index solely to represent a composite market interest rate for tax-exempt instruments. Other terms of the variable rate demand notes that are used to calculate the SIFMA Swap Index -- such as their prices, yields, maturities, or prepayment terms -- are not reported as part of the SIFMA Swap Index. Moreover, the specific identities of the securities from which the interest rate information is collected by MMD, and the securities that are eliminated from the calculation of the SIFMA Swap Index due to the criteria "filters," change from week to week and are known only to MMD.[18]

---

[15] SIFMA, Answering Your Questions About The Securities Industry and Financial Markets Association (SIFMA) Municipal Swap Index http://www.sifma.org/capital_markets/swapindex.shtml (last visited July 30, 2008) (Ex. E hereto at 2).

[16] Id.

[17] Id.

[18] See id.

ARGUMENT

I. THE COURT MAY TAKE JUDICIAL NOTICE OF THE INFORMATION REGARDING THE NATURE OF THE SIFMA SWAP INDEX AND OTHER INFORMATION THAT IS CAPABLE OF READY DETERMINATION BY SOURCES WHOSE ACCURACY CANNOT BE REASONABLY QUESTIONED

The Court may take judicial notice of information outside of a complaint that is "not subject to reasonable dispute in that it is . . . capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably questioned." Fed. R. Evid. 201(b). In deciding motions to dismiss, courts routinely take judicial notice of publicly-available information contained in publications and websites that is not subject to reasonable dispute and is capable of ready determination. E.g., Termarsch v. Argent Mortgage Company, LLC, No. 8:07-CV-1725-T-30TBM, 2008 WL 1776592, at *4 n.4 (M.D. Fla. April 16, 2008) (taking judicial notice from Wells Fargo Bank's website that the bank did not have offices in a particular state); Doron Precision Sys., Inc. v. FAAC, Inc., 423 F. Supp. 2d 173, 179 n. 8 (S.D.N.Y. 2006) ("For purposes of a 12(b)(6) motion to dismiss, a court may take judicial notice of information publicly announced on a party's website, as long as the website's authenticity is not in dispute 'and it is capable of accurate and ready determination.'"); St. Matthews Baptist Church v. Wachovia Bank, No. Civ. A. 04-4540 (FLW), 2005 WL 1199045, at *1 (D. N.J. May 18, 2005) (taking judicial notice of information from website of a bankers association showing that the London Interbank Offered Rate (i.e., "LIBOR") is an index of rates); In re Merck & Co., Sec. Litig., 432 F.3d 261, 264 n.3 (3d Cir. 2005) ("We can take judicial notice of Merck's stock prices even on a motion to

dismiss because these facts are 'not subject to reasonable dispute [and are] capable of accurate and ready determination by resort to a source whose accuracy cannot be reasonably questioned.'").

Information contained on SIFMA's website with respect to itself and the SIFMA Swap Index, as well as information contained on other websites that are hosted by prominent and reliable entities (such as ISDA) whose accuracy cannot be reasonably questioned, are subject to the Court's judicial notice. Indeed, the SEC appropriately cites to the SIFMA website in its opposition brief as authoritative support of which the Court may take judicial notice. SEC Opp. Brief at 47-48. To avoid any concern as to the accuracy of the sources cited by SIFMA, true copies of these sources are attached hereto for the convenience of the Court and the parties.

SIFMA further notes that the issue of whether the County Swap Agreements are security-based swap agreements not only implicates the Court's subject matter jurisdiction for purposes of Fed. R. Civ. P. 12(b)(1) (SEC Br. at 38-39), but also whether the Complaint states a cause of action in respect of the claims based on the County Swap Agreements for purposes of Fed. R. Civ. P. 12(b)(6). The SEC acknowledges in its opposition brief that if its claims concerning the County Swap Agreements are without merit, the Court may address the jurisdictional issue on a motion to dismiss. SEC Opp. Brief at 44-46. For the reasons set forth in Sections II and III below, the Complaint does not state a claim for relief with respect to the County Swap Agreements, and, therefore, dismissal of those claims is appropriate pursuant to Fed. R. Civ. P. 12(b)(6). There is no question that the Court may consider information that is properly the subject of

judicial notice as part of a motion pursuant to Fed. R. Civ. P. 12(b)(6). E.g., St. Matthews, 2005 WL 1199045, at *1 (taking judicial notice that LIBOR is an index of rates, and granting 12(b)(6) motion to dismiss because plaintiff could not state a claim under Section 10(b) over non-security based swap agreement).[19]

Even on a facial challenge to a complaint for lack of subject matter jurisdiction under Fed. R. Civ. P. 12(b)(1), the Court may consider information which is the proper subject of judicial notice. OJO v. Farmers Group, Inc., No. CV 05-5818-JFW, 2006 WL 4552707, at *3 n.21 (C.D. Cal. Mar. 7, 2006) (holding that a court may take judicial notice of information in a facial challenge to subject matter jurisdiction); Acierno v. Haggerty, No. Civ. A. 04-1376-KAJ, 2005 WL 3134060, at *5 (D. Del. Nov. 23, 2005) (same); see also Fed. R. Evid. 201(f) ("Judicial notice may be taken at any stage of the proceeding."). When a court takes judicial notice of information, this "does not transform [a] facial challenge to subject matter jurisdiction into a factual one." OJO, 2006 WL 4552707, at *3 n.21; see also, e.g., Acierno, 2005 WL 3134060, at *5 n.6 ("[Plaintiff] correctly cites the law stating that different materials can be considered in a facial and factual attack on subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1). However, because I determine here that the materials submitted by the Individual Defendants fall within the categories of information of which I may take

[19] The Eleventh Circuit has stressed that, in appropriate cases, courts may still grant motions to dismiss even where the issue of subject matter jurisdiction overlaps with the merits of plaintiff's claim. E.g., Morrison v. Amway Corp., 323 F.3d 920, 930 (11th Cir. 2003) (emphasizing that a motion to dismiss that implicates subject matter jurisdiction and the merits may still be granted under Fed. R. Civ. P. 12(b)(6) if the plaintiff fails to properly state a claim); see also Lawrence v. Dunbar, 919 F.2d 1525, 1531 n.7 (11th Cir. 1990) ("Our holding in this case does not mean that a district court can never dismiss a federal claim for lack of subject matter jurisdiction whenever a decision on subject matter jurisdiction also implicates the substantive merits of the claim.").

judicial notice, that distinction is irrelevant here."); see also Fed. R. Evid. 201(f) ("Judicial notice may be taken at any stage of the proceeding."). Accordingly, the facts regarding the nature of the SIFMA Swap Index of which the Court can take judicial notice may properly be considered as part of a motion to dismiss, either under Fed. R. Civ. P. 12(b)(1), Fed. R. Civ. P. 12(b)(6), or both.

II. SWAP AGREEMENTS UNDER WHICH PAYMENTS ARE BASED UPON THE SIFMA SWAP INDEX ARE NOT "SECURITY-BASED SWAP AGREEMENTS"

The Complaint alleges that the defendants violated Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a), and Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b) (and Rule 10b-5 promulgated thereunder by the SEC) with respect to the County Swap Agreements.[20] Doc. 1, ¶¶ 15-17. Generally, in order to assert claims under those provisions, the Complaint must allege material misrepresentations or omissions in the offer or sale of a security or in connection with the purchase or sale of a security.[21]

---

[20] 17 C.F.R. § 240.10b-5. The Complaint also asserts violations of Section 15B(c)(1) of the Exchange Act and Municipal Securities Rulemaking Board Rules G-17 and G-20. The SEC, in its opposition brief, confirms that the Complaint does not assert a claim under Section 15B(c)(1), or Rules G-17 and G-20, with respect to the County Swap Agreements. SEC Opp. Brief at 39, n.10.

[21] E.g., SEC v. Gane, No. 03-61553-Civ-SEITZ, 2005 WL 90154, at *11 (S.D. Fla. Jan. 4, 2005) ("A violation [occurs under] Section 17(a)(1), Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder when there is (1) a misrepresentation or omission, (2) that was material, (3) which was made in the offer [or] sale [of] a security (Section 17(a)(1)) or in connection with the purchase or sale of securities (Section 10(b) and Rule 10b-5), (4) scienter, and (5) the involvement of interstate commerce, the mails, or a national securities exchange. . . . Negligence, rather than scienter, may [be] shown to prove violations of Sections 17(a)(2) and (a)(3) of the Securities Act.").

In 2000, Congress passed the CFMA, which made clear that a swap agreement[22] is not a "security" under the Securities Act or the Exchange Act. Specifically, the CFMA defined two types of swap agreements -- a "security-based swap agreement" and a "non-security-based swap agreement"[23] -- and amended the Securities Act and the Exchange Act to provide that the definitions of "security" for purposes of those statutes do not include any security-based swap agreement or non-security based swap agreement.[24] The CFMA amendments to the Securities

---

[22] The CFMA defined a "swap agreement" to mean, in pertinent part:

> [A]ny agreement . . . between eligible contract participants . . . the material terms of which (other than price and quantity) are subject to individual negotiation, and that . . . provides on an executory basis for the exchange, on a fixed or contingent basis, of one or more payments based on the value or level of one or more interest or other rates, currencies, commodities, securities . . . or other financial or economic interests . . . and that transfers, as between the parties to the transaction . . . the financial risk associated with a future change in any such value or level without also conveying a current or future direct or indirect ownership interest in an asset . . . or liability that incorporates the financial risk so transferred, including any such agreement . . . commonly known as an interest rate swap . . . .

Pub. Law No. 106-554 § 206A(a)(1)-(5), 114 Stat. 2763, 2763A-449-450 (codified as amended in scattered sections of 7 U.S.C. §1).

[23] Pub. Law No. 106-554 § 206B, 114 Stat. 2763, 2763A-451; Pub. Law No. 106-554 § 206C, 114 Stat. 2763, 2763A-451; Pub. Law No. 106-554 § 2A(a), 114 Stat. 2763, 2763A-451; Pub. Law No. 106-554 § 2A(b)(1), 114 Stat. 2763, 2763A-451; Pub. Law No. 106-554 § 3A(a), 114 Stat. 2763, 2763A-452; Pub. Law No. 106-554 § 3A(b)(1), 114 Stat. 2763, 2763A-452.

[24] Pub. Law No. 106-554 § 206B, 114 Stat. 2763, 2763A-451; Pub. Law No. 106-554 § 206C, 114 Stat. 2763, 2763A-451; Pub. Law No. 106-554 § 2A(a), 114 Stat. 2763, 2763A-451; Pub. Law No. 106-554 § 2A(b)(1), 114 Stat. 2763, 2763A-451; Pub. Law No. 106-554 § 3A(a), 114 Stat. 2763, 2763A-452; Pub. Law No. 106-554 § 3A(b)(1), 114 Stat. 2763, 2763A-452. As a result of the CFMA, transactions in swap agreements as defined in the CFMA do not trigger the securities offering registration requirement of the Securities Act or the broker-dealer registration requirement of the Exchange Act. Pub. Law No. 106-554 § 3A(b)(2), 114 Stat. 2763, 2763A-452-53.

Act and the Exchange Act did provide that "security-based swap agreements," while not securities, are nevertheless subject to the anti-fraud, anti-manipulation, insider trading and short-swing profit provisions of the Securities Act and the Exchange Act.[25] In contrast, "non-security based swap agreements" are not subject to the anti-fraud, anti-manipulation anti-insider trading or short-swing profit provisions of these statutes.[26] To distinguish between the two types of swap agreements, the statute defines a "security-based swap agreement" as an agreement "of which a material term is based on the price, yield, value or volatility of any security or any group or index of securities, or any interest therein."[27] A "non-

---

[25] Specifically, the CFMA amended Section 17(a) of the Securities Act, and Sections 9, 10(b), 15(c) 16, 20 and 21A of the Exchange Act to apply those provisions to security-based swap agreements, generally to the same extent as securities (including making judicial precedents under those sections applicable to security-based swap agreements). Pub. Law No. 106-554 § 2A(b), 114 Stat. 2763, 2763A-452; Pub. Law No. 106-554 § 3A(b), 114 Stat. 2763, 2763A-453-54; Pub. Law No. 106-554 § 3A(d), 114 Stat. 2763, 2763A-454; Pub. Law No. 106-554 § 3A(e), 114 Stat. 2763, 2763A-454-55; Pub. Law No. 106-554 § 3A(g), 114 Stat. 2763, 2763A-455-56; Pub. Law No. 106-554 § 3A(i), 114 Stat. 2763, 2763A-456; Pub. Law No. 106-554 § 3A(k), 114 Stat. 2763, 2763A-456-57. At the same time, the CFMA prohibits the SEC from registering, or requiring, recommending or suggesting the registration of, security-based swap agreements, or imposing reporting or record-keeping requirements or other procedures or standards as preventative measures against fraud, manipulation or insider trading with respect to security-based swap agreements. See note 43, infra.

[26] Pub. Law No. 106-554 § 2A(a), 114 Stat. 2763, 2763A-451; Pub. Law No. 106-554 § 3A(a), 114 Stat. 2763, 2763A-451.

[27] Pub. Law No. 106-554 § 206B. To emphasize that swap agreements are neither securities nor futures contracts, the definitions of "security-based swap agreement" and "non-security-based swap agreement" were inserted in the Gramm-Leach-Bliley Act, rather than in the federal securities or commodities laws. Pub. Law No. 106-554 § 206B, 114 Stat. 2763, 2763A-451; Pub. Law No. 106-554 § 206C, 114 Stat. 2763, 2763A-451. See 146 Cong. Rec. S11867 (2000) (statement of Senator Phil Gramm) ("It is important to emphasize that nothing in the title should be read to imply that swap agreements are either securities or futures contracts. To emphasize that point, the definition of a 'swap agreement' is placed in a neutral statute, the Gramm-Leach-Bliley Act, that is, legislation that is not specifically part of a banking, securities, or commodities law.").

security-based swap agreement" is defined as any swap agreement that is not a security-based swap agreement.[28]

In light of the foregoing, a claim may be asserted against the defendants with respect to the County Swap Agreements only if the swap agreements meet the definition of "security-based swap agreements." The SEC's assertion that the County Swap Agreements meet the statutory definition of a "security-based swap agreement" is based on the allegation that the "floating interest rate payments" due under the swap agreements were based on the value of the SIFMA Swap Index, which the Complaint alleges is an "index of securities." Doc. 1, ¶16. As discussed below, however, swap agreements under which payments are based on the SIFMA Swap Index are not "security-based swap agreements."[29] First, the SIFMA Swap Index is an index of interest rates, not an "index of securities." Second, a swap agreement under which payments are based on the SIFMA Swap Index is not based on "the price, yield, value or volatility of any security or any group or index of securities."

---

[28] Pub. Law No. 106-554 § 206C, 114 Stat. 2763, 2763A-451.

[29] In assessing the SEC's position concerning the Securities Act or the Exchange Act, it is well-settled that any deference to the SEC "is constrained by [the court's] obligation to honor the clear meaning of [the] statute[s], as revealed by [their] language, purpose and history." International Brotherhood of Teamsters v. Daniel, 439 U.S. 551, 556 n.20 (1979). See also, e.g., Fin. Planning Ass'n v. SEC, 482 F.3d 481, 487 (D.C. Cir. 2007) (rejecting the SEC's assertion of authority, and holding that in "[a]pplying the traditional tools of statutory construction, the court looks to the text, structure, and the overall statutory scheme, as well as the problem Congress sought to solve."). "The starting point in every case involving construction of a statute is the language itself." Daniel, 439 U.S. at 558.

1. The SIFMA Swap Index Is Not An "Index of Securities"

As noted, in order for a swap agreement to be subject to the anti-fraud provisions of the Securities Act or the Exchange Act, the swap agreement must be a "securities-based swap agreement," which is defined as an agreement "of which a material term is based on the price, yield, value or volatility of any security or any group or index of securities, or any interest therein."[30] Citing this definition, the Complaint first alleges that the SIFMA Swap Index, on which payments under the County Swap Agreements are based, is an "index of securities." Doc. 1, ¶16. In its opposition brief, the SEC cites to the SIFMA website in support of the Complaint's characterization of the SIFMA Swap Index as an "index of securities." Specifically, the SEC quotes the following statements on the SIFMA website:

> **WHAT IS THE SIFMA MUNICIPAL SWAP INDEX?**
>
> . . . [The SIFMA Municipal Swap Index is] a 7-day high-grade market index comprised of tax-exempt VRDOs from MMD's extensive database.
>
> **WHY WAS THE INDEX CREATED?**
>
> [The SIFMA Municipal Swap Index] was created in response to industry participants' demand for a short-term index which accurately reflected activity in the VRDO market . . . .

[30] Pub. Law No. 106-554 § 206B.

HOW WERE THE INDEX CRITERIA SELECTED?

> . . . [SIFMA] chose specific criteria which would most effectively represent activity in the variable rate demand note market. . . . .

SEC. Opp. Brief at 48.

These citations, however, do not explain the nature of the "market activity" that is reflected in the Index and do not establish, let alone suggest, that the Index is an "index of securities." Rather, other statements not cited by the SEC that appear on the SIFMA website make clear that the "Index serves as a benchmark floating rate in [a] swap transaction," and that the "activity" referred to above relates to changes in the interest rates paid on variable rate demand notes.[31] The fact that the interest rates are interest on debt securities does not make the Index itself an index of securities. To the contrary, as SIFMA's description of the manner in which the Index is compiled makes clear, the Index is an index of interest rates, not an index of securities.

As described above (supra at 6-10), the SIFMA Swap Index is based solely upon the rates derived from a broad sampling of variable rate demand notes so that it purely reflects market changes in those rates. In that regard, the specific identities of the securities from which the interest rate information is collected by MMD, and the securities that are subject to being eliminated from the calculation of the SIFMA Swap Index, change from week to week and are known only to MMD. Id. Other terms of the variable rate demand notes -- such as their prices,

---

[31] SIFMA, Answering Your Questions About The Securities Industry and Financial Markets Association (SIFMA) Municipal Swap Index, http://www.sifma.org/capital_markets/swapindex.shtml (last visited July 30, 2008) ("The Index serves as a benchmark floating rate . . . .") (Ex. E hereto at 1).

volatilities, maturities, or prepayment terms -- are not used to create the SIFMA Swap Index. See supra at 10. The only information that is relevant is the interest rate that is reset on the variable rate demand notes each week, which is utilized so that the SIFMA Swap Index will represent a composite market rate for short-term tax-exempt interest.[32]

That the SIFMA Swap Index is an index of interest rates and not an index of securities is further demonstrated by the fact that issuers of floating rate debt securities enter into swap agreements based upon the Index to hedge against changes in interest rates; such swap agreements are not used to hedge against changes in the value of a securities portfolio.[33] Indeed, the Complaint acknowledges that the swap agreements were used by Jefferson County to hedge its interest rate risk on its bonds. For example, Paragraph 103 of the Complaint

---

[32] In contrast, for example, the Lehman Brothers U.S. Corporate Floating Rate Note Index is based on information obtained from up to 50 underlying bonds, including price, interest rate, maturity, issue date, prepayment terms and principal amount. These factors are then used to measure the "performance" or "return" of the portfolio of bonds represented by the index. Lehman Brothers, U.S. Corporate Floating Rate Note Index (April 2008), http://www.lehman.com/fi/indices/pdf/US_Corporate_FRN_Index.pdf (Ex. K hereto at 2).

[33] Unlike swaps relating to the SIFMA Swap Index, swaps relating to an index of securities (such as the Lehman Brothers U.S. Corporate Floating Rate Note Index (see note 32, supra)) can be used to hedge against changes in the value of a portfolio of securities similar to the securities represented by that index. To do so, the investor could enter into a swap agreement under which the investor agreed to exchange payments calculated with reference to the level of the index of securities. For each period that the value of the index decreased, the investor would receive a payment based upon the decreased value of the index (that is, the depreciation in the underlying securities). For each period that the value of the index increased, the investor would make a payment based upon the increased value of the index (that is, the appreciation in the underlying securities). See, e.g., Reuter's Financial Glossary, Contract For Difference, http://glossary.reuters.com/index.php/Contract_for_Difference (last visited July 9, 2008) (Ex. L hereto); Max Hotopf, *Contract for Difference,* Citywire Personal Investor Edition http://www.citywire.co.uk/personal/investment-guides/contracts-for-difference.aspx (April 12, 2007) (Ex. M hereto at 1).

characterizes one of the swap agreements as an obligation "to pay an interest rate… based upon the value of the BMA's Municipal Swap Index." Doc. 1, ¶ 103 (emphasis added).

In order to accept the Complaint's allegation that a swap agreement under which payment is based on the SIFMA Swap Index is a security-based swap agreement, the Court would need to re-write the definition of "security-based swap agreement" to cover interest rate swap agreements. But the statute makes no reference to "an index of interest rates." In that regard, the much publicized controversy over certain derivatives activities involving Bankers Trust Co. led to the seminal decision of Procter & Gamble Co. v. Bankers Trust Co., 925 F. Supp. 1270, 1277-83 (S.D. Ohio 1996), which held that the federal securities laws do not apply to interest rate swap agreements. Other court decisions interpreting the status of interest rate swap agreements under pre-CFMA law also held that interest rate swap agreements are not subject to securities laws.[34] In light of the pre-CFMA case law holding that interest rate swap agreements are not securities for purposes of the securities laws, if Congress intended that Section 17(a) and Section 10(b) apply to interest rate swap agreements, it would have expressly stated so.

St. Matthews Baptist Church v. Wachovia Bank National Association, 2005 WL 1199045 (D. N.J. May 18, 2005), a post-CFMA decision, is instructive. In that case, the plaintiff argued that because payments on the swap agreement were based on LIBOR, the swap agreement was a "security-based swap

[34] See Lehman Bros. Commercial Corp. v. Minmetals Int'l Non-Ferrous Metals Trading Co., 179 F. Supp. 2d 159, 164, 167 (S.D.N.Y. 2001) (interest rate swap agreements not securities for purposes of federal securities laws; applying pre-CFMA law); see also K3C, 204 Fed. Appx. at 465 (holding that interest rate swaps are not securities under the Texas Securities Act).

agreement." The court rejected plaintiff's argument, and held that because LIBOR is an interest rate, swap agreements under which payment is based on LIBOR do not fall within the definition of a "security-based swap agreement." 2005 WL 1199045, at *13. The same logic applies here. SIFMA designed the SIFMA Swap Index to serve as a benchmark interest rate. See supra at 8. The market views the SIFMA Swap Index as the tax-exempt equivalent of LIBOR. Id. Indeed, a common strategy in the market is to hedge variations in the rate of interest represented by LIBOR versus the rate represented by the SIFMA Swap Index. An example of this strategy is one of the Bear Stearns swap transactions in the instant case.[35] Because the instruments from which each of these indices derives its interest rate are so different (global interbank lending versus tax-exempt municipal debt), such a strategy would not be common if features other than the interest rates of the underlying instruments were relevant to the calculation of the respective indices. However, because the only feature that matters to each of them is interest rate, the two indices are comparable. It would, therefore, be incongruous for the statute to be read to consider a swap agreement under which payment is based on LIBOR to be a non-security based swap agreement, but to consider a swap agreement under which payment is based on the SIFMA Swap Index to be a security-based swap agreement.

There can be no question that the SIFMA Swap Index is by definition and application a benchmark index of tax-exempt interest rates, the sole purpose of

---

[35] *Swap Monitoring Report*, Jefferson County Alabama, *available at* http://jeffco.jccal.org/pls/portal/docs/PAGE/FINANCE_PAGE_GROUP/INVESTOR_RELATIONS/TAB60915/SWAP%20ASSET%20MANAGEMENT%20REPORT%20-%20013107%20-%20LIBRARY.PDF (January 31, 2007) (Ex. N hereto at 5).

which is to establish an interest rate, typically in a swap agreement. Accordingly, a swap agreement under which payment is based upon the SIFMA Swap Index is not a "security-based swap agreement," and the Complaint's claims based on the County Swap Agreements are without basis. See Doc. 1, ¶¶ 15-17.

2. The Material Terms of the Swaps At Issue Were Not Based On The "Price, Yield, Value Or Volatility" Of the SIFMA Swap Index

As also noted, in order to be considered a "security-based swap agreement," a material term of the swap agreement must be based on "the price, yield, value or volatility of any security or any group or index of securities, or any interest therein."[36] Citing this definition, the Complaint further alleges that the terms of the County Swap Agreements were based on the "value" of the SIFMA Swap Index, which is used "to establish the floating rate yield." Doc. 1, ¶16.[37] The Complaint's allegation in this regard is inaccurate.

As established above, the SIFMA Swap Index is solely an index of interest rates. It is, therefore, incorrect for the Complaint to assert that the payments under the swap agreements are based on the "value" of an index of securities. In fact, there is no such thing as the "value" of the SIFMA Swap Index, because that Index serves purely as an interest rate. It is not an index of value, or even an index that captures or averages the values of underlying securities.[38]

---

[36] Pub. Law No. 106-554 § 206B.

[37] The Complaint does not allege that the swaps here were based on the price or volatility of the SIFMA Swap Index. In any event, for the same reasons discussed above, swap agreements based on the SIFMA Swap Index are not agreements based on the price or volatility of the Index.

[38] An example of an index based upon the "value" of bonds would be the Lehman Brothers U.S. Corporate Floating Rate Note Index. See note 32 supra.

Similarly, it is incorrect to refer to the SIFMA Swap Index as representing the "yield" of the underlying variable rate demand notes.[39] "Yield" is a function of several factors, only one of which is "interest rate." Specifically, "yield" is the annual rate of return on a debt security, based on its purchase price, the rate at which interest accrues in accordance with the terms of the debt security, and the length of time the debt security is held.[40] In contrast, the "interest rate" on a debt security is only the annual rate at which interest accrues in accordance with its terms.[41] As described herein, only the interest rate on the variable rate demand notes is extracted to create the SIFMA Swap Index. As such, as set forth above, the SIFMA Swap Index is an index of interest rates, and was created to serve, and does serve, solely as a benchmark floating interest rate. See supra at 8. The only feature of a variable rate demand note that has any significance for purposes of deriving the SIFMA Swap Index is its interest rate, and this information is obtained solely for purposes of creating a composite interest rate for use in the tax-exempt market. See supra at 8-10. By definition, therefore, the SIFMA Swap Index is not based upon the prices, yields, values or volatilities of the notes whose interest rates are used to create the Index. See St. Matthews 2005 WL 1199045 at *13

---

[39] An example of an index based upon the "yields" of bonds would be the Dow Jones Corporate Bond Index. Among the many factors relating to the underlying bonds that are necessary to calculate that index are price, maturity, prepayment features, principal amount, date of issuance and interest rate. See Dow Jones Indexes, Corporate Bond Index FAQ, http://www.djindexes.com/mdsidx/index.cfm?event=showCorpBondFaq (last visited July 30, 2008) (Ex. O hereto at 1). Other than interest rate, none of these factors is used to calculate the SIFMA Swap Index.

[40] See, e.g., Municipal Securities Rule Making Board, Glossary of Municipal Securities Terms, *http://www.msrb.org/msrb1/glossary/* (last visited August 1, 2008) (Ex. P hereto at 2).

[41] Id. at 3.

("LIBOR, as its title indicates, is an interest rate, and is therefore not an index based on the 'price, yield, value or volatility of any security or any group [or] index of securities.'").

In sum, in addition to the fact that it does not constitute an "index of securities" (see supra at 18-23), the SIFMA Swap Index does not reflect or represent the composite changes in the prices, yields, market values or volatilities of the bonds whose interest rates are used in the Index. Therefore, because a swap agreement under which payments are based on the SIFMA Swap Index are not based on "the price, yield, value or volatility of any security or any group or index of securities, or any interest therein," such a swap agreement does not fall within the statutory definition of a "security-based swap agreement." Accordingly, there is no merit to the claims in the Complaint that are based on the County Swap Agreements. See Doc. 1, ¶¶ 15-17.

III. THE COMPLAINT CANNOT STATE A CLAIM FOR VIOLATIONS OF SECTION 17(a) OR SECTION 10(b) BASED ON THE THEORY THAT THE SWAP AGREEMENTS WERE ENTERED INTO "SIMULTANEOUSLY WITH" SECURITIES TRANSACTIONS

Paragraph 18 of the Complaint alleges that the defendants violated Section 17(a) and Section 10(b) with respect to two of the County Swap Agreements – that is, the 2003-B and 2003-C swap agreements – because "the County negotiated, executed and entered into these two swap agreements simultaneously with the 2003-B and 2003-C bonds, respectively." Doc. 1, at ¶ 18. On this basis, the Complaint asserts claims with respect to swap agreements that are "non-security based swap agreements." For the reasons explained below, there

is no basis for the Complaint's claims under this theory with respect to those two County Swap Agreements.

A cardinal rule of statutory construction is that "[w]hen a statute limits a thing to be done in a particular mode, it includes the negative of any other mode." Transamerica Mortgage Advisors, Inc. v. Lewis, 444 U.S. 11, 19-20 (1979) ("[I]t is an elemental canon of statutory construction that where a statute expressly provides a particular remedy or remedies, a court must be chary of reading others into it."); United States v. Kinard, 472 F.3d 1294, 1298 (11th Cir. 2006) ("Using the principle of *expressio unius est exclusio alterius* as an aid to our construction of the enhancement, we conclude that the application of the enhancement is limited to offenses that involve violations of the four enumerated statutes . . . .") (internal citations omitted). Application of this principle in this case demonstrates that the Complaint's claims with respect to non-security based swap agreements are untenable.

As discussed above, the CFMA clarified that swap agreements are not "securities" for purposes of the federal securities laws. See supra at 15-16. Moreover, only security-based swap agreements -- and not non-security based swap agreements -- are subject to SEC antifraud, anti-manipulation and insider-trading enforcement authority.[42] In that regard, even as to security-based swap agreements, the SEC is expressly prohibited from issuing any rules imposing reporting or recordkeeping requirements, procedures or standards as measures

[42] See Pub. Law No. 106-554 §§ 302(b), 303 (b) to (1) 114 Stat. 2763, 2763A-452-56. See also Guy-P. Lander, 14 U.S. Securities Law for International Financial Transactions and Capital Markets § 1:32 at 1-79, 1-83-84 (2007 Thomson/West) (Ex. Q hereto).

against fraud, manipulation, or insider trading.[43] Given the express – and limited – authority granted by the CFMA over security-based swap agreements, the Court should not read into the CFMA any enforcement authority by the SEC over non-security based swap agreements. Nothing in the CFMA supports the contention that entering into a non-security swap agreement "simultaneously with" a securities transaction (such as a purchase or sale of bonds) gives the SEC an independent basis for an enforcement action with respect to the non-security swap agreement. Indeed, this theory is completely at odds with the purpose and structure of the CFMA.[44]

In light of the plain statutory language -- which makes clear that Congress carefully limited the SEC's anti-fraud enforcement authority to security-based swap agreements -- it is implausible that the Complaint could assert claims under the anti-fraud provisions of the securities laws with respect to non-security based swap agreements solely by virtue of the fact that they were entered into

---

[43] Pub. Law No. 106-554 § 2A(b)(3), 114 Stat. 2763, 2763A-452; Pub. Law No. 106-554 § 3A(b)(3), 114 Stat. 2763, 2763A-453.

[44] Significantly, since well before the CFMA's enactment, it has been common for swap agreements to be entered into simultaneously with securities offerings. For example, interest rate swaps are used with municipal bond offerings and other debt offerings; cross-currency swap agreements are used in connection with cross-border financings; and securitizations use interest swap agreements, caps and floors, to name a few. See, e.g., *Proposed Statement of the Governmental Accounting Standards Board: Plain Language Supplemental*, Governmental Accounting Standards Board of the Financial Accounting Foundations, http://www.nabl.org/AM/Template.cfm?section=Gen_Municipal_Bond_Material&template=/MembersOnly.cfm&ContentID=7140&q=%22interest%20rate%20swap%22 (June 29, 2007) (Ex. R hereto at 2-3); Brian O'Keefe, *Hedging Considerations in CDO Transactions*, Financial Services Industry, http://findarticles.com/p/articles/mi_m0MTK/is_1-4_5/ai_n25060165 (last visited July 30, 2008) (Ex. C hereto at 2). Despite these known transaction patterns, the CFMA clearly distinguished between security-based and non-security based swap agreements, and did not include in the definition of the former swap agreements that are entered into "simultaneously with" or as "part of" a securities offering.

"simultaneously with" a securities transaction. Such an amorphous and expansive theory would effectively eviscerate the careful and deliberate distinction that Congress drew between security-based swap agreements and non-security based swap agreements when it clarified that only the former are subject to the SEC's anti-fraud enforcement authority.

Given the clarity of the CFMA's purpose in strictly limiting the SEC's enforcement authority with respect to security-based swap agreements, it is not surprising that an SEC administrative law judge recently rejected the alternative theory that is alleged in the Complaint. See In re Snell and LeCroy, No. 3-12359, 2007 WL 1297008, *32-33 (S.E.C. May 3, 2007) ("I agree with Respondents that, while an issuer might enter into a swap transaction or a swaption at the same time as it enters a bond offering, the contemporaneous nature of the two transactions does not make them a single financial instrument with a bond component."). SIFMA is aware of no case law, statute or authority that supports the alternative theory alleged by the SEC in the instant action.

The expansive nature of the Complaint's claims based on non-security based swap agreements is made clear when it is contrasted with the SEC's appropriate invocation of Section 17(a) and Section 10(b) with respect to the five bond offerings and the alleged fraudulent conduct in connection with them. See Doc. 1, ¶ 14. Under a well-established line of authority, fraudulent conduct that takes place "in connection with" the purchase or sale of securities is prohibited under Section 10(b) and Rule 10b-5. See, e.g., SEC v. Zandford, 535 U.S. 813, 820-25 (2002). Thus, assuming that the SEC can meet the "in connection with" standard, and establish that the alleged conduct was part of a fraudulent scheme

that took place in connection with the bond offerings, the SEC has ample statutory authority to seek redress under Section 17(a) and Section 10(b) with respect to all of the alleged wrongdoing.[45] Indeed, the SEC admits this point in its brief. SEC Br. at 2-3.

Because the SEC has asserted claims based on alleged fraudulent conduct involving instruments that indisputably are "securities," the Court should reject the SEC's erroneous attempt to assert claims involving non-security based swap agreements.

[45] Of course, it is the manipulative or deceptive practice that must be "in connection with" the purchase or sale of a security. See Zandford, 535 U.S. at 820, 822-23 (holding that the "in connection with" standard was met where the sale of securities was made to further the fraudulent scheme, and thus "the scheme to defraud and the sale of securities coincide[d]"). That is, it is not enough for the SEC to simply assert, as it does in Paragraph 18 of the Complaint, that a swap agreement coincides with a purchase or sale of a bond. Rather, the SEC needs to show that fraudulent conduct, which may happen to involve swap agreements, took place "in connection with" the bond offerings in order for such conduct to fall within the scope of Section 10(b) and Rule 10b-5. Id.

CONCLUSION

For the foregoing reasons, amicus curiae SIFMA respectfully requests that the Court dismiss the claims alleged in the Complaint with respect to the County Swap Agreements.

Dated: Birmingham, Alabama
August 7, 2008

/s/ Crawford S. McGivaren, Jr.

Crawford S. McGivaren, Jr. MCG008
CABANISS, JOHNSTON, GARDNER, DUMAS & O'NEAL LLP
2011 Park Place North
Suite 700
Birmingham, Alabama 35203
Telephone: (205) 716-5200

Jonathan M. Hoff (admission pending)
Lary Stromfeld
Maurine Bartlett
Tom M. Fini (admission pending)
CADWALADER, WICKERSHAM & TAFT LLP
One World Financial Center
New York, NY 10281
Telephone: (212) 504-6000

Attorneys for *Amicus Curiae* Securities Industry And Financial Markets Association

OF COUNSEL:

Ira D. Hammerman
Kevin M. Carroll
SECURITIES INDUSTRY AND FINANCIAL MARKETS ASSOCIATION
1101 New York Avenue, NW
Washington, DC 20005
Telephone: (202) 962-7382

Leslie M. Norwood
SECURITIES INDUSTRY AND FINANCIAL MARKETS ASSOCIATION
360 Madison Avenue
New York, NY 10017
Telephone: (212) 313-1130

CERTIFICATE OF SERVICE

I hereby certify that on 7th day of August, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Mr. Jason R Berkowitz
Mr. Robert K Levenson
US SECURITIES & EXCHANGE COMMISSION
Southeast Regional Office
801 Bricknell Avenue, Suite 1800
Miami, FL 33131
305-982-6300
305-536-4146 (fax)
berkowitzj@sec.gov

Mr. Thomas E Baddley, Jr
BADDLEY & MAURO, LLC
2545 Highland Avenue, Suite 201
Birmingham, AL 35205
939-0090
eveblue@baddleymauro.com

Mr. Joseph A Fawal
FAWAL & SPINA
1330 21st Way South, Suite 200
Birmingham, AL 35205
939-1330
933-0101 (fax)
jfawal@bellsouth.net

Ms. Caroline Smith Gidiere
CAMPBELL WALLER & POER LLC
2100-A Southbridge Parkway, Suite 450
Birmingham, AL 35209
205-803-0051
205-803-0053 (fax)
cgidiere@cwp-law.com

/s/ Crawford S. McGivaren, Jr.
OF COUNSEL

FILED
2008 Aug-07 PM 03:15
U.S. DISTRICT COURT
N.D. OF ALABAMA

Table of Contents

Exhibits A-G

Exhibit A..... SIFMA.org: Welcome Page

Exhibit B..... International Swaps and Derivatives Association ("ISDA"), Product Descriptions and Frequently Asked Questions,

Exhibit C..... Financial Services Industry, "Hedging Considerations in CDO Transactions"

Exhibit D..... Investment News, "SIA & BMA Merge into SIFMA"

Exhibit E..... SIFMA, "Answering Your Questions About The Securities Industry and Financial Markets Association (SIFMA) Municipal Swap Index"

Exhibit F..... Securities Industry and Financial Markets Association Municipal Swap

Exhibit G..... FinCAD, "Tax Exempt (Municipal) Swap Curve"

Exhibits H-O

Exhibit H..... CDFA: "Basis with Interest Swaps"

Exhibit I..... The Street: "Get to Know VRDOs"

Exhibit J..... Municipal Securities Rule Making Board, "Request for Comment Plan for Increasing Information Available for Variable Rate Demand Obligations"

Exhibit K..... Lehman Brother's: "U.S. Corporate Floating Rate Note Index"

Exhibit L..... Reuter's Financial Glossary: "Contract for Difference"

Exhibit M..... Citywire: "Contract for Difference (CFD)"

Exhibit N..... Jefferson County, Alabama: "Swap Monitoring Report"

Exhibit O..... Dow Jones Indexes: "Corporate Bond Index FAQ"

Exhibits P-R

Exhibit P..... Municipal Securities Rule Making Board: Glossary of Municipal Securities Terms

Exhibit Q..... 14 U.S. Securities Law for International Financial Transactions and Capital Markets § 1:32

Exhibit R..... Governmental Accounting Standards Board of the Financial Accounting Foundations: Proposed Statement of the Governmental Accounting Standards Board: Plain Language Supplemental

EXHIBIT A

SIFMA
Securities Industry and Financial Markets Association

Welcome to SIFMA.org:

The Securities Industry and Financial Markets Association (SIFMA) represents the industry which powers the global economy.

SIFMA is the single powerful voice for strengthening markets and supporting investors -- the world over.

Our dynamic, organization is passionately dedicated to representing more than 650 member firms of all sizes, in all financial markets in the U.S. and around the world. We are committed to enhancing the public's trust and confidence in the markets, delivering an efficient, enhanced member network of access and forward-looking services, as well as premiere educational resources for the professionals in our industry and the investors whom they serve.

Throughout 2008 we will focus on the following goals:

- **Promote effective and efficient regulation**
- **Facilitate more open, competitive and efficient global capital markets**
- **Champion investor education, retirement preparedness and savings**
- **Ensure the public's trust in the securities industry and financial markets**

SIFMA - we link investors and issuers locally and globally to create economic growth and financial security - around the corner, around the world.

More Information

- View Our **Key Projects**

- SIFMA's Organizational Chart

- Learn About Our European Affiliates

- Summary of the SIFMA Member Group Efficiency Project with updated Committee List

EXHIBIT B

Product Descriptions and Frequently Asked Questions

The following definitions are provided for educational purposes only. They are not in any way meant to serve as legal or official definitions, nor are they meant to serve as standard market definitions. In practice, terminology can differ across firms and across market segments.

1. What is a derivative?
2. Major derivative categories
3. How do privately negotiated (OTC) derivatives differ from futures?
4. Product description: Forward contracts
5. Definition: Trade date
6. Definition: Notional principal
7. Product description: Forward rate agreements (FRA)
8. Short-term interest rates: Libor
9. What is a swap?
10. Product description: Interest rate swaps
11. Risks associated with interest rate swaps
12. Suppose a client enters into an interest rate swap with a derivatives dealer to protect against rates rising by locking in a fixed rate. Doesn't that mean the dealer expects rates to fall? Otherwise, why would the dealer take on the risk of losing money?
13. The value of an interest rate swap
14. Credit risks associated with swaps
15. What is the actual amount at risk in a swap?
16. Product description: Options
17. How do options differ from swaps and forwards?
18. Credit exposures associated with options
19. Is an option a form of insurance?
20. Product description: Interest rate options
21. Currency derivatives
22. Product description: Cross-currency swaps
23. What is a credit derivative?
24. Product description: Credit default swaps
25. What risks does do the parties to a credit default swap give up and what risks do they take on?
26. Product description: Total return swaps
27. What risks does do the parties to a total return swap give up and what risks do they take on?
28. Why is derivatives documentation (such as the ISDA Master Agreement) important?
29. Definition: Payment netting
30. Definition: Close-out netting
31. What is the status of an individual transaction under the ISDA Master Agreement?

Product Descriptions and some Frequently Asked Questions

1. What is a derivative?

A derivative is a risk-shifting agreement, the value of which is derived from the value of an *underlying asset*. The underlying asset could be a physical commodity, an interest rate, a company's stock, a stock index, a currency, or virtually any other tradable instrument upon which two parties can agree.

2. Major derivative categories

Derivatives fall into two categories. One consists of customized, privately negotiated derivatives, which are known generically as *over-the-counter (OTC)* derivatives or, even more generically, as *swaps*. The other category consists of standardized, exchange-traded derivatives, known generically as *futures*. In addition, there are various types of product within each of the two categories as described below.

3. How do privately negotiated (OTC) derivatives differ from futures?
First, the terms of a futures contract—including delivery places and dates, volume, technical specifications, and trading and credit procedures—are standardized for each type of contract. For swaps, the same characteristics are subject to negotiation by the parties to the contracts. Second, futures contracts are always traded on an exchange, while swaps are traded on a bilateral basis. Third, those who engage in futures transactions assume exposure to default by the exchange's clearinghouse; for OTC derivatives, the exposure is to default by the counterparty. Fourth, credit risk mitigation measures, such as regular mark-to-market and margining, are automatically required for futures but optional for swaps. Finally, futures are generally subject to a single regulatory regime in one jurisdiction, while swaps—although usually transacted by regulated firms—are transacted across jurisdictional boundaries and are primarily governed by the contractual relations between the parties. Various products, including futures contracts and exchange-traded options, fall within the generic category of futures, but all have the common characteristics described above. The definitions that follow refer exclusively to privately negotiated (OTC) derivatives.

4. Product description: Forward contracts
A forward is a customized, privately negotiated agreement between two parties to exchange an asset or cash flows at a specified future date at a price agreed on the trade date. Entering a forward contract typically does not require the payment of a fee.

Top of Page

5. Definition: Trade date
The trade date is the date on which the parties agree to the terms of a contract. The *effective date* is the date on which the parties begin calculating accrued obligations, such as fixed and floating interest payment obligations on an interest rate swap.

6. Definition: Notional principal
Notional principal, or notional amount, of a derivative contract is a hypothetical underlying quantity upon which interest rate or other payment obligations are computed.

7. Product description: Forward rate agreements (FRA)
A forward rate agreement is a forward contact on a short-term interest rate, usually Libor, in which cash flow obligations at maturity are calculated on a notional amount and based on the difference between a predetermined *forward rate* and the market rate prevailing on that date. The settlement date of an FRA is the date on which cash flow obligations are determined.

8. Short-term interest rates: Libor
Libor, which stands for London Interbank Offered Rate, is the interest rate paid on interbank deposits in the international money markets (also called the *Eurocurrency markets*). Because Eurocurrency deposits priced at Libor are almost continually traded in highly liquid markets, Libor is commonly used as a benchmark for short-term interest rates in setting loan and deposit rates and as the floating rate on an interest rate swap.

9. What is a swap?
A swap is a privately negotiated agreement between two parties to exchange cash flows at specified intervals (payment dates) during the agreed-upon life of the contract (maturity or tenor). Entering a swap typically does not require the payment of a fee.

10. Product description: Interest rate swaps
An interest rate swap is an agreement to exchange interest rate cash flows, calculated on a notional principal amount, at specified intervals (*payment dates*) during the life of the agreement. Each party's payment obligation is computed using a different interest rate. In an interest rate swap, the notional principal is never exchanged. Although there are no standardized swaps, a plain vanilla swap typically refers to a generic interest rate swap in which one party pays a fixed rate and one party pays a floating rate (usually Libor).

Top of Page

11. Risks associated with interest rate swaps
Typically, a party entering a swap gives up (or takes on) exposure to a given interest rate. At the same time, each party take on the risk—known as counterparty credit risk—that the other party will default at some time during the life of the contract.

12. Suppose a client enters into an interest rate swap with a derivatives dealer to protect against rates rising by locking in a fixed rate. Doesn't that mean the dealer expects rates to fall? Otherwise, why would the dealer take on the risk of losing money?
The dealer's view on interest rates does not matter. When the dealer assumes a client's risk, the dealer typically lays off—that is, hedges—that risk with an offsetting transaction. Suppose, for example, a dealer enters into a swap in which the client pays a fixed rate to the dealer and the dealer pays a floating rate to the client. The dealer could hedge the risk by entering into an offsetting swap with another client or dealer. Or, it could take a Treasury security position with interest rate exposure that offsets the swap. Or, it could take an offsetting futures position. Over the entire portfolio some risks might be uncovered at various times—which is essential to the existence of a liquid market—but such risks are carefully monitored and controlled by dealers.

13. The value of an interest rate swap
The value of an interest rate swap to a counterparty is the net difference between the *present value* of the payments the counterparty expects to receive and the present value of the payments the counterparty expect to make. At the inception of the swap, the value is generally zero to both parties, and becomes positive to one and negative to the other depending on the movement of interest rates. *Present value* is the value of a quantity to be received in the future, adjusted for the time value of money (interest foregone while waiting for the quantity).

14. Credit risks associated with swaps
Loss on a swap occurs if two things happen: First, the counterparty must default; and second, the swap must have a positive value to the party that does not default. The amount of the loss depends on the credit exposure of the swap.

15. What is the actual amount at risk in a swap?
The *credit exposure* of a swap is the amount that would be lost if default were to occur immediately. Credit exposure is generally equal to the current market value if positive, and zero if current market value is negative. Swap participants also calculate future exposures of swaps, which are potential positive values during the life of the swap; future exposures are used to establish credit charges (expected exposure) and credit limit usage (peak exposure).

Top of Page

16. Product description: Options
An option is an agreement that gives the buyer, who pays a fee (*premium*), the right—but not the obligation—to buy or sell a specified amount of an underlying asset at an agreed upon price (*strike or exercise price*) on or until the expiration of the contract (*expiry*). A call option is an option to buy, and a put option is an option to sell.

17. How do options differ from swaps and forwards?
In a forward or swap, the parties lock in a price (e.g., a forward price or a fixed swap rate) and are subject to symmetric and offsetting payment obligations. In an option, the buyer purchases protection from changes in a price or rate in one direction while retaining the ability to benefit from movement of the price or rate in the other direction. In other words, the option involves asymmetric cash flow obligations.

18. Credit exposures associated with options
For a buyer of an option, the amount at risk is generally the value (premium) of the option at default. For the seller of an option, there is no credit exposure.

19. Is an option a form of insurance?

Options differ from insurance in that options do not require one party to suffer an actual loss for payment to occur. In addition, the owner of an option need not have an insurable interest—such as ownership in the underlying asset—in the option.

20. Product description: Interest rate options
In an interest rate option, the underlying asset is related to the change in an interest rate. In an interest rate cap, for example, the seller agrees to compensate the buyer for the amount by which an underlying short-term rate exceeds a specified rate on a series of dates during the life of the contract. In an interest rate *floor*, the seller agrees to compensate the buyer for a rate falling below the specified rate during the contract period. A *collar* is a combination of a long (short) cap and short (long) floor, struck at different rates. Finally, a *swap option (swaption)* gives the holder the right—but not the obligation—to enter an interest rate swap at an agreed upon fixed rate until or at some future date.

Top of Page

21. Currency derivatives
A *currency forward* is a contract in which the parties agree to exchange cash flows in two different currencies at an agreed upon date in the future. A *cross-currency swap* is essentially an interest rate swap in which each side is denominated in a different currency. And a *currency option* is a contract that gives the buyer the right, but not the obligation, to exchange one currency for another at a predetermined exchange rate on or until the maturity date.

22. Product description: Cross-currency swaps
A cross-currency swap is an interest rate swap in which the cash flows are in different currencies. Upon initiation of a cross-currency swap, the counterparties make an initial exchange of notional principals in the two currencies. During the life of the swap, each party pays interest (in the currency of the principal received) to the other. And at the maturity of the swap, the parties make a final exchange of the initial principal amounts, reversing the initial exchange at the same spot rate. A cross-currency swap is sometimes confused with a traditional *FX swap*, which is simply a spot currency transaction that will be reversed at a predetermined date with an offsetting forward transaction; the two are arranged as a single transaction.

23. What is a credit derivative?
A credit derivative is a privately negotiated agreement that explicitly shifts credit risk from one party to the other.

24. Product description: Credit default swaps
A credit default swap is a credit derivative contract in which one party *(protection buyer)* pays an periodic fee to another party *(protection seller)* in return for compensation for default (or similar *credit event*) by a *reference entity*. The reference entity is not a party to the credit default swap. It is not necessary for the protection buyer to suffer an actual loss to be eligible for compensation if a credit event occurs.

25. What risks does do the parties to a credit default swap give up and what risks do they take on?
The protection buyer gives up the risk of default by the reference entity, and takes on the risk of simultaneous default by both the protection seller and the reference credit. The protection seller takes on the default risk of the reference entity, similar to the risk of a direct loan to the reference entity.

Top of Page

26. Product description: Total return swaps
A total return swap is a agreement in which one party (total return payer) transfers the total economic performance of a reference obligation to the other party (total return receiver). Total economic performance includes income from interest and fees, gains or losses from market movements, and credit losses.

27. What risks does do the parties to a total return swap give up and what risks do they take on?
The total return receiver assumes the entire economic exposure—that is, both market and credit exposure--to the reference asset. The total return payer—often the owner of the reference obligation—gives up economic exposure to the performance of the reference asset and in return takes on counterparty credit

exposure to the total return receiver in the event of a default or fall in value of the reference asset.

28. Why is derivatives documentation (such as the ISDA Master Agreement) important?
Swaps and related OTC derivatives combine characteristics of loans with characteristics of traded capital market instruments. On the one hand, each swap transaction creates a credit relationship between the counterparties, the terms of which need to be negotiated and documented just as would the terms of a traditional loan. But unlike a loan, the credit exposure is two-way and unknown at the inception of the swap (see above, items 13 – 15). On the other hand, swaps are traded in the market and might involve repeated interaction between two counterparties; renegotiation of credit terms for each transaction would be costly and would act as a drag on trading activity. Consequently, market participants developed the ISDA Master Agreement (click here for a history), which would contain the 'non-economic' terms—such as representations and warranties, events of default, and termination events—leaving counterparties free to negotiate only the 'economic' terms—that is, rate or price, notional amount, maturity, collateral, and so on. Additional benefits of the ISDA Master Agreement include provisions that facilitate payment netting and close-out netting.

29. Definition: Payment netting
Payment netting reduces payments due on the same date and in the same currency to a single net payment.

30. Definition: Close-out netting
If a counterparty to an ISDA Master Agreement defaults, the close-out netting provisions of the ISDA Master Agreement provide that offsetting credit exposures between the two parties will be combined into a single net payment from one party to the other.

31. What is the status of an individual transaction under the ISDA Master Agreement?
In jurisdictions where close-out netting is enforceable, all transactions under the ISDA Master Agreement constitute a 'single agreement' between the two counterparties instead of being separate contracts. The confirmation of a transaction serves as evidence of that transaction, and each transaction is incorporated into the ISDA Master Agreement.

Top of Page

EXHIBIT C

Hedging considerations in CDO transactions

Brian O'Keefe

CDO will use some combination of interest rate swap and cap agreements to hedge its risks against interest rate mismatches between fixed rate assets and floating rate liabilities, or visa-versa. Similarly, it may be necessary to employ a basis-risk swap where the collateral consists of floating-rate assets linked to one index, while the liabilities pay interest based on another. In addition to these interest-rate and basis-risk swaps, a transaction may employ currency hedges where assets and liabilities are paid in different currencies to protect against foreign-exchange risk.

I. INTRODUCTION

Many CDO structures use swap agreements to transform the cash flow characteristics of the issuer's assets into payment terms sought by investors. Most commonly, the CDO will use some combination of interest rate swap and cap agreements to hedge its risks against interest rate mismatches between fixed rate assets and floating rate liabilities, or visa-versa. Similarly, it may be necessary to employ a basis-risk swap where the collateral consists of floating-rate assets linked to one index, while the liabilities pay interest based on another.

In addition to these interest-rate and basis-risk swaps, a transaction may employ currency hedges where assets and liabilities are paid in different currencies to protect against foreign-exchange risk. The overwhelming majority of these hedges are documented using the master agreement prepared by the International Swap Dealers Association, Inc. (ISDA). Set forth below is a discussion of the criteria that Standard and Poor's applies in transactions with "AAA" rated tranches for determining which parties are eligible to be swap counterparties and the provisions that are acceptable under the ISDA documentation.

II. INTEREST RATE AND BASIS RISK SWAPS

A. HEDGE COUNTERPARTIES RATINGS REQUIREMENTS

Entities rated with a short-term rating of 'A-1' or better may serve as swap counterparties in interest-rate and basis-risk hedges. To the extent that a potential counterparty does not have a short-term rating (or prefers to use a long-term rating to satisfy the ratings requirement), the entity must have a long-term rating of 'A+' or higher to be an acceptable interest-rate and basis-risk hedge counterparty. (These rating requirements may be satisfied by the rating of a guarantor of the swap counterparty's obligations under the hedge agreement, provided that such guarantor is identified under the ISDA documentation as a Credit Support Provider.)

B. REQUIREMENTS UPON DOWNGRADE

Should the rating of the counterparty (or the rating of its guarantor, if satisfaction of the ratings requirement is dependent upon the rating of such guarantor) fall below the 'A-1' or the 'A+' thresholds discussed above, the swap counterparty will then have an obligation to find a substitute counterparty that satisfies these rating requirements, All costs associated with finding such a replacement and assigning the agreement shall be borne by the "downgraded" swap counterparty. In the event that the agreement has not been assigned to a new counterparty within 30 days, the swap counterparty will be required to post collateral in amount equal to the greater of the market-to-market value of the swap, the amount of the next payment due, or 1% of the outstanding notional amount of the hedge agreement. These amounts should be posted in accordance with the collateral posting requirement set forth below.

Regardless of the fact that the counterparty may have posted such collateral in accordance with Standard & Poor's criteria after 30 days, the obligation of the swap counterparty is to find a replacement swap counterparty to which it may assign its rights and obligations under the agreement, which will remain in effect. In the event the swap is not replaced within this 30-day period, then a rating action may be taken. Standard & Poor's will weigh the following: the swap maturity; the market value of the swap; the market for similar swaps; the current rating of the transaction; and the rating outlook of the swap provider.

C. COLLATERAL POSTING REQUIREMENTS

All collateral should be pledged to the trustee or other independent third party acting as agent for investors. The collateral should be segregated and pledged under normal ISDA requirements and in the possession of the trustee or some other fiduciary third party.

Collateral is to be invested in eligible investments (other than debt of the counterparty) in the currency of the rated securities and should be deposited in an account in the name of the trustee or issuer. The funds should be invested with an eligible institution other than the swap provider. If the funds do not mature before the next interest payment due on the rated securities, additional collateral may be required. The costs associated with posting the collateral should be borne by the swap provider.

Swap providers will have to mark the swap to market and post collateral on a weekly basis, with a cure period of three days. The mark-to-market valuation should reflect the higher of two bids from counterparties that would be eligible and willing to provide the swap in the absence of the current provider. Annual audits should be amended to specifically verify a sample of swap calculations and collateral postings.

First loss classes should absorb any loss due to the failure of a swap counterparty. Transactions will need to explicitly state that all subordinated cash flows will be diverted to make up any shortfalls. Claims resulting from insufficient swap payments, a counterparty default, or insufficient collateral necessary to find a replacement counterparty will be the obligation of the first loss class.

III. FOREIGN CURRENCY SWAPS

A. Hedge Counterparties Ratings Requirements

For currency hedges, entities with short-term ratings of 'A-1+' may serve as counterparties in 'AAA' -rated transactions if they agree to post collateral or replace themselves upon downgrade to a rating of 'A-1'. Similarly, entities with a short-term rating of 'A-1' (or 'A+' if a long-term rating threshold is used) may participate in a 'AAA' -rated transaction if they agree to post collateral at the beginning of the transaction and agree to replace themselves upon downgrade from the 'A-1' or 'A+' threshold.

The collateral posting triggers for currency hedges are more stringent than those for interest rate and basis risk hedges. Standard & Poor's believes that the market for interest rate and basis risk hedges enjoys less price volatility and has more liquidity, thus allowing for a lower-rated counterparty without increasing the overall risk to the transactions. The thresholds and the collateral posting requirements set forth herein are limited to those currencies recognized by ISDA.

B. CALCULATION OF REQUIRED COLLATERAL POSTING AMOUNTS

For currency swaps in permitted currencies, 'A-1+' rated counterparties do not have to post collateral. For 'A-1' and 'A+' rated entities, the new collateral levels will equal the greater of zero or the mark to market of the swap plus the amount equal to the appropriate value as a percentage of the notional value of the swap.

The specifics of calculating the required collateral posting amount for foreign currency swap counterparties is presented in Appendix B. The required collateral amounts should be posted in the manner discussed above under "Interest-Rate and Basis-Risk Hedges, Collateral Posting Requirements".

C. REQUIREMENTS FOR 'AAAT' RATED SWAP TRANSACTIONS

As a result of the growing and increasingly liquid market for swaps, Standard & Poor's will rate structured finance transactions with swaps from 'AAAt' rated derivative product companies. The derivative product company will be required to post additional collateral with the trustee to ensure sufficient funds are available to replace the swap during market swings.

Terminating derivative product companies are rated based on their ability to pay the mark to market at termination. Structured financings, however, need additional protection against movement in swap values between termination and replacement. These collateral amounts should be posted in the manner discussed above under "Interest-Rate and Basis Risk Hedges, Collateral Posting Requirements".

IV. SWAP AGREEMENT CRITERIA FOR CDOS

This section substantively restates the swap criteria for structured finance transactions that were originally published in Standard & Poor's 1995 publication Global Synthetic Securities Criteria. Structured finance transactions frequently include swap agreements that transform the cash flow characteristics of an issuing special-purpose entity's (SPE's) assets into payment terms desired by investors. The swap agreement criteria for a particular issue depend on the applicable rating approach. There are three rating approaches that reflect the differing roles of swap agreements in transaction structures: the swap-dependent approach, the asset-independent approach, and the swap-independent approach.

A majority of the swap agreements reviewed by Standard & Poor's are contracted under the ISDA agreement forms. The ISDA documentation for a swap transaction consists of a swap toaster agreement and a schedule and confirmation that modify the terms of the master agreement. The schedule and confirmation should modify the master agreement to reflect Standard & Poor's swap agreement criteria based on the applicable rating approach.

This section discusses specific sections of the 1992 ISDA multi-currency Cross Border Master Agreement as it pertains to Standard & Poor's swap agreement criteria. This '1992 agreement' updates the 1987 ISDA form documents. The discussions of criteria that follow are cross-referenced to the appropriate section of the 1992 agreement. Separate comments are provided when the "1987 agreement" treats a topic differently. Although the ISDA form agreements are most frequently used to document a swap transaction, other forms of agreements may be used provided that the comparable sections incorporate Standard & Poor's swap agreement criteria.

V. RATING APPROACHES

In both the swap-dependent rating approach and the asset-independent rating approach, the issuer's credit rating of the swap counterparty, or its guarantor, is a supporting rating and may be the weak-link rating if its rating is the lowest of all the supporting ratings in the transaction. In addition to evaluating the creditworthiness of the swap counterparty or its guarantor, the swap-dependent approach reflects the creditworthiness of the issuing SPE's other assets. The asset-independent approach reflects only the creditworthiness of the swap counterparty or its guarantor.

A. SWAP-DEPENDENT APPROACH

When the issuing SPE's other assets also are a supporting rating, the issue credit rating addresses the credit risk of the swap counterparty, the other assets, and the transaction's structure. Each element affects the issuing SPE's ability to provide transformed cash flows to holders of the rated securities in a full and timely manner.

In many of these transactions, as well as in most asset-and mortgage-backed issues, the counterparty does not expect to take the credit risk of the issuing SPE's other assets. Therefore, the counterparty desires a swap contract that deviates as little as possible from the market standard. Investors in rated securities, however, also need reasonable assurance that the swap counterparty will not cause an early termination of the swap. An early termination of the swap may result in a termination payment by the issuing SPE to the swap counterparty out of funds that otherwise would be payable to the holders of the rated securities. A list of acceptable default and termination events that would enable the swap counterparty to terminate the swap agreement in securities in which the swap counterparty and the issuing SPE's other assets are supporting ratings is included here.

Analysts will assume that the issuing SPE would not have an incentive, or the ability, to terminate the swap agreement absent a default on its other assets, and then only if it is in the best interests of investors and is generally subject to their vote. The criteria for securities in which the swap counterparty and the issuing SPE's other assets are supporting ratings, as the criteria apply to specific sections of the 1992 agreement, are discussed below. These criteria are applicable to synthetic securities and asset- and mortgage-backed transactions. The provisions of the 1992 agreement that are not referenced below are acceptable provided that they are not modified. The swap dependent ISDA Cross References are presented in Appendix D.

B. ASSET-INDEPENDENT APPROACH

Rated securities can be structured so that the issuing SPE's other assets will not be a supporting rating and thus achieve a rating that is higher than, or irrespective of, the issuer credit rating of these other assets. This can be accomplished by including a swap agreement that commits the counterparty to make payments to the issuing SPE even if there has been a default on the issuing SPE's other assets. In effect, the swap agreement becomes the issuing SPE's only asset from a rating perspective. The swap counterparty is

still a supporting rating, but the other assets are not.

Default and termination events for swaps in these transactions are more flexible than they are in transactions in which the issuing SPE's other assets are also a supporting rating. Recent structures have included the following default and termination events under the swap agreement:

* Failure to pay,

* Misrepresentation,

* Bankruptcy,

* Merger without assumption,

* Illegality, or

* Events of default under the indenture.

Events of default under the indenture include failure to pay interest on any note when due, failure to pay principal on any note when due, an event of default or early termination of the swap agreement, and the bankruptcy of the issuing SPE.

If the swap is terminated for any of the above reasons, however, the swap counterparty would make a termination payment to the issuing SPE equal to the principal of and accrued interest on the rated securities minus proceeds from sale of the issuing SPE's other assets, In other words, investors in the rated securities are paid full principal and interest up to the redemption date even if the swap is terminated. In this structure, the formula for calculating the termination payment will have to be amended accordingly.

If no withholding tax currently applies to swap payments by the swap counterparty and its guarantor, if any, Standard & Poor's will generally request legal opinions from counsel confirming that under current law no such tax applies, and that there is no pending legislation to create such a tax.

C. SWAP-INDEPENDENT APPROACH

These types of securities also use swaps to transform the cash flows generated by the assets as an accommodation to investors. A Standard & Poor's issue credit rating, however, does not address the swapped cash flow, only the likelihood of payment on the issuing SPE's other assets. If the swap counterparty defaults for any reason, either the transaction terminates and investors receive their pro rata share of the assets, or the investors agree to accept the cash flows on the other assets without the benefit of the swap and the transaction continues.

The swap counterparty's issuer credit rating is not a supporting rating. Therefore, default and termination events under the swap agreement are more flexible than those for swap-dependent securities in which the issuing SPE's other assets are also a supporting rating. The following events have been included in swap-independent structures:

* Failure to pay,

* Breach of agreement,

* Credit support default,

* Misrepresentation,

* Default under specified transaction or swaps,

* Cross default,

* Bankruptcy,

* Merger without assumption,

* Trust termination, and

* Default on the issuer's other assets.

If the swap terminates, neither party would be owed a termination payment or swap breakage fees. Generally, the 'r' symbol is attached to the ratings of these transactions to indicate that investors may be subject to market risk upon termination of the swap.

VI. ADDITIONAL CRITERIA

Section 11 of the 1992 agreement provides that the defaulting party will pay certain reasonable out-of-pocket expenses incurred by the other party related to the enforcement and protection of that party's rights under the swap agreement or any credit support document. This section should not apply to the issuing SPE for asset-independent or swap-independent structures because swap agreements employed by these structures may terminate as a result of non-credit events. The occurrence of an event of default under the swap agreement for an asset-independent transaction should not create a liability for the issuing SPE that will result in payment shortfalls to investors. In the case of swap-independent structures, since the swap provider is not a supporting rating, the occurrence of an event of default should be transparent to the issuing SPE and not result in the creation of an expense under this section.

For all swap agreements, the swap counterparty should agree that it will not petition the issuing SPE into bankruptcy, or join in any petition to file the issuing SPE, during the term of the rated securities and for a period equal to the preference period plus one day applicable to the issuing SPE after all outstanding rated securities have matured.

In transactions where the issue credit rating is dependent on a swap agreement and guarantee, if any, Standard & Poor's generally requests the following legal opinions for the swap counterparty and guarantor, as applicable, under the law of the jurisdiction of organization of the relevant entity and under the governing law of the swap agreement and guarantee, as applicable:

* An enforceability opinion in connection with the swap agreement and guarantee against the swap counterparty and the guarantor, as applicable, according to their respective terms;

* A pari passu opinion stating that payments due under the swap agreement and the guarantee, as applicable, rank at least pari passu with the unsecured and unsubordinated obligations of the swap counterparty and the guarantor, as the case may be;

* A choice of law opinion stating that local courts in the jurisdictions of the swap counterparty and the guarantor, as applicable, would recognize the choice of law in the swap agreement and the guarantee, as the case may be, and the choice of law is prima facie valid and binding under such local law;

* A recognition of claim opinion stating that local courts in the jurisdictions of the swap counterparty and the guarantor, as applicable, would recognize and enforce as a valid judgment any final and conclusive civil judgment of a court of competent jurisdiction for monetary claims under the swap agreement and the guarantee, as the case may be; and

* Relevant withholding tax opinions on payments under the swap agreement and the guarantee, as applicable. Standard & Poor's will also typically request from counsel for the issuer the relevant withholding tax opinions on payments by the issuer under the swap agreement.

Standard & Poor's may waive the enforceability opinion described above for swap counterparties and guarantors if Standard & Poor's previously has received similar opinions under the same governing law in similar transactions. (For a fuller discussion of these rating approaches, see Standard & Poor's Legal Issues In Rating Structured Finance Transactions, "Criteria Related to Global Synthetic Securities.")

In addition, for CDO transactions and given the nature of the asset pool and transaction specifics, Standard & Poor's allows the termination of the swap with the SPE being at fault. This could occur if the majority noteholders of each class of notes vote to materially amend the indenture or other transaction documents once they are notified that the swap counterparty has not consented to the change, and by them voting "yes" proceed with the amendments, causing the swap to terminate. Such material amendments typically are changes to the rights of the swap counterparty, changes to the priority of payments above the swap counterparty's position, and changes to the reinvestment criteria.

A. TERMINATION PAYMENTS IN THE PRIORITY OF PAYMENTS

Given the uncertainty associated with precisely predicting future interest rates, and the fact that structure finance SPEs are special purpose vehicles that only have a limited amount of assets and no borrowing power, it is not feasible to accurately model termination payments or require the SPE to pay such an amount above the rated noteholders, should the swap counterparty default. For these reasons Standard & Poor's requires the swap counterparty to subordinate its claim of termination payments below investment grade rated tranches should the cause of the termination be due to its own default.

If the SPE defaults, Standard & Poor's allows the swap counterparty to get termination payments pari passu with the senior noteholders. In such cases, one of the abovementioned events of default has occurred and the rating of the senior notes has already been compromised.

Brian O'Keefe

Standard & Poor's

BRIAN O'KEEFE is a director in the Structured Finance Group at Standard & Poor's. He is a member of the Global CDO Group. Prior to joining Standard & Poor's in 2000, Brian was an attorney working on securitization transactions at the law firms of Clifford, Chance, Rogers & Wells and Jones, Day, Reavis & Pogue. Brian earned a J.D. from the University of Pennsylvania in 1994.

EXHIBIT D

InvestmentNews
The Leading News Source for Financial Advisers

SIA & BMA merge into SIMFA

November 1, 2006

The Securities Industry Association and Bond Market Association officially merged today and is now known as the The Securities Industry & Financial Markets Association, or SIFMA.

"We begin a new chapter in representing the businesses that form a cornerstone of the global economy," said a letter from SIFMAs co-chief executives Micah S. Green and Marc E. Lackritz. "SIFMA, the result of the merger between The Securities Industry Association and The Bond Market Association, is a stronger organization for firms of all sizes, in all markets at home and abroad.

"It is an efficient, enhanced member network of access and services."

In June, the two industry associations announced that their boards had voted to merge (InvestmentNews, June 28) .

The merger was approved in July (InvestmentNews, July 27) .

SIFMA will release its new logo and branding during its launch next week in Boca Raton, Fla.

EXHIBIT E

SIFMA®
Securities Industry and Financial Markets Association

Answering Your Questions About The Securities Industry and Financial Markets Association (SIFMA) Municipal Swap Index

(formerly The Bond Market Association/PSA Municipal Swap Index) produced by Municipal Market Data (MMD)

WHAT IS THE SIFMA MUNICIPAL SWAP INDEX?

The Securities Industry and Financial Markets Association Municipal Swap Index , produced by Municipal Market Data, is a 7-day high-grade market index comprised of tax-exempt VRDOs from MMD's extensive database.

WHY WAS THE INDEX CREATED?

The Index was created in response to industry participants' demand for a short-term index which accurately reflected activity in the VRDO market. In 1991, SIFMA established a Market Index Subcommittee to analyze the need for such an index, and determine a solution. SIFMA contacted Municipal Market Data in this effort because of MMD's extensive database of active variable rate demand notes, and MMD's long-standing reputation within the industry. MMD worked closely with SIFMA to determine appropriate criteria on which to base the index.

HOW IS THE INDEX USED?

One of the most critical elements of a swap transaction is the Index on which the floating rate is based. (In a swap, two counterparties "swap" fixed rate interest payments for floating rate payments or vice versa). The Index serves as a benchmark floating rate in the swap transaction. Industry-wide acceptance of the Index naturally increases liquidity and thus the attractiveness of the transaction.

HOW WERE THE INDEX CRITERIA SELECTED?

Extensive historical correlation analysis was employed, incorporating and excluding a wide range of variables. After many revisions, the SIFMA Subcommittee selected specific criteria which would most effectively represent activity in the variable rate demand note market.

WHAT ARE THE CRITERIA FOR THE INDEX?

In order for an issue to qualify for inclusion in the index it must...

- be a weekly reset, effective on Wednesday (no lag resets considered)
- NOT be subject to Alternative Minimum Tax
- have an outstanding amount of $10 million or more
- have the highest short-term rating [VMIG1 by Moody's or A-1+ by S&P]
- pay interest on a monthly basis, calculated on an actual/actual basis.

In addition, only one quote per obligor per remarketing agent will be included in the Index. Issues from all states are eligible for inclusion.

HOW IS THE INDEX CALCULATED?

The Index is calculated on a weekly basis, and released to subscribers on Thursday. The following are considered in the Index calculation:

- The standard deviation of the rates is calculated. Any issue falling outside of +/-1.0 standard deviations is dropped.
- Each participating remarketing agent is limited to no more than 15% of the Index by an averaging method.

WHAT IS THE VARIABLE RATE DEMAND NOTE NETWORK™?

MMD's Variable Rate Demand Note Network™ is the most comprehensive source of information on VRDOs available. Using the Network, over 80 remarketing agents (representing more than 90% of the market) download daily rate change information for their issues to MMD's database. Interest rate and interest payment factor data is then retrieved electronically by portfolio managers, fund accountants, custodians, pay agents, and income collection departments. Data available includes current and historical rates, issue ratings, credit enhancements, and detailed interest accrual specifications.

HOW DO I KNOW THAT THE INDEX REPRESENTS "THE MARKET"?

The Index is comprised of actual issues from the most comprehensive source of data on VRDOs available. MMD's database contains extensive information for more than 15,000 active VRDOs. By applying the criteria mentioned above, MMD is able to calculate a truly representative Index.

HOW MANY VRDO ISSUES ARE IN THE INDEX?

The actual number of issues that make up the Index will vary in time as issues are called, converted, mature or are newly issued. In addition, if changes occur which violate the criteria or calculation methods, an issue will be dropped. Typically, the Index has included 650 issues in any given week.

MY SWAP IS FOR 20 YEARS. HOW LONG WILL THE INDEX BE AROUND?

Municipal Market Data has built its reputation through a continuing commitment to the municipal bond industry. We firmly believe in the value of this information to industry participants, and intend to provide the Index for as long as data is available.

WHO IS THE SECURITIES INDUSTRY AND FINANCIAL MARKETS ASSOCIATION?

The Securities Industry and Financial Markets Association (SIFMA) represents the industry which powers the global economy.

Born of the merger between The Securities Industry Association and The Bond Market Association, SIFMA is the single powerful voice for strengthening markets and supporting investors -- the world over.

WHO IS MUNICIPAL MARKET DATA?

Municipal Market Data, a Thomson Financial Services Company, was founded in 1981, dedicated to the development of strategic analytic tools for institutional investors in the municipal bond market. Since then the company has created a broad range of products to meet the diverse needs of the investment community. In addition to several daily on-line analytical products, and a futures consulting service, MMD offers the Variable Rate Demand Note Network™.

HOW CAN I GET THE INDEX?

The index is available on a subscription basis, from Municipal Market Data. For more information, call (617) 856-2900.

Related Links

This article from *Government Finance Review* provides a useful overview of the municipal derivatives market.

Latest Releases for the Municipal Division

View Municipal Swap Index

EXHIBIT F

The Securities Industry and Financial Markets Association ™ Municipal Swap Index

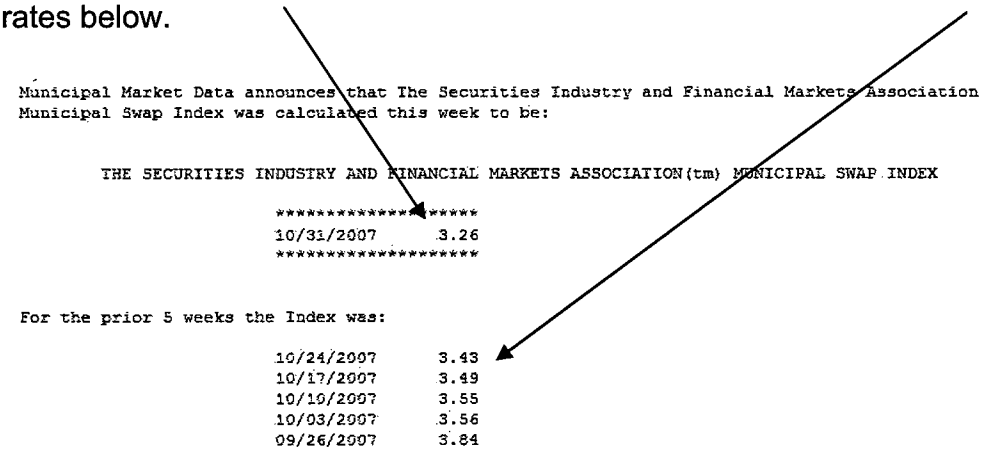
The Securities Industry and Financial Markets Association ™ Municipal Swap Index, produced by Municipal Market Data, is a seven day high grade market index comprised of tax-exempt VRDNs from MMD's extensive database. The Index is calculated on a weekly basis, and released to subscribers every Wednesday.

Navigation

On the main www.tm3.com page, click the SIFMA Swap Index hyperlink.

The SIFMA Municipal Swap Index page will open.

The most recent rate is always listed at the top of the page, with the past five rates below.



Municipal Market Data announces that The Securities Industry and Financial Markets Association(tm) Municipal Swap Index was calculated this week to be:

THE SECURITIES INDUSTRY AND FINANCIAL MARKETS ASSOCIATION(tm) MUNICIPAL SWAP INDEX

****
10/31/2007 3.26
****

For the prior 5 weeks the Index was:

10/24/2007	3.43
10/17/2007	3.49
10/10/2007	3.55
10/03/2007	3.56
09/26/2007	3.84

The Securities Industry and Financial Markets Association(tm) Municipal Swap Index, produced by Municipal Market Data, is a weekly high grade market index comprised of 7-day tax-exempt variable rate demand notes. Actual issues are selected from MMD's database of more than 10,000 active issues based on several specific criteria. For more information on the criteria, contact Municipal Market Data. The data submitted herewith is regarded as proprietary in nature.

Overview

Q: WHY WAS THE INDEX CREATED?

A: The Index was created in response to industry participants' demand for a short-term index which accurately reflected activity in the Variable Rate Demand Note (VRDN) market. In 1991 the Public Securities Association (currently known as The Securities Industry and Financial Markets Association™) established a Market Index Subcommittee to analyze the need for such an index, and determine a solution. The PSA contacted Municipal Market Data in this effort because of MMD's extensive database of active VRDNs, and long-standing reputation within the industry. MMD worked closely with the PSA to determine appropriate criteria on which to base the index.

Q: HOW IS THE INDEX USED? ...IN SWAPS

A: One of the most critical elements of a swap transaction is the Index on which the floating rate is based. (In a swap, two counterparties "swap" fixed rate interest payments for floating rate payments or vice versa). The Index serves as a benchmark floating rate in the swap transaction. Industry-wide acceptance of

the Index naturally increases liquidity and thus the attractiveness of the transaction.

Q: AS A MARKET INDICATOR?

A: The Index provides issuers, investment bankers, and other market participants with a consistent, superior means of tracking market movements as they occur.

Q: HOW WAS THE INDEX CRITERIA SELECTED?

A: Extensive historical correlation analysis was employed, incorporating and excluding a wide range of variables. After many revisions, the PSA Subcommittee selected specific criteria, which would most effectively represent activity in the variable rate demand note market.

Q: WHAT ARE THE CRITERIA FOR THE INDEX?

A: In order for an issue to qualify for inclusion in the index, it must:

- be a weekly reset, effective on Wednesday (no lag resets considered)
- NOT be subject to Alternative Minimum Tax
- have an outstanding amount of $10 mil. or more
- have the highest short-term rating [VMIG1 by Moody's or A-1+ by S&P]
- pay interest on a monthly basis, calculated on an actual/actual basis. Only 1 quote per obligor per remarketing agent is included in the Index. Issues from all states are eligible for inclusion.

Q: HOW DO I KNOW THE INDEX REPRESENTS "THE MARKET"?

A: The Index is comprised of actual issues from the most comprehensive source of data on VRDNs available. MMD's database contains extensive information for more than 23,000 active VRDNs. By applying the criteria mentioned above, MMD is able to calculate a truly representative Index.

Q: HOW IS THE INDEX CALCULATED?

A: The Index is calculated on a weekly basis, and released to subscribers on Wednesday. The following are considered in the Index calculation:

- The standard deviation of the rates is calculated. Any issue falling outside of +/- 1.0 standard deviations is dropped.
- Each participating remarketing agent is limited to no more than 15% of the Index by an averaging method.

Q: HOW MANY VRDN ISSUES ARE IN THE INDEX?

A: The actual number of issues that make up the Index will vary in time as issues are called, converted, mature, or are newly issued. In addition, if changes occur which violate the criteria or calculation methods, an issue will be dropped.

Q: MY SWAP IS FOR 20 YEARS...HOW LONG WILL THE INDEX BE AROUND?

A: Municipal Market Data has built its reputation through a continuing commitment to the municipal bond industry. We firmly believe in the value of this information to industry participants, and intend to provide the Index for as long as data is available.

Q: WHO IS THE SECURITIES INDUSTRY AND FINANCIAL MARKETS ASSOCIATION™?

A: The Securities Industry and Financial Markets Association ™ (formerly named the Bond Market Association which was formerly Public Securities Association) is the international organization of banks and brokerage firms that underwrite, trade and sell municipal securities, U.S. government and Federal agency securities, mortgage-backed securities and money market instruments.

Q: WHO IS MUNICIPAL MARKET DATA?

A: Municipal Market Data (MMD), a division of Thomson Financial Services, has been the foremost data source for the municipal bond market since 1981, providing comprehensive technical and fundamental analysis and tax-exempt money market data. MMD is widely recognized as the premier source of benchmark data.

EXHIBIT G

FINCAD
FINANCIALCAD CORPORATION

Tax-Exempt (Municipal) Swap Curve

Overview

A BMA swap is an interest rate swap in which the payments of one leg are variable and are based upon fixings of the US SIFMA Municipal Swap Index (formerly the BMA Municipal Swap Index or "BMA Index"). This index is produced weekly, reflecting the average rate of issues of tax-exempt variable-rate debt, and serves as a benchmark floating rate in municipal swap transactions. The BMA index is usually 65%-70% of its taxable equivalent 1-month Libor. This ratio is subject to tax-risk, i.e., the risk that marginal tax rates will change or that there will be revisions to the US Tax Code.

The BMA Swap Curve represents the expected future values of the BMA index, where expectations are taken in the corresponding forward probability measure; the forward rates that are encoded in the curve can be used to calculate expected future cash-flows for the purpose of valuing the BMA leg. Similar to other curve generation processes, the BMA Swap Curve is generated using a set of quoted cash rates and par rates for BMA fixed/floating swaps. Another important input is the risk-free discount factor curve (usually the Libor curve), which is used to calculate the present value of expected future cashflows. The par rate for a BMA fixed/floating swap of a particular maturity (e.g., 10 years) can be derived from the BMA Basis factor for that maturity (e.g., 75%) and the corresponding Libor swap rate. A BMA Basis factor of 75% means that a BMA/Libor basis swap, in which one leg pays 75% of Libor, and the other leg pays BMA, is a par swap. Thus, if the 10Y Libor swap rate (for a 10Y fixed/floating Libor swap) is, say, 4%, then the par rate for a BMA fixed/floating swap is 75% ´ 4% = 3%.

Bootstrapping starts with the shortest term swap and steps through them all in ascending order of maturity. At every step, forward rates inferred from the preceding swaps are considered as known, and subsequent forward rates are constrained to recover the price of the current swap. Refer to the **Interest Rate Curve Generation** FINCAD Math Reference document for more information on curve generation, and **Floating Rate Notes with Averaging (muni / tax-exempt market)** FINCAD Math Reference document for how to value the BMA leg of a BMA swap. When valuing the BMA leg, the BMA Swap Curve is intended to be used as the "accruing curve" (used to calculate expected cashflows from its implied forward rates). The Libor curve would typically be used as the "discounting curve". The BMA swap Curve is *not* intended to be used as a "discounting curve"; the 2-column format [date, discount_factor] is merely a representation to encode the forward rates in a way that is consistent with the format of other FINCAD interest rate curves.

Formulas and Technical Details

The function **aaSwap_crv_avg** takes in a table of swap rates and/or basis factors; the latter are the scaling factors to apply to the internally-calculated LIBOR swap rates. Each row in the table that has a basis factor as the rate will be converted to a BMA swap rate using the function **aaParSwap3** with the inputs of the fixed leg payment frequency and daycount equal to the BMA swap's fixed leg (i.e., as specified by the freq_fixed and acc_fix inputs, respectively). For example, if the frequency of the BMA swap's fixed leg is specified as quarterly, then internally the quarterly LIBOR swap rate is calculated, multiplied by the basis factor, and used as the BMA swap rate. If a different frequency and daycount for the basis factor is needed by the user then the scaled swap rate should be calculated externally, and passed into **aaSwap_crv_avg** as swap rates.

The bootstrapping process iterates through the given par rates for BMA fixed/floating swaps, using the rules stated below, and outputs discount factors and optionally forward rates. Note that the discount factor curve for discounting (i.e., the Libor curve) is already known, and therefore it is only necessary to build a curve that encodes implied forward rates.

The function **aaSwap_crv_avg** provides a choice of three bootstrapping methods for building BMA curves, Linear Swap Rates, Constant Forward Rates, and Quadratic Forward Rates. The last method (Quadratic Forward Rates) give rise to the smoothest profiles for the forward rates, and is the recommended method.

Linear Swap Rates

In this method a set of hypothetical swaps are created that mature on each payment date of each of the given swaps. The par swap rate for each of these hypothetical swaps is obtained by linear interpolation of the given swap rates, based on the maturity date. The algorithm steps through each hypothetical swap, in order of maturity. At each step the new swap has precisely one more payment than the previous swap; the forward rates spanning this extra payment period are calculated by assuming that they all have the same value.

In other words, it is assumed that the rate for all forward periods (i.e., for each week in the case of the BMA index) spanning any two consecutive payment dates are the same. This value is determined by ensuring that the value of the floating leg equals that of the fixed leg when the coupon equals the interpolated par swap rate.

For example, suppose that

- today's date is 29-May-2006,
- the payment frequency of the BMA leg is quarterly,
- the par swap rate for a maturity of 29-May-2007 is given as 5.72%,
- the par swap rate for a maturity of 29-May-2008 is given as 5.80%, and
- the forward BMA rates spanning the period 29-May-2006 to 29-May-2007 have been calculated by prior steps in the algorithm.

The first step is to linearly interpolate a par swap rate for a hypothetical maturity of 29-Aug-2007, which is the next payment date after 29-May-2007. The interpolated result is 5.74%. This hypothetical swap rate is used to calculate the weekly forward rates spanning 29-May-2007 to 29-Aug-2007, assuming that the rates for all 13 or 14 forward periods within this 3-month payment period are equal to each other. The next step would be to use the interpolated swap rate of 5.76% for a maturity of 29-Nov-2007 to calculate the 13 or 14 weekly forward rates spanning 29-Aug-2007 to 29-Nov-2007, assuming that they are all equal. And so on.

Unfortunately the curves generated this way often have saw-tooth shaped forward rate profiles. The following two methods overcome this problem and generate curves with smoother forward rate profiles.

Constant Forward Rates

In this method, it is assumed that the rates for all the forward periods spanning any two given swap maturities are the same.

For example, in the above example, it is assumed that the rates for all weekly forward periods spanning 29-May-2007 to 29-May-2008 (about 53 of them) are equal to each other. Using this assumption, it is possible to directly calculate the common forward rate that is consistent with the 5.80% par swap rate.

This method will give rise to a staircase shaped forward rate profile, comprised of a series of horizontal segments with vertical jumps at each given swap maturity.

Quadratic Forward Rates

This method further improves the Constant Forward Rates Method by smoothing out the discontinuities in the forward rate profile. The first step is to build a curve using the Constant Forward Rates Method. The second step creates a sequence of parabolic segments for the forward rate profile. The parabolic segments match at each of the given swap maturities; i.e., part-way up the vertical jumps of the Constant Forward Rates Method. The vertical coordinates of the match points are calculated as a function of the height of each horizontal segment of the Constant Forward Rates Method. The parameters of each parabolic segment are chosen to ensure that the smoothed curve is consistent with the input swap rates, and also that the whole curve is continuous. The end result is a curve whose forward rate profile is piecewise quadratic and continuous (no jumps).

FINCAD Function

aaSwap_crv_avg(d_v, cash_crv, swapcrv_bma_tbl, freq_fixed, drul_fix, acc_fix, freq_fl, drul_fl, acc_flt, d_reset_cycle, reset_freq, d_rul_reset, acc_rt, reset_mktdays, rate_reset, hl, df_crv_disc, intrp, rate_use, method_boot, output_type)

Calculates an accruing curve that implies forward rates for the Municipal Swap Index, given a discounting (LIBOR) curve and par rates (or basis factors) of tax-exempt municipal swaps whose floating leg payments are based upon the average index rate.

Description of Inputs

Argument	Description
d_v	value (settlement) date
cash_crv	cash/deposit rates
swapcrv_bma_tbl	par swap rates (or basis factors)
freq_fixed	frequency of fixed leg payments
drul_fix	business day adjustment for fixed leg payments
acc_fix	accrual method for fixed leg payments
freq_fl	frequency of floating leg payments
drul_fl	business day adjustment for floating leg payments
acc_flt	accrual method for floating leg payments
d_reset_cycle	reset cycle date
reset_freq	reset frequency
d_rul_reset	business day adjustment for reset dates
acc_rt	accrual method for reset/forward rates
reset_mktdays	number of business days prior to the rate effective date that the index is fixed
rate_reset	current value of index
hl	holiday list
df_crv_disc	discount curve (LIBOR)
intrp	interpolation method
rate_use	rate tables to be used
method_boot	bootstrapping method: 1 = linear swap rates (constant forwards between swap payments) 2 = constant forward rates (constant forwards between swap maturities) 3 = quadratic forward rates
output_type	output curve type

Description of Outputs

Table type	Output
1	discount factor curve
2	discount factor and forward curve
3	discount factor curve (monthly points)
4	discount factor and forward curve (monthly points)
5	discount factor curve (quarterly points)
6	discount factor and forward curve (quarterly points)

For Table Type 1 or 2, the function gives discount factors for each forward rate effective date. When the reset frequency is high, e.g., weekly, the output curve can be very long. The other table types are provided for shorter curves, although this comes at a cost of interpolation errors. For example, Table Type 5 would give a discount factor

curve that will only show discount factors on the dates cycled quarterly from the maturity of the longest given swap. With a shortened discount factor curve a round trip may not be achieved for par swaps, because of the need for interpolation; i.e., when the curve is used to value the given par swaps, the value may not be exactly zero.

Example

Suppose that money market rates and the basis factors are given as follows:

Deposit rates

effective date	terminating date	rate	rate quotation basis	accrual method for coupons	use this point (0 = no, 1 = yes)
3-Dec-2006	4-Dec-2006	0.500%	7	4	1

Swap rates

effective date	terminating date	rate or factor	use this point (0 = no, 1 = yes)	swap rate or base factor (1 = s.w., 2 =b.f)
3-Dec-2006	3-Dec-2007	62.00%	1	2
3-Dec-2006	3-Dec-2008	71.60%	1	2
3-Dec-2006	3-Dec-2009	72.20%	1	2

For the purposes of this example, the payment frequency of the fixed leg and floating leg of the given swaps is quarterly, and the reset frequency is weekly. Suppose further that the Libor curve (for discounting) is given as follows:

Libor Curve (for discounting)

grid date	discount factor
3-Dec-2006	1
11-Dec-2006	0.999708
1-Jan-2007	0.998922
…	…
7-Dec-2013	0.758813
5-Dec-2014	0.717608
3-Dec-2015	0.676827

The following set of inputs is used to call **aaSwap_crv_avg** using two different bootstrapping methods, Constant Forward Rates, and Quadratic Forward Rates:

aaSwap_crv_avg

Argument	Description	Example data	Switch
d_v	value (settlement) date	3-Dec-2006	
cash_crv	cash/deposit rates	see above	
swapcrv_bma_tbl	par swap rates (or basis factors)	see above	
freq_fixed	frequency of fixed leg payments	3	quarterly
drul_fix	business day adjustment for fixed leg payments	2	next good business day
acc_fix	accrual method for fixed leg payments	2	actual/360

freq_fl	frequency of floating leg payments	3	quarterly
drul_fl	business day adjustment for floating leg payments	2	next good business day
acc_flt	accrual method for floating leg payments	2	actual/360
d_reset_cycle	reset cycle date	6-Feb-2006	
reset_freq	reset frequency	6	weekly
d_rul_reset	business day adjustment for reset dates	1	no date adjustment
acc_rt	accrual method for reset/forward rates	2	actual/360
reset_mktdays	number of business days prior to the rate effective date that the index is fixed	0	
rate_reset	current value of index	0.02 (or 2%)	
hl	holiday list	See below	
df_crv_disc	discounting curve (LIBOR)	See above	
intrp	interpolation method	1	linear
rate_use	rate tables to be used	2	use both swap rates and cash rates
method_boot	bootstrapping method	2 and 3	constant forward rates and quadratic forward rates
output_type	output curve type	2	discount factor and forward curve

Holiday list

holiday date
1-Jan-2007
1-Jan-2008

The results using Constant Forward Rates are as follows:

Results: Constant Forward Rates

Date	Discount Factor	Forward Rate
3-Dec-2006	1	0.500000%
4-Dec-2006	0.999986111	0.500000%
11-Dec-2006	0.9998889	0.500000%
18-Dec-2006	0.999712698	0.906441%
25-Dec-2006	0.999536527	0.906441%
...	...	...
3-Dec-2007	0.99094208	0.906441%
10-Dec-2007	0.990604178	1.754265%
17-Dec-2007	0.990266391	1.754265%
...	...	...

8-Dec-2008	0.973191132	1.754265%
15-Dec-2008	0.972667287	2.769765%
22-Dec-2008	0.972143724	2.769765%
...	...	...
23-Nov-2009	0.947341346	2.769765%
30-Nov-2009	0.946831416	2.769765%
7-Dec-2009	0.94632176	2.769765%

The results using Quadratic Forwards are as follows:

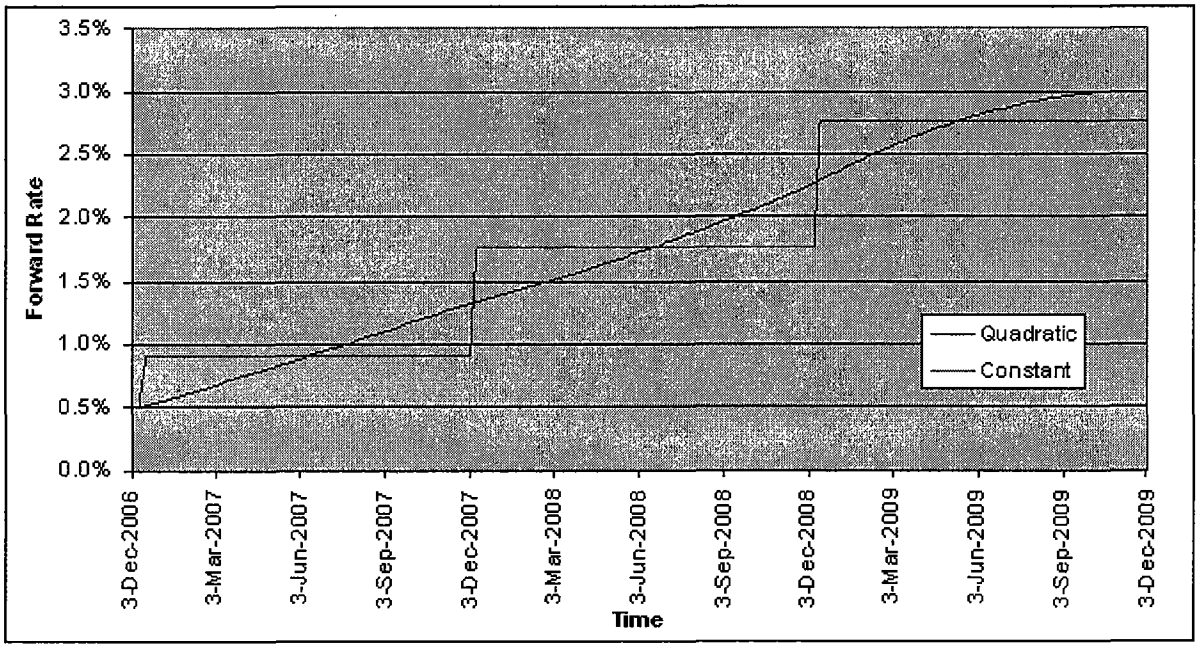
Results: Quadratic Forwards

Date	Discount Factor	Forward Rate
3-Dec-2006	1	0.500000%
4-Dec-2006	0.999986111	0.500000%
11-Dec-2006	0.9998889	0.500000%
18-Dec-2006	0.999788828	0.514763%
25-Dec-2006	0.999685887	0.529580%
1-Jan-2007	0.999580065	0.544452%
8-Jan-2007	0.999471355	0.559378%
15-Jan-2007	0.999359745	0.574359%
22-Jan-2007	0.999245228	0.589394%
29-Jan-2007	0.999127792	0.604483%
5-Feb-2007	0.999007429	0.619626%
12-Feb-2007	0.998884128	0.634824%
19-Feb-2007	0.998757882	0.650076%
26-Feb-2007	0.998628679	0.665382%
5-Mar-2007	0.998496512	0.680743%
12-Mar-2007	0.998361369	0.696158%
19-Mar-2007	0.998223243	0.711628%
26-Mar-2007	0.998082123	0.727152%
2-Apr-2007	0.997938002	0.742730%
...	...	...
9-Feb-2009	0.969017841	2.500908%
16-Feb-2009	0.968542469	2.524177%
23-Feb-2009	0.968063055	2.546899%
2-Mar-2009	0.967579708	2.569072%
9-Mar-2009	0.967092538	2.590699%
16-Mar-2009	0.966601654	2.611778%

23-Mar-2009	0.966107164	2.632309%
30-Mar-2009	0.965609176	2.652293%
...	...	...
12-Oct-2009	0.950680324	2.989555%
19-Oct-2009	0.950127254	2.993662%
26-Oct-2009	0.949573849	2.997220%
2-Nov-2009	0.949020211	3.000232%
9-Nov-2009	0.948466442	3.002695%
16-Nov-2009	0.947912643	3.004612%
23-Nov-2009	0.947358915	3.005980%
30-Nov-2009	0.94680536	3.006802%
7-Dec-2009	0.946252078	3.007075%

Below is a graph of the forward curves produced using both methods:

Results: Quadratic Forwards and Constant Forward Rates



The staircase profile is evident for the curve produced using Constant Forward Rates. Setting the bootstrapping method to "quadratic forward rates" will result in a smoother profile of forward rates. The workbook "Averaging Swap Curve", that is shipped with FINCAD XL, contains plots of the resulting forward rates, and is a good tool for comparing the different methods and switch settings.

References

[1] **Floating Rate Notes with Averaging (muni / tax-exempt market)** FINCAD Math Reference document.

[2] **Interest Rate Curve Generation** FINCAD Math Reference document.

EXHIBIT H

National Sponsors

CDFA Spotlight:
Basis Risk With Interest Rate Swaps

By Stan Provus

Preview

This article explains "basis risk" in the context of interest rate swaps. Basis risk is one of several risks are issuer must consider when entering into interest rate swap agreements.

Body

This article is intended to provide accurate and authoritative information in regard to the subject matter covered. The author and CDFA are not herein engaged in rendering legal, accounting or other professional services, nor does it intend that the material included herein be relied upon to the exclusion of outside counsel.

Basis Risk

Basis risk on a floating-to-fixed rate swap is the potential exposure of the issuer to the difference between the floating rate on the variable rate demand obligation bonds and the floating rate received from the swap counterparty. This occurs, for example, when the floating rate on the bonds such as the Bond Market Association (BMA) index is different than the index used by the counterparty such as 60-70% of LIBOR.

The BMA Municipal Swap Index ("BMA Index", formerly PSA) is a market basket index of over 200 active high-grade, governmental, tax-exempt, variable rate demand obligation bonds with weekly interest resets. The BMA index is the market benchmark for short-term, tax-exempt rates. See www.bondmarkets.com and select "swap Index" for a description, including a 10-year history of rates.

LIBOR is the London Interbank Offering Rate. This is the rate at which financial institutions will lend Eurodollars to each other. See www.bba.org.uk/public/LIBOR
for a description.

In recent years, a number of issuers have used "% of LIBOR" swaps while issuing tax-exempt bonds, such as State Housing Finance Agencies. This results in such issuers taking on basis risk (and tax risk) as the bonds of these issuers may trade at a level above the index that the swap is based on. In other words, there is a shortfall in the variable rate payment received from the counterparty and the variable rate due on the bonds, which the issuer must cover in addition to its fixed rate payment. BMA historically trades at about 65% of LIBOR, swaps priced at 60-70% of LIBOR are common. However, in recent months the spread between LIBOR and BMA has narrowed considerably—with BMA at times trading very close to LIBOR, such as 85-95% of LIBOR. When the spread between LIBOR and the BMA index narrows to a point that is below the swap index rate (60-70% of LIBOR) and the bonds and swap use these different indexes, the issuer must take on a portion of the variable rate payment on the bonds in addition to its fixed rate counterparty payment.

For example, assume the BMA index (rate governing variable rate demand obligation bonds) for any given month was 1.5% and the swap counterparty payment was based on 65% of LIBOR at a time when LIBOR was 1.4%. In this example, the counterparty payment would be .91% (.0065 X 1.4—nine tenths of 1%). Therefore, the issuer in this example would have to pay an additional .59% (fifty-nine basis points or over one-half of 1%) of the notional principal amount for the month in this example in addition to its fixed rate counterparty payment.

Historical BMA and LIBOR Rates
Period BMA Index 1 Month LIBOR Index
1990 to date 3.08% 4.54%
Last 10 Years 2.80% 4.25%
Last 5 Years 2.06% 2.94%
Last Year 1.26% 1.55%

While BMA index swaps in contrast to LIBOR would reduce basis risk, since the variable-rate paid on the bonds would be the same index paid by the counterparty in a floating –to-fixed rate swap, the fixed rate paid by the issuer would also be higher than a LIBOR based swap. In addition, there will still be some basis risk because most variable rate demand obligation bonds (weekly low-floaters) are priced weekly based on a rate determined by the remarketing agent that would enable the bonds to trade a par—they are not priced based on the BMA index. In other words, there can be a spread between the rate on the bonds and the BMA index.

It is very important for an issuer to understand any potential basis risk exposure as a party to a swap agreement and to access the cash flow implications over the term of the swap. In floating-to-fixed rate swaps where the counterparty is paying the variable interest rate based on a different index than that used on the bonds, the issuer should get from its counterparty a graph showing how the two interest rates, such as LIBOR and BMA, track each other historically.

Council of Development Finance Agencies
815 Superior Avenue
Suite 1301
Cleveland, Ohio 44114
Phone: (216) 920-3073
Fax: (216) 771-4938
E-mail: info@cdfa.net

EXHIBIT I

TheStreet.com

Tony Crescenzi Blog

Return to Article

Get to Know VRDOs

Tony Crescenzi

02/13/08 - 01:09 PM EST

Just when you thought you had learned nearly all of the financial acronyms there were to learn, here is another one: VRDOs, or variable-rate demand obligations. There is no reason to suspect any type of problem in the VRDO realm, but given all of the focus on municipal securities and the repeated surprises that have been sprung upon investors since last summer, it is a good idea to get a grip on as many relatively new products as possible.

Take particular note of the fact that VRDOs are issued by entities whose cash flows are generally stable, as shown in the excerpt below, which was adopted from my book, Stigum's Money Market. Keep in mind that **Fed** Chairman Ben Bernanke recently mentioned VRDOs in a letter he wrote to Congress regarding risks posed to the financial system by problems with the financial guarantors.

(The following is an excerpt from the book mentioned above.)

Variable-Rate Demand Obligations

A variable-rate demand obligation (VRDO) is a long-term security with periodic rate-reset dates on which the investor may put the paper back to the issuer's trustee at any time with specified notice (e.g., seven days). The put price is par, plus accrued interest.

VRDOs are issued to finance some sort of project: sewers, hospitals, public educational facilities, and so on. "Usually, VRDOs are issued," noted one marketing agent, "for general capital purposes. We do them for colleges, universities, hospitals, virtually any kind of issuer that has the authority to enter into a variable-rate obligation."

In 2005, data from the Bond Market Association and Thomson Financial show that the total issuance of VRDOs was $65 billion, which was double the level seen seven years earlier. In addition, there were over 23,000 active VRDOs remarketed by over 80 dealers. The total amount outstanding included about $250 billion of AMT VRDOs, $27.13 billion taxable VRDOs and $71.15 billion AMT VRDOs.

The Mechanics

Most VRDOs are long in term, 20, 30 or even 40 years, but they are considered short-term securities because their yields reset often and because of their put feature. The rate paid on them is reset at specified intervals, usually daily or weekly, but there are also weeklies, monthlies, semi-annuals and annuals available.

Also, there is a commercial-paper mode in which the reset period can be anything from one day (i.e., daily) to over 360 days. The reset period is customized by the investor. A VRDO with a six-month rate reset is called a six-month put bond; there is also an annual put bond.

Backups for VRDOs

Typically, a VRDO is backed with a credit line that ensures that there will be sufficient liquidity to meet any and all puts by investors. If an issuer of a VRDO isn't a top credit, it may also back its paper with a bank line of credit (LOC) or a Standby Bond-Purchase Agreement (SBPA).

A bank writing an LOC is writing a credit guarantee: It commits itself to pay off an issuer's bonds should the issuer default. Thus, the credit on such paper is regarded as being that of the bank writing the LOC, rather than that of the issuer.

SBPAs are typically provided by commercial banks and then insured by a municipal-bond insurance company. In fact, credit agencies, such as Standard & Poor's, base their credit ratings for tender obligations on VRDOs on third-party liquidity facilities, such as LOCs and SBPAs.

There have been some major issuers of VRDOs that have indicated to Standard & Poor's that they would rather use their own liquid assets in combination with liquidity facilities as a way of providing liquidity backup. They argue that liquidity facilities are often expensive and difficult to administer.

Standard & Poor's assigns dual ratings, such as "AA/A1+," to VRDOs, with the left side the "credit" rating on the bond and the right side the "liquidity" rating. The liquidity rating is assigned only if the VRDO has some form of liquidity support that meets the requirements of the bond structure. Issuers often have to renew their LOCs, which usually have an initial term of three to five years.

TheStreet.com Ratings updates stock ratings daily. However, if no rating change occurs, the data on this page does not update. The data does update after 90 days if no rating change occurs within that time period.

IDC calculates the Market Cap for the basic symbol to include common shares only. Year-to-date mutual fund returns are calculated on a monthly basis by Value Line and posted mid-month.

*Oil Data in Market Overview is Brent Crude Pricing

EXHIBIT J

Home Page | Back

MSRB NOTICE 2008-24 (MAY 23, 2008)

REQUEST FOR COMMENT: PLAN FOR INCREASING INFORMATION AVAILABLE FOR MUNICIPAL VARIABLE RATE DEMAND OBLIGATIONS

The MSRB continues to monitor the market for municipal Auction Rate Securities and remains concerned about the lack of comprehensive information available to market participants. In a recent notice, the MSRB requested comment on a plan for increasing information available on municipal Auction Rate Securities ("March 2008 Notice").[1] Comments received on the March 2008 Notice generally were supportive of the creation of a system to collect and disseminate critical market information about Auction Rate Securities. However, some commentators noted that, as a result of the extreme volatility in the market for Auction Rate Securities, many Auction Rate Securities have been redeemed by issuers or converted into other types of municipal securities thus reducing the amount of information that would be collected by such a system. As the MSRB reviews those comments, the question of increased transparency for municipal Variable Rate Demand Obligations (VRDOs) has surfaced.

VRDOs are long-term securities with short-term interest rate periods. There has been increased interest in the market for VRDOs by both issuers and investors as a result of the volatility in the market for Auction Rate Securities. Given this increased interest in the market for VRDOs and the likelihood that more individual investors may purchase VRDOs, the MSRB is concerned about the lack of information available to market participants on these securities. The MSRB is requesting comment on a proposal to collect and disseminate critical market information about VRDOs using the same system proposed in the March 2008 Notice for Auction Rate Securities.

The proposed plan for increasing information available on VRDOs is described below and is the same as the plan proposed for collection and dissemination for Auction Rate Securities described in the March 2008 Notice. Under the plan, dealers that act as remarketing agents would be required to report information about a VRDO by the end of the day that an interest rate reset occurs. Comments on the proposed plan should be submitted no later than June 30, 2008 and may be directed to Justin R. Pica, Uniform Practice Policy Advisor. Written comments will be available for public inspection.

BACKGROUND

VRDOs are long-term securities with short-term interest rates. Interest rates are reset periodically through programs operated by dealers ("Remarketing Agents") on behalf of the issuers of the securities. The interest rate is set to allow the securities to be sold at par. Interest on a VRDO typically is paid on a monthly or semiannual basis.

A distinguishing characteristic of VRDOs is the existence of a "put" or "tender" feature that allows holders to liquidate a position in a VRDO, at par, on a periodic basis. Through the put or tender feature, holders seeking to liquidate a position can put the securities back to the issuer through the Remarketing Agent. A specified amount of notice is required to be provided to the Remarketing Agent and during that notification period, the Remarketing Agent seeks to find a purchaser for the securities that have been tendered ("Notification Period"). If the Remarketing Agent is unable to find a purchaser for the securities during the Notification Period, a liquidity facility, such as a letter of credit (LOC) or standby bond purchase agreement (SBPA), provides a guarantee against a failed remarketing to ensure that the holder of a VRDO is able to liquidate its position at a price of par.

Existing Price Transparency Issues

As "short-term" securities under Rule G-14 on transaction reporting, VRDOs are subject to different reporting requirements than other securities. In 2003, the MSRB proposed rules for a Real-Time Transaction Reporting System (RTRS), including a requirement to report trades no later than fifteen minutes after the time of trade execution, and, for customer transactions, a

requirement that the trade report include both a dollar price and yield.[2] In response, the MSRB received comments from dealers that, because of the special trade processing methodologies for short-term variable rate securities, it would be difficult or impossible to meet these requirements for such securities. Based on these concerns, the MSRB included special provisions in the final rule that provide dealers with an end-of-day exception from the fifteen-minute reporting deadline and allow dealers to report customer transactions in variable rate securities without yield.

Since transactions in short-term variable rate securities are executed at a dollar price of par, the lack of yield means that RTRS provides little useful price information on these securities. The MSRB was aware of this in 2003 when it decided to provide the special provisions, noting:

> The MSRB does not currently plan to require reports of yields or reset rates on variable rate and auction rate products, but continues to be interested in price transparency in this area. Accordingly, the MSRB will explore other ways to provide transparency for short-term rates that are being set...in variable rate and auction products. [3]

VRDO Market

Most VRDOs have a minimum denomination of $100,000, thus they have primarily been marketed to an institutional customer base, such as tax-exempt money market and bond funds as well as corporations and trust departments. Information reported to RTRS indicates that most transactions in VRDOs are in large par amounts, reflecting the primarily institutional customer base.

Given the volatility in the market for Auction Rate Securities, the MSRB is concerned that individual investors may begin to have a greater presence in the market for VRDOs. The MSRB is not aware of any ready source of information available to retail investors or to the marketplace in general on VRDOs. Accordingly, many of the concerns the MSRB expressed in the March 2008 Notice with respect to the limited amount of information available to investors on Auction Rate Securities also apply to the market for VRDOs.

PLAN TO INCREASE VRDO TRANSPARENCY

To improve transparency of VRDOs, the MSRB proposes to require Remarketing Agents to report information about VRDOs to the MSRB by the end of the day that an interest rate is reset. Information received from Remarketing Agents would be posted to an MSRB web site immediately after receipt.

The information proposed to be collected on VRDOs would provide an investor with the ability to determine the current interest rate for the security and compare the current interest rate to other VRDOs. In addition, the MSRB proposes to collect information about the terms of the liquidity facilities attached to VRDOs. This would allow current and prospective investors to determine whether the VRDO is backed in full or only in part by a LOC or SBPA and inform investors of the expiration dates of the liquidity facilities.

The specific items of information about VRDOs proposed to be collected and disseminated include:

- CUSIP Number
- Name of Remarketing Agent
- Date of interest rate reset
- Interest rate for the next reset period
- Length of the interest rate reset period
- Length of Notification Period
- Whether interest rate is "set by formula" or "set by Remarketing Agent"
- Minimum and maximum rates, if any
- Minimum denomination
- Type of liquidity facility(ies)
- Expiration date of each liquidity facility

In addition to the specific items of information listed above, the MSRB also proposes to receive notification of interest rate conversions, including the date of the conversion and the new interest rate mode. The MSRB proposes to require receipt of such information about interest

rate conversions by the end of the day on which an interest rate conversion occurs.

Information Collection and Dissemination Methodology

The proposed collection of information about VRDOs would be accomplished through (i) a secure, password-protected Internet web site; and (ii) computer-to-computer data connections.[4] The MSRB would allow Remarketing Agents to designate third parties, such as information vendors, to provide information to the MSRB on the Remarketing Agent's behalf. However, the responsibility to ensure timely and accurate reporting of information to the MSRB would remain with the Remarketing Agent.

Each Remarketing Agent and submitter would be required to complete and keep current an electronic registration form.[5] This form would provide the MSRB with contact information for purposes of sending electronic records of submissions and to allow for follow-up by MSRB staff should any submission prove to be incomplete or incorrect. In addition, Remarketing Agents would identify intended methods of submitting information and identify third-party submitters that would submit information to the MSRB on their behalf.

Information about VRDOs submitted by or on behalf of a Remarketing Agent would be displayed immediately after receipt on an MSRB web site. In addition to the information submitted, users of the MSRB web site would be able to access any additional documents on file with the MSRB associated with the VRDO, such as the Official Statement, as well as trade reports disseminated from RTRS.

REQUEST FOR COMMENT

Comment is requested on all aspects of the proposed plan for increasing transparency of VRDOs. Consideration of the following questions may be helpful in providing comments:

- Are the items of information proposed to be collected and disseminated about VRDOs appropriate? Are there additional items of information that should be added to this list of information?

- What is the current and anticipated volume of VRDOs that are bought by retail customers?

- The MSRB proposes that Remarketing Agents would be required to provide information about VRDOs to the MSRB by the end of the day on which an interest rate is reset. What time would the information proposed to be collected about VRDOs be available on the day an interest rate is reset? What deadline would allow for a sufficient amount of time for Remarketing Agents to provide the information to the MSRB?

- Do Remarketing Agents anticipate difficulty in being able to collect such information about VRDOs for purposes of providing it to the MSRB? Are there technical or operational difficulties associated with providing information about VRDOs to the MSRB?

- Are there documents concerning VRDOs that are not currently required to be filed with the MSRB under Rule G-36, on delivery of official statements, advance refunding documents and Forms G-36(OS) and G-36(ARD), such as the LOC or SBPA for a VRDO, that should be filed with the MSRB and made publicly available?

* * *

Comments should be submitted no later than June 30, 2008, and may be directed to Justin R. Pica, Uniform Practice Policy Advisor. Written comments will be available for public inspection at the MSRB's public access facility and also will be posted on the MSRB web site.[6]

May 23, 2008

---

[1] *See* Request for Comment: Plan for Increasing Information Available for Municipal Auction Rate Securities, MSRB Notice 2008-15 (March 17, 2008).

[2] Inter-dealer trade reports, in general, are not required to include yield.

[3] *See* Real-Time Transaction Reporting: Revised Schedule and Operational Plan, MSRB Notice 2003-44 (December 11, 2003).

[4] One example of a computer-to-computer data connection would be web service through which dealers would transmit information using standardized file formats. The MSRB would have the goal of ensuring an efficient process for submission of information and would work with Remarketing Agents and other submitters to determine appropriate system specifications.

[5] This form would be similar to Form RTRS which dealers as well as non-dealer service bureaus that report trades on behalf of dealers are required to complete prior to submitting trade reports to RTRS.

[6] All comments received will be made publicly available without change. Personal identifying information, such as names or e-mail addresses, will not be edited from submissions. Therefore, commentators should submit only information that they wish to make available publicly.

EXHIBIT K

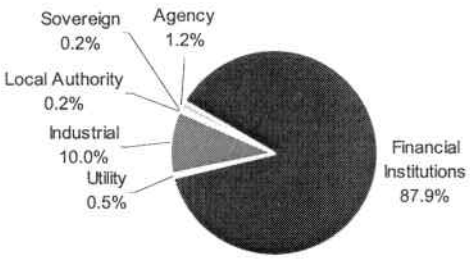
LEHMAN BROTHERS

U.S. Corporate FRN Index

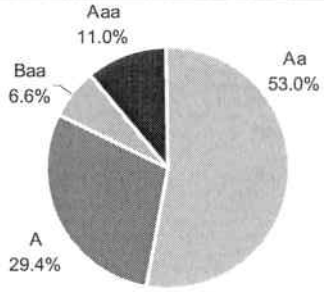
Overview

On October 1, 2003, the U.S. Floating-Rate Note (FRN) Index was launched, measuring the performance of floating-rate notes across sector, credit quality, maturity, and asset class while providing an important boost to liquidity into the FRN market. This index is not part of any of our U.S. Aggregate Index, which is a fixed coupon index.

Sector Breakdown as of 12/31/2007



Quality Breakdown as of 12/31/2007



Access to the Index

LehmanLive Website
www.lehmanlive.com

KEY FEATURES

- Daily index returns and statistics
- Historical index time series downloadable into Excel
- Standardized market structure reports
- Fully customizable views
- Index primers and shelf reference documents
- Latest index and portfolio strategies research publications

Bloomberg Index Page <LEHM><18><7>

POINT (Portfolio and Index Tool)
Long Name: US FRN
Short Name: US FRN

KEY FEATURES

- Index level returns and statistics
- Historical index constituents
- Fully customizable market structure reports
- Index dynamics and turnover reports
- Portfolio upload/analysis
- Multi-factor Global Risk Model
- Portfolio performance attribution
- Automated batch processing

Pricing and Related Issues

Sources & Frequency	All bonds are marked daily by FT Interactive Data (IDC). Additionally, up to 50 actively traded benchmark corporate securities are priced by traders at different times throughout the month.
Pricing Quotes	Bonds priced by FT Interactive Data are quoted using direct price quotes as a percentage of par. Bonds priced by the Lehman traders are quoted using a discount margin.
Timing	3:00 pm (New York time) each day. If the last business day of the month is a public holiday in the U.S. market, prices from the previous business day are used.
Bid or Offer Side	Bonds in the index are priced on the bid side.
Settlement Assumptions	T+3 settlement basis for all bonds
Reinvestment of Cash flows	Index cashflows are reinvested at the start of the month following their receipt. There is no return on cash held intra-month.

Contacts

New York	London	Tokyo	Hong Kong
index@lehman.com	londonindexgroup@lehman.com	tkindexhelp@lehman.com	hongkongasiaindex@lehman.com
+1 212 526 7400	+44 20 7102-2220	+81 3 6440 1770	+852 2252 6230

U.S. Corporate FRN Index

Rules for Inclusion

Amount Outstanding	USD 300 million minimum par amount outstanding.
Quality	Must be rated investment grade (Baa3/BBB-/BBB- or above) using the middle rating of Moody's, S&P, and Fitch, respectively. ◆ When all three agencies rate an issue, a median or "two out of three" rating is used to determine index eligibility by dropping the highest and lowest rating. ◆ When a rating from only two agencies is available, the lower ("most conservative") of the two is used. ◆ When a rating from only one agency is available, that rating is used to determine index eligibility.
Maturity	◆ Minimum of 1 month to final maturity with an issue date of 1998 or later. Prior to April 1, 2007, the minimum time to maturity was 13 months. ◆ Must have an original maturity of at least 18 months.
Seniority of Debt	Senior and subordinated issues are included.
Currency	Denominated in USD.
Coupon	Step-up coupons and 3-month LIBOR-based fixed spread securities.
Market of Issue	SEC-registered, fully taxable issues. SEC Rule 144A securities with and without Registration Rights are included.
Security Types	**Included:** ◆ Bullet and callable structures ◆ FRNs with coupon step-ups ◆ 3-month LIBOR-based fixed spread securities ◆ Corporate entities and funding agreements **Excluded:** ◆ Yankee CDs ◆ ABS ◆ Preferreds ◆ Perpetuals ◆ Longer dated maturity ◆ Agency issues

Rebalancing Rules

Frequency	The composition of the Returns Universe is rebalanced monthly at each month end and represents the set of bonds on which index returns are calculated. The Statistics Universe changes daily to reflect issues dropping out and entering the index, but is not used for return calculation. On the last business day of the month, the composition of the latest Statistics Universe becomes the Returns Universe for the following month.
Index Changes	During the month, indicative changes to securities (maturity, credit rating change, sector reclassification, amount outstanding) are reflected in both the Statistics and Returns Universe of the index on a daily basis. These changes may cause bonds to enter or fall out of the Statistics Universe of the index on a daily basis, but will affect the composition of the Returns Universe only at month-end when the index is rebalanced.
Reinvestment of Cash Flows	Interest and principal payments earned by the Returns Universe are held in the index without a reinvestment return until month-end when it is removed from the index.
New Issues	Qualifying securities issued, but not necessarily settled, on or before the month-end rebalancing date qualify for inclusion in the following month's Returns Universe.

Index History

October 1, 2003	U.S. Corporate FRN Index introduced

Indices are unmanaged and cannot accommodate direct investments. Past performance is not indicative of future results.

This material has been prepared and/or issued by Lehman Brothers Inc., member SIPC, and/or one of its affiliates ("Lehman Brothers") and has been approved by Lehman Brothers International (Europe), authorized and regulated by the Financial Services Authority, in connection with its distribution in the European Economic Area. This material is distributed in Japan by Lehman Brothers Japan Inc., and in Hong Kong by Lehman Brothers Asia Limited. This material is distributed in Australia by Lehman Brothers Australia Pty Limited, and in Singapore by Lehman Brothers Singapore Pte Limited. Where this material is distributed by Lehman Brothers Singapore Pte Limited, please note that it is intended for general circulation only and the recommendations contained herein do not take into account the specific investment objectives, financial situation or particular needs of any particular person. An investor should consult his Lehman Brothers representative regarding the suitability of the product and take into account his specific investment objectives, financial situation or particular needs before making a commitment to purchase the investment product. This material is distributed in Korea by Lehman Brothers International (Europe) Seoul Branch, and in Taiwan by Lehman Brothers Securities Taiwan Limited.

This document is for information purposes only and it should not be regarded as an offer to sell or as a solicitation of an offer to buy the securities or other instruments mentioned in it. No part of this document may be reproduced in any manner without the written permission of Lehman Brothers. We do not represent that this information, including any third party information, is accurate or complete and it should not be relied upon as such. It is provided with the understanding that Lehman Brothers is not acting in a fiduciary capacity. Opinions expressed herein reflect the opinion of Lehman Brothers and are subject to change without notice. The products mentioned in this document may not be eligible for sale in some states or countries, and they may not be suitable for all types of investors. Lehman Brothers may, from time to time, perform investment banking or other services for, or solicit investment banking or other business from any company mentioned in this document. Additional information is available on request. Please contact a Lehman Brothers entity in your home jurisdiction.

EXHIBIT L

Contract for Difference

From Reuters Financial Glossary

The exchange of a fixed price asset for a floating price asset. In foreign exchange markets the term is used to describe the settlement of the difference between a contract rate and the eventual settlement rate. Contracts for difference (CFDs), are an equity derivative that give a trader the ability to trade a vast range of financial instruments, including shares, indices, commodities and currencies across international markets. CFDs do not grant ownership of the underlying asset, just access to the price performance.

Characteristics include:

Leveraging / gearing - CFDs make use of the 'gearing' principle. This enables investors to increase their percentage return, and losses, on investments.

Short (Selling) as well as Long (Buying) - CFDs also provide you with the ability to sell the assets you are trading. If you perceive a fall in the market value of an instrument then you can choose to short sell. By short selling a CFD, you can benefit from any fall in the asset value.

No Stamp Duty - As CFDs are a derivative product there is currently no stamp duty to pay when trading CFDs on UK equities.

CFDs are currently available in listed and/or over the-counter markets in countries such as United Kingdom, New Zealand, Germany, Switzerland, Italy, Singapore, South Africa, Australia and recently Hong Kong. CFDs are referred to by a variety of names, depending on who and where they are issued. They are sometimes called Turbo Certificates or Waves. In Hong Kong, they are referred as Callable Bull/Bear Contracts.

Article provided courtesy of MFGfx, a leading provider of self-directed online CFDs trading (*http://www.mfgfx.com/*)

See also: FX

EXHIBIT M

Contract For Difference (CFD)

By Max Hotopf | 17:14:45 | 12 April 2007

1. INTRODUCTION TO CONTRACT FOR DIFFERENCES

A beginner's guide

Any experienced investor looking to speculate on the stockmarket may consider borrowing money in order to buy shares that they feel sure are likely to go up. Typically, you might get a loan from the bank for say £20,000, and then buy £20,000 of shares in your chosen company or companies, in the hope of making a healthy profit that will more than cover the cost of servicing the loan.
Another way of achieving a similar goal is to buy a contract for difference (CFD).

2. WHAT ARE CFDS?

How do they work?

According to the technical definitions, a CFD is 'a contract designed to make a profit or avoid a loss through the movements in the price of an underlying item.' That item can be a stock market index eg, the FTSE 100, a bond, an option, but for the individual investor is most usually an equity, a share in a company that you do not physically own, but from which you get all of the associated benefits including dividends. Since you are not actually buying or selling the shares, CFDs are also exempt from stamp duty.

When you buy or sell (go long or short) a CFD, you are entering into a contract a broker, to exchange the difference between an opening value and the closing value of a particular financial instrument (share, bond, index etc.)

In most respects, buying a CFD mirrors buying the underlying instrument. In the case of an individual equity you will get dividend payments for example.

You will basically make a 'call' on whether you think a share, bond, or index is going to go up or down, and you will buy or sell a CFD accordingly. If you get it right, the company pays you the difference between where you bought, or sold, and the current value. If you get it wrong the CFD issuer is the winner.

Margin trading

Perhaps one of the major differences between trading CFDs and the underlying instrument is the fact that you can trade 'on margin.' In other words the broker will allow you to buy a certain value of CFDs by putting down a small percentage of the total value. For example, to buy £1,000 worth of shares you may only need to deposit £50 or 5% with the CFD provider.

You are effectively 'leveraging' or 'gearing' your investment, being offered credit with which to buy CFDs.

But it is this high level of gearing that makes CFDs particularly risky, and therefore unsuitable for any private investor who does not understand the risks or cannot afford to lose his or her investment. In effect, you can double or lose your money by just a 20% move in the underlying stock or index, depending if your call on whether they would go up or down was right or wrong.

Even the brokers themselves admit that it is a market strictly for risk capital.

Financing

Since the CFD provider is effectively lending you money, you get charged financing costs for CFD share positions kept open overnight. Typically you get charged interest on the 'unmargined' portion of your position. In other words if you put £50 down for a £1,000 trade, you'd get charged costs on the remaining £1,950.

However if you have 'sold' or 'gone short' a CFD, the company will pay you interest.

3. EXAMPLES OF USING CFDS - MAKING A PROFIT

Let's say you decide to buy some Vodafone shares. It is 5 January, and the bid/offer spread is 134.25p/134.5p.

If you were to buy 10,000 actual shares, you would, not surprisingly, have to hand over £13,450. But to buy the equivalent of 10,000 shares via CFDs, you won't actually pay over any money, but you will have to lodge your 5% or so margin in your account.

Because the CFD company is effectively funding your purchase, you will be charged interest calculated daily, based on the closing price of the shares each day. If the interest rate is say 5%, and Vodafone's shares close today at 135p, you would be charged £1.84 for the day (10,000 x 5% x 135p/365 days).

Let's say three weeks later, you are still holding your position open, and you pass Vodafone's ex-dividend date. This would have entitled you to payment of a dividend if you'd been holding the actual shares. So the company puts some money into your account equivalent to the dividend.

In this case, it would be 10,000 shares, at say 1.25p per share, x 80% (dividend adjustment dependent on tax jurisdiction etc) = £100.00.

In the first week of February, you decide to close out your position on Vodafone. The share price is now 160/160.25p.

You 'sell' your Vodafone position to the CFD provider for 160p, the 'bid' price. So your profit on your position is as follows: difference between opening purchase (134.5p) and closing sell price (160p), is 25.5p. Multiplied by 10,000 shares = £2,550.

So your overall profit, assuming an interest rate of 5% for one month, would be: £2,550 minus interest at 5% for the month of £78 = £2,472 + interest adjustment* of £100 = £2,572 profit.

*The interest cost of your position is calculated daily, by applying the applicable interest rate to the daily closing value of the position. The daily closing value is the number of shares multiplied by the closing price. Each day's interest calculation will be different. Interest adjustments are calculated daily and usually posted to your account on a weekly basis.

Making a loss

Conversely, had you decided to 'sell' Vodafone on 5 January at 134.25p, because you believed the shares would fall, here's what you might have lost.

You sell the equivalent of 10,000 shares on 5 January at 134.25p. Because you are effectively 'lending' money to the company, it will pay you interest, at say 5%. Say the shares close at 135p; the company will pay you £1.84 for the day (10,000 x 5% x 135p/365 days).

However, after four weeks you realise you have called Vodafone the wrong way, and in spite of your bearishness, the shares have continued to rise. You decide to cut your losses at 160/160.25p.

The difference between where you initially sold, 134.25p, and now, where you can buy (160.25p) is 26p. Multiplied by 10,000 shares = £2,600. Minus the interest you've been paid of £78 = £2,522 loss.

4. SITUATIONS IN WHICH CFDS MAY BE APPROPRIATE

Shorting

Five years ago private investors could only really make money in a rising market,

because they were only really able to buy shares they thought would jump in value.

The advent of CFDs (including spread betting) has meant that as far as the retail trader is concerned it is irrelevant whether the market is moving up or down, just so long as it is moving. With CFDs you are able to profit from a falling share price as well as a rising price (by shorting, ie, selling a position that you do not have and buying it back later at a lower price, the exact opposite of what we normally do when we expect a price to rise.)

Hedging an existing holding
Let's say that you have a long-term holding in Vodafone shares, but think they are likely to fall in the short term.

You could 'sell' a CFD on Vodafone in the hope of making some short-term money out of the fall, while holding on to your actual shares for the longer term.

5. The costs - No Stamp Duty
With a CFD you are not physically buying the stock, so you are not liable for the 0.5% stamp duty. This will represent a significant saving over time, even for a relatively inactive investor/trader.

In fact, if you were to trade a £25,000 position each day, via a conventional stock broker you would pay the Government an incredible £27,500 in stamp duty over one year.

Commissions and other charges
These will vary but typically you will be charged a commission for 'opening a long position,' buying a CFD, or for opening a short position, or selling a CFD. This could be in the order of say 0.6%, although some providers do not charge a commission. However, those not charging a commission will usually take something out of the dealing spread when executing the trade. In other words the difference between the bid and offer price of the CFD.

You will also be charged a finance charge. Again this will vary according to the provider.

But since when you trade on margin and you buy a CFD you are effectively borrowing money to finance the purchase, you will pay a financing charge.

The opposite occurs when you sell a CFD, where you will receive interest.

Dividend payments or other corporate actions (eg, rights issues, warrants, stock splits) are reflected in your CFD by way of a cash adjustment. In the case of dividends a long position will usually attract a credit of 85-90% and a short position 100% adjustment.

EXHIBIT N

Jefferson County, Alabama

Swap Monitoring Report
January 31, 2007

Prepared by CDR Financial Products, Inc.

CDR
FINANCIAL PRODUCTS

CDR
FINANCIAL PRODUCTS

Jefferson County, Alabama

Swap Monitoring Report
January 31, 2007

Introduction

Jefferson County, Alabama (the "County") currently has fifteen (15) swaps and two (2) swaptions with four (4) counterparties. The total notional amount as of January 31, 2007 is $5,723,555,000.

Counterparty credit ratings and swap notional amounts are listed below:

Counterparty	Rating S&P*	Rating Moody's*	Rating Fitch*	Swap Notional	Notional % of Total
Bank of America, N.A.	AA	Aa1	AA-	$752,853,250	13
Bear Stearns Capital Markets	A+	A1	A+	$1,567,778,000	27
Lehman Brothers Special Financing	A+	A1	NR	$190,054,000	3
JPMorgan Chase Bank	AA-	Aa2	A+	$3,212,869,750	56
Total				$5,723,555,000	100%

** Credit Ratings have been provided by the respective Swap Providers directly and/or through Bloomberg or the rating agency websites. Ratings not provided by a rating agency for a specific counterparty are indicated as "NR"*

As we understand, the County executed most of its swaps[1] to generate significant debt service savings in comparison to other financing alternatives at the time. The savings generated from these swaps have assisted the County in keeping sewer rates down. Refer to the table below for details:

Refunding Savings Matrix

Bond Issue	Swap Notional	Provider	Net PV Savings	% Savings of Refunded Bonds
2001B GO Warrants	$120,000,000	JP Morgan Chase	$7,341,000	7.30%
2002C Sewer Warrants	$539,450,000 $110,000,000 $190,000,000	JP Morgan Chase Bank of America Lehman Brothers	$57,529,051	7.94%
2003B Sewer Warrants	$1,035,800,000	JP Morgan Chase	$64,675,744	7.01%
2003C Sewer Warrants	$789,020,000 $263,000,000	JP Morgan Chase Bank of America	$85,000,000	8.43%
Total	$3,047,270,000		$214,545,795	

[1] CDR Financial acted as swap advisor on six (6) of the County's sixteen (16) swaps and received information regarding debt service savings from the County, their Financial Advisors & Swap Counterparties.

Portfolio Analysis

The mark to market[2] as of January 31, 2007 for the portfolio is ($75,847,253). The mark to market as of December 29, 2006 was ($129,704,321), resulting in a positive change of $53,857,068 during the valuation period.

Refer to the table below for a more detailed analysis of the portfolio changes caused by interest rate movements during the valuation period:

MTM Valuations

Derivative Type/Hedge Code	NPV Jan. 31, 2007	MTM Jan. 31, 2007	MTM Dec. 31, 2006	MTM Change	Number of Swaps
Floating	(27,782,991)	(27,774,935)	(25,933,476)	(1,841,459)	4
Interim Reversal	(3,721,408)	(2,540,839)	(3,234,451)	693,612	3
Synthetic Fixed	(18,014,854)	(15,558,208)	(17,025,852)	1,467,644	1
Synthetic Float	3,218,902	(334,593)	(614,252)	279,659	2
Synthetic Refund	(76,984,140)	(29,638,678)	(82,896,290)	53,257,612	7
Total	($123,284,490)	($75,847,253)	($129,704,321)	$53,857,068	17

The mark to market is analogous to unrealized losses or gains in that a swap would need to be terminated before a payment was due. The swaps could be terminated for certain events of default under the related ISDA documentation, including swap Counterparty default. In the event of default by a swap Counterparty, it is likely that the event would be cured through an assignment to an alternate swap Counterparty. In addition, a swap may be optionally terminated pursuant to the optional termination language stated in the confirmation. If a Counterparty is downgraded and the portfolio/individual swap is positive, the County may be entitled to receive collateral from that Counterparty equal to the amount outlined in the established Credit Support Agreement.

The total net present value (NPV) stated in the table above is the amount that the County would pay to the swap Counterparties in the event that their outstanding swaps were terminated, excluding bid/ask spreads.

If interest rates rise by 100 basis points, the mark to market on the swaps would increase by $214,796,169. If interest rates rise by 200 basis points, the mark to market on the swaps would increase by $387,423,962.

[2] The indicative pricing information which appears herein reflects the subjective opinion of CDR Financial. CDR Financial makes no representations or guarantees regarding the accuracy, reliability, or completeness of the pricing information. As this is our opinion, all price indications are subject to change without notice. We are not liable for any damages, including loss of profits, which may result from any reliance on this information. By providing this information to you, CDR Financial is not creating any independent obligation to enter into or liquidate derivative transactions at indicated prices.

Attached as an Exhibit are a number of reports that include:

1. Maturity Report *(current notional amounts)*
2. Mark to Market Report
3. PV0X Summary Report *(current value of one basis point on outstanding swaps)*
4. DV0X Summary Report – 100 BP Shift *(value of 100 basis point shift in the Libor forward curve)*
5. DV0X Summary Report – 200 BP Shift *(value of 200 basis point shift in the Libor forward curve)*
6. Graphs

CDR
FINANCIAL PRODUCTS

Maturity Report

By Customer

As of 01/31/2007

StDate	EndDate	Bucket	Entity	Branch	Hedge	Our Ref	CustCode	B/S	PC	ProdCode	Description	Curr. Notional
BEAR												
08/01/12	02/01/42	2042	JEFFCTY	BIRM	FLOATING	500729	BEAR	BUY		SWAP	USD-LIBOR-1M / USD-LIBOR-1M 01FEB42 633.08MM NN NN	633,078,000
02/01/11	02/01/40	2040	JEFFCTY	BIRM	FLOATING	500730	BEAR	BUY		SWAP	USD-LIBOR-1M / USD-LIBOR-1M 01FEB40 824.70MM NN NN	824,700,000
06/24/04	02/01/42	2042	JEFFCTY	BIRM	FLOATING	500731	BEAR	BUY		SWAP	USD-LIBOR-1M / USD-BMA-1M 01FEB42 110.00MM NN NW	110,000,000
							BEAR					1,567,778,000
BOA												
08/01/12	02/01/42	2042	JEFFCTY	BIRM	FLOATING	500968	BOA	BUY		SWAP	USD-LIBOR-1M / USD-LIBOR-1M 01FEB42 379.85MM NN NN	379,847,000
08/07/03	02/01/42	2042	JEFFCTY	BIRM	SYNREFUND	500213	BOA	BUY		SWAP	USD-FIXED / USD-LIBOR-1M 01 FEB 2042 263.01MM 3.596% (2003- C Sewer Refunding Warrants)	263,006,250
10/25/02	02/01/40	2040	JEFFCTY	BIRM	SYNREFUND	500017	BOA	BUY	SWAPADV	SWAP	USD-LIBOR-1M / USD-FIXED-6M 01FEB40 110.00MM 3.920% NN	110,000,000
							BOA					752,853,250
JPM												
05/01/03	02/01/42	2042	JEFFCTY	BIRM	SYNREFUND	500013	JPM	BUY	SWAPADV	SWAP	USD-FIXED / USD-BMA-1M 01 FEB 2042 1,035.80MM 3.678% (2003-B1-B7 Refunding Warrants)	1,035,800,000
10/25/02	02/01/40	2040	JEFFCTY	BIRM	SYNREFUND	500015	JPM	BUY	SWAPADV	SWAP	USD-FIXED / USD-LIBOR-1M 01 FEB 2040 539.45MM 3.920% (2002-C Sewer Refunding Warrants)	539,446,000
04/19/01	04/01/11	2011	JEFFCTY	BIRM	SYNREFUND	500037	JPM	BUY	SWAPADV	SWAP	USD-FIXED / USD-BMA-1M 01 APR 2011 120.00MM 4.295% (2001-B General Obligation Refunding Warrants)	120,000,000
02/01/02	02/01/07	2007	JEFFCTY	BIRM	INTERIMREV	500043	JPM	BUY	SWAPADV	SWAP	USD-FIXED / USD-BMA-1M 01 FEB 2007 70.00MM 3.945% (2002-A Sewer Revenue Warrants)	70,000,000
02/01/02	02/03/31	2031	JEFFCTY	BIRM	SYNFLOAT	500045	JPM	BUY	SWAPADV	SWAP	USD-FIXED / USD-BMA-1M 01 FEB 2031 70.00MM 5.170% CANCEL	70,000,000
02/15/02	02/01/42	2042	JEFFCTY	BIRM	SYNFIXED	500047	JPM	BUY	SWAPADV	SWAP	USD-FIXED / USD-BMA-1M 01 FEB 2042 110.00MM 5.060% (2002-A Sewer Revenue Warrrants)	110,000,000
08/07/03	02/01/42	2042	JEFFCTY	BIRM	SYNREFUND	500211	JPM	BUY		SWAP	USD-FIXED / USD-LIBOR-1M 01 FEB 2042 789.02MM 3.596% (2003-C Sewer Refunding Warrants)	789,018,750
05/01/04	02/01/24	2024	JEFFCTY	BIRM	SYNFLOAT	500436	JPM	BUY		SWAP	USD-FIXED-6M / USD-BMA-1M 01FEB24 111.83MM 4.325% NW CANCEL	103,605,000
02/02/09	01/02/16	2016	JEFFCTY	BIRM	INTERIMREV	500659	JPM	BUY		SWAPTION	USD-FIXED / USD-BMA-1M 02 JAN 2016 200.00MM 5.069% (1007-A, 2001-A, 2002-C Sewer Revenue Warrants)	200,000,000
02/02/09	01/02/16	2016	JEFFCTY	BIRM	INTERIMREV	500660	JPM	BUY		SWAPTION	USD-FIXED / USD-BMA-1M 02 JAN 2016 175.00MM 5.225% (2002-A, 2002-C)	175,000,000
							JPM					3,212,869,750
LHMN												
10/25/02	02/01/40	2040	JEFFCTY	BIRM	SYNREFUND	500028	LHMN	BUY	SWAPADV	SWAP	USD-LIBOR-1M / USD-FIXED-6M 01FEB40 190.05MM 3.920% NN	190,054,000
							LHMN					190,054,000

StDate	EndDate	Bucket	Entity	Branch	Hedge	Our Ref	CustCode	B/S	PC	ProdCode	Description	Curr. Notional
Grand Total												5,723,555,000

ENTITY=JEFFCTY BRANCH=BIRM

Powered By Ferential Systems
www.ferential.com

Record Count 17

Run DateTime 2007-02-05 18:53:24

Printed 02/05/2007

DSN CDRNET
User CDR4USER

CDR
FINANCIAL PRODUCTS

Mark To Market Report

Value Date - 01/31/2007

Sorted By HedgeCode.CustCode

No	Our Ref	CustCode	ProdCode	MatTyp	B/S	Start	End	Ntl 1	Ntl 2	Description	NPV	MTM	Accrual	Premium
HEDGECODE - FLOATING														
1	500730	BEAR	SWAP	FIXED	BUY	02/01/11	02/01/40	825	825	USD-LIBOR-1M / USD-LIBOR-1M 01FEB40 824.70MM NN NN	-8,446,834.98	-8,446,834.98	0.00	0.00
2	500731	BEAR	SWAP	FIXED	BUY	06/24/04	02/01/42	110	110	USD-LIBOR-1M / USD-BMA-1M 01FEB42 110.00MM NN NW	-10,094,759.08	-10,086,703.46	-8,055.62	0.00
3	500729	BEAR	SWAP	FIXED	BUY	08/01/12	02/01/42	633	633	USD-LIBOR-1M / USD-LIBOR-1M 01FEB42 633.08MM NN NN	-5,786,427.24	-5,786,427.24	0.00	0.00
4	500968	BOA	SWAP	FIXED	BUY	08/01/12	02/01/42	380	380	USD-LIBOR-1M / USD-LIBOR-1M 01FEB42 379.85MM NN NN	-3,454,969.40	-3,454,969.40	0.00	0.00
Sub Total											-27,782,990.70	-27,774,935.08	-8,055.62	0.00
HEDGECODE - INTERIMREV														
5	500043	JPM	SWAP	CANCEL	BUY	02/01/02	02/01/07	70	70	USD-FIXED / USD-BMA-1M 01 FEB 2007 70.00MM 3.945% (2002-A Sewer Revenue Warrants)	-1,173,471.92	7,097.28	-1,180,569.20	0.00
6	500659	JPM	SWAPTION	FIXED	BUY	02/02/09	01/02/16	200	200	USD-FIXED / USD-BMA-1M 02 JAN 2016 200.00MM 5.069% (1007-A, 2001-A, 2002-C Sewer Revenue Warrants)	-1,358,899.17	-1,358,899.17	0.00	-1,358,899.17
7	500660	JPM	SWAPTION	FIXED	BUY	02/02/09	01/02/16	175	175	USD-FIXED / USD-BMA-1M 02 JAN 2016 175.00MM 5.225% (2002-A, 2002-C)	-1,189,036.78	-1,189,036.78	0.00	-1,189,036.78
Sub Total											-3,721,407.87	-2,540,838.67	-1,180,569.20	-2,547,935.95
HEDGECODE - SYNFIXED														
8	500047	JPM	SWAP	FIXED	BUY	02/15/02	02/01/42	110	110	USD-FIXED / USD-BMA-1M 01 FEB 2042 110.00MM 5.060% (2002-A Sewer Revenue Warrrants)	-18,014,854.31	-15,558,208.04	-2,456,646.27	0.00
Sub Total											-18,014,854.31	-15,558,208.04	-2,456,646.27	0.00
HEDGECODE - SYNFLOAT														
9	500436	JPM	SWAP	CANCEL	BUY	05/01/04	02/01/24	104	104	USD-FIXED-6M / USD-BMA-1M 01FEB24 111.83MM 4.325% NW CANCEL	1,307,978.79	-636,197.45	1,944,176.24	-4,023,811.00
10	500045	JPM	SWAP	CANCEL	BUY	02/01/02	02/03/31	70	70	USD-FIXED / USD-BMA-1M 01 FEB 2031 70.00MM 5.170% CANCEL	1,910,923.36	301,604.16	1,609,319.20	-10,095,126.51

No	Our Ref	CustCode	ProdCode	MatTyp	B/S	Start	End	Ntl 1	Ntl 2	Description	NPV	MTM	Accrual	Premium
Sub Total											3,218,902.15	-334,593.29	3,553,495.44	-14,118,937.51
HEDGECODE - SYNREFUND														
11	500017	BOA	SWAP	FIXED	BUY	10/25/02	02/01/40	110	110	USD-LIBOR-1M / USD-FIXED-6M 01FEB40 110.00MM 3.920% NN	-5,768,469.54	-3,928,649.23	-1,839,820.31	0.00
12	500213	BOA	SWAP	FIXED	BUY	08/07/03	02/01/42	263	263	USD-FIXED / USD-LIBOR-1M 01 FEB 2042 263.01MM 3.596% (2003- C Sewer Refunding Warrants)	-2,029,289.22	1,943,588.29	-3,972,877.51	0.00
13	500037	JPM	SWAP	CANCEL	BUY	04/19/01	04/01/11	120	120	USD-FIXED / USD-BMA-1M 01 APR 2011 120.00MM 4.295% (2001-B General Obligation Refunding Warrants)	-4,679,781.57	-3,319,265.33	-1,360,516.24	-327,015.74
14	500015	JPM	SWAP	FIXED	BUY	10/25/02	02/01/40	539	539	USD-FIXED / USD-LIBOR-1M 01 FEB 2040 539.45MM 3.920% (2002-C Sewer Refunding Warrants)	-28,288,975.99	-19,266,396.86	-9,022,579.13	0.00
15	500013	JPM	SWAP	FIXED	BUY	05/01/03	02/01/42	1,036	1,036	USD-FIXED / USD-BMA-1M 01 FEB 2042 1,035.80MM 3.678% (2003-B1-B7 Refunding Warrants)	-20,174,591.53	-4,103,492.51	-16,071,099.02	0.00
16	500211	JPM	SWAP	FIXED	BUY	08/07/03	02/01/42	789	789	USD-FIXED / USD-LIBOR-1M 01 FEB 2042 789.02MM 3.596% (2003-C Sewer Refunding Warrants)	-6,087,867.52	5,830,765.00	-11,918,632.52	0.00
17	500028	LHMN	SWAP	FIXED	BUY	10/25/02	02/01/40	190	190	USD-LIBOR-1M / USD-FIXED-6M 01FEB40 190.05MM 3.920% NN	-9,955,164.39	-6,795,227.14	-3,159,937.25	0.00
Sub Total											-76,984,139.76	-29,638,677.78	-47,345,461.98	-327,015.74
Grand Total											-123,284,490.49	-75,847,252.86	-47,437,237.63	-16,993,889.20

FILTER: Entity = JEFFCTY, Branch = BIRM

Printed 02/05/2007

DSN CDRNET
User CDR4USER

PVOX Summary Report - 1.00 BP Shift

Value Date - 01/31/2007 Sorted By HedgeCode.CustCode

No	Our Ref	CustCode	Product	Start	End	Ntl 1	Ntl 2	Description	NPV	PVOX
HEDGECODE - FLOATING										
1	500730	BEAR	SWAP	02/01/11	02/01/40	825	825	USD-LIBOR-1M / USD-LIBOR-1M 01FEB40 824.70MM NN NN	-8,446,834.98	0.00
2	500731	BEAR	SWAP	06/24/04	02/01/42	110	110	USD-LIBOR-1M / USD-BMA-1M 01FEB42 110.00MM NN NW	-10,094,759.08	0.00
3	500729	BEAR	SWAP	08/01/12	02/01/42	633	633	USD-LIBOR-1M / USD-LIBOR-1M 01FEB42 633.08MM NN NN	-5,786,427.24	0.00
4	500968	BOA	SWAP	08/01/12	02/01/42	380	380	USD-LIBOR-1M / USD-LIBOR-1M 01FEB42 379.85MM NN NN	-3,454,969.40	0.00
Sub Total									-27,782,990.70	0.00
HEDGECODE - INTERIMREV										
5	500043	JPM	SWAP	02/01/02	02/01/07	70	70	USD-FIXED / USD-BMA-1M 01 FEB 2007 70.00MM 3.945% (2002-A Sewer Revenue Warrants)	-1,173,471.92	-3,499.48
6	500659	JPM	SWAPTION	02/02/09	01/02/16	200	200	USD-FIXED / USD-BMA-1M 02 JAN 2016 200.00MM 5.069% (1007-A, 2001-A, 2002-C Sewer Revenue Warrants)	-1,358,899.17	14,014.73
7	500660	JPM	SWAPTION	02/02/09	01/02/16	175	175	USD-FIXED / USD-BMA-1M 02 JAN 2016 175.00MM 5.225% (2002-A, 2002-C)	-1,189,036.78	10,555.06
Sub Total									-3,721,407.87	21,070.31
HEDGECODE - SYNFIXED										
8	500047	JPM	SWAP	02/15/02	02/01/42	110	110	USD-FIXED / USD-BMA-1M 01 FEB 2042 110.00MM 5.060% (2002-A Sewer Revenue Warrrants)	-18,014,854.31	-176,828.59
Sub Total									-18,014,854.31	-176,828.59
HEDGECODE - SYNFLOAT										
9	500436	JPM	SWAP	05/01/04	02/01/24	104	104	USD-FIXED-6M / USD-BMA-1M 01FEB24 111.83MM 4.325% NW CANCEL	1,307,978.79	37,466.12
10	500045	JPM	SWAP	02/01/02	02/03/31	70	70	USD-FIXED / USD-BMA-1M 01 FEB 2031 70.00MM 5.170% CANCEL	1,910,923.36	13,221.05
Sub Total									3,218,902.15	50,687.17
HEDGECODE - SYNREFUND										
11	500017	BOA	SWAP	10/25/02	02/01/40	110	110	USD-LIBOR-1M / USD-FIXED-6M 01FEB40 110.00MM 3.920% NN	-5,768,469.54	-150,356.94
12	500213	BOA	SWAP	08/07/03	02/01/42	263	263	USD-FIXED / USD-LIBOR-1M 01 FEB 2042 263.01MM 3.596% (2003- C Sewer Refunding Warrants)	-2,029,289.22	-369,343.91

No	Our Ref	CustCode	Product	Start	End	Ntl 1	Ntl 2	Description	NPV	PVOX
13	500037	JPM	SWAP	04/19/01	04/01/11	120	120	USD-FIXED / USD-BMA-1M 01 APR 2011 120.00MM 4.295% (2001-B General Obligation Refunding Warrants)	-4,679,781.57	-43,177.66
14	500015	JPM	SWAP	10/25/02	02/01/40	539	539	USD-FIXED / USD-LIBOR-1M 01 FEB 2040 539.45MM 3.920% (2002-C Sewer Refunding Warrants)	-28,288,975.99	-737,362.98
15	500013	JPM	SWAP	05/01/03	02/01/42	1,036	1,036	USD-FIXED / USD-BMA-1M 01 FEB 2042 1,035.80MM 3.678% (2003-B1-B7 Refunding Warrants)	-20,174,591.53	-1,392,297.08
16	500211	JPM	SWAP	08/07/03	02/01/42	789	789	USD-FIXED / USD-LIBOR-1M 01 FEB 2042 789.02MM 3.596% (2003-C Sewer Refunding Warrants)	-6,087,867.52	-1,108,031.75
17	500028	LHMN	SWAP	10/25/02	02/01/40	190	190	USD-LIBOR-1M / USD-FIXED-6M 01FEB40 190.05MM 3.920% NN	-9,955,164.39	-259,762.03
Sub Total									-76,984,139.76	-4,060,332.35
Grand Total									-123,284,490.49	-4,165,403.46

Powered By Ferential Systems
www.ferential.com

FILTER: Entity = JEFFCTY, Branch = BIRM

Printed 02/05/2007

DSN CDRNET
User CDR4USER

CDR FINANCIAL PRODUCTS

DVOX Summary Report - 100.00 BP Shift

Value Date - 01/31/2007

Sorted By HedgeCode.CustCode

No	Our Ref	CustCode	Product	Start	End	Ntl 1	Ntl 2	Description	NPV	ShiftUP	Shift down	Avg Shift
HEDGECODE - FLOATING												
1	500730	BEAR	SWAP	02/01/11	02/01/40	825	825	USD-LIBOR-1M / USD-LIBOR-1M 01FEB40 824.70MM NN NN	-8,446,834.98	-6,744,093.56	8,833,676.62	7,788,885.09
2	500731	BEAR	SWAP	06/24/04	02/01/42	110	110	USD-LIBOR-1M / USD-BMA-1M 01FEB42 110.00MM NN NW	-10,094,759.08	-5,535,660.27	7,014,162.26	6,274,911.27
3	500729	BEAR	SWAP	08/01/12	02/01/42	633	633	USD-LIBOR-1M / USD-LIBOR-1M 01FEB42 633.08MM NN NN	-5,786,427.24	-4,342,107.02	5,849,716.25	5,095,911.64
4	500968	BOA	SWAP	08/01/12	02/01/42	380	380	USD-LIBOR-1M / USD-LIBOR-1M 01FEB42 379.85MM NN NN	-3,454,969.40	-2,599,128.27	3,495,148.62	3,047,138.45
Sub Total									-27,782,990.70	-19,220,989.12	25,192,703.75	22,206,846.45
HEDGECODE - INTERIMREV												
5	500043	JPM	SWAP	02/01/02	02/01/07	70	70	USD-FIXED / USD-BMA-1M 01 FEB 2007 70.00MM 3.945% (2002-A Sewer Revenue Warrants)	-1,173,471.92	31.21	-31.37	31.29
6	500659	JPM	SWAPTION	02/02/09	01/02/16	200	200	USD-FIXED / USD-BMA-1M 02 JAN 2016 200.00MM 5.069% (1007-A, 2001-A, 2002-C Sewer Revenue Warrants)	-1,358,899.17	-2,875,948.85	1,117,217.08	1,996,582.97
7	500660	JPM	SWAPTION	02/02/09	01/02/16	175	175	USD-FIXED / USD-BMA-1M 02 JAN 2016 175.00MM 5.225% (2002-A, 2002-C)	-1,189,036.78	-2,516,455.25	977,564.95	1,747,010.10
Sub Total									-3,721,407.87	-5,392,372.89	2,094,750.66	3,743,624.36
HEDGECODE - SYNFIXED												
8	500047	JPM	SWAP	02/15/02	02/01/42	110	110	USD-FIXED / USD-BMA-1M 01 FEB 2042 110.00MM 5.060% (2002-A Sewer Revenue Warrrants)	-18,014,854.31	16,795,911.33	-21,216,645.68	19,006,278.51
Sub Total									-18,014,854.31	16,795,911.33	-21,216,645.68	19,006,278.51
HEDGECODE - SYNFLOAT												
9	500436	JPM	SWAP	05/01/04	02/01/24	104	104	USD-FIXED-6M / USD-BMA-1M 01FEB24 111.83MM 4.325% NW CANCEL	1,307,978.79	-7,506,765.59	8,430,327.43	7,968,546.51
10	500045	JPM	SWAP	02/01/02	02/03/31	70	70	USD-FIXED / USD-BMA-1M 01 FEB 2031 70.00MM 5.170% CANCEL	1,910,923.36	-8,581,445.15	10,321,813.00	9,451,629.08

No	Our Ref	CustCode	Product	Start	End	Ntl 1	Ntl 2	Description	NPV	ShiftUP	Shift down	Avg Shift
Sub Total									3,218,902.15	-16,088,210.74	18,752,140.43	17,420,175.59
HEDGECODE - SYNREFUND												
11	500017	BOA	SWAP	10/25/02	02/01/40	110	110	USD-LIBOR-1M / USD-FIXED-6M 01FEB40 110.00MM 3.920% NN	-5,768,469.54	9,049,303.92	-11,040,731.70	10,045,017.81
12	500213	BOA	SWAP	08/07/03	02/01/42	263	263	USD-FIXED / USD-LIBOR-1M 01 FEB 2042 263.01MM 3.596% (2003- C Sewer Refunding Warrants)	-2,029,289.22	21,092,371.86	-25,985,567.53	23,538,969.70
13	500037	JPM	SWAP	04/19/01	04/01/11	120	120	USD-FIXED / USD-BMA-1M 01 APR 2011 120.00MM 4.295% (2001-B General Obligation Refunding Warrants)	-4,679,781.57	4,491,931.27	-4,674,628.15	4,583,279.71
14	500015	JPM	SWAP	10/25/02	02/01/40	539	539	USD-FIXED / USD-LIBOR-1M 01 FEB 2040 539.45MM 3.920% (2002-C Sewer Refunding Warrants)	-28,288,975.99	44,378,543.86	-54,144,695.21	49,261,619.54
15	500013	JPM	SWAP	05/01/03	02/01/42	1,036	1,036	USD-FIXED / USD-BMA-1M 01 FEB 2042 1,035.80MM 3.678% (2003-B1-B7 Refunding Warrants)	-20,174,591.53	80,780,025.56	-98,595,050.80	89,687,538.18
16	500211	JPM	SWAP	08/07/03	02/01/42	789	789	USD-FIXED / USD-LIBOR-1M 01 FEB 2042 789.02MM 3.596% (2003-C Sewer Refunding Warrants)	-6,087,867.52	63,277,115.54	-77,956,702.80	70,616,909.17
17	500028	LHMN	SWAP	10/25/02	02/01/40	190	190	USD-LIBOR-1M / USD-FIXED-6M 01FEB40 190.05MM 3.920% NN	-9,955,164.39	15,632,538.74	-19,073,393.70	17,352,966.22
Sub Total									-76,984,139.76	238,701,830.75	-291,470,769.89	265,086,300.33
Grand Total									-123,284,490.49	214,796,169.33	-266,647,820.73	327,463,225.24

Powered By Ferential Systems
www.ferential.com

FILTER: Entity = JEFFCTY, Branch = BIRM

Printed 02/05/2007

DSN CDRNET
User CDR4USER

CDR
FINANCIAL PRODUCTS

DVOX Summary Report - 200.00 BP Shift

Value Date - 01/31/2007

Sorted By HedgeCode.CustCode

No	Our Ref	CustCode	Product	Start	End	Ntl 1	Ntl 2	Description	NPV	ShiftUP	Shift down	Avg Shift
HEDGECODE - FLOATING												
1	500730	BEAR	SWAP	02/01/11	02/01/40	825	825	USD-LIBOR-1M / USD-LIBOR-1M 01FEB40 824.70MM NN NN	-8,446,834.98	-11,865,004.86	20,367,465.93	16,116,235.40
2	500731	BEAR	SWAP	06/24/04	02/01/42	110	110	USD-LIBOR-1M / USD-BMA-1M 01FEB42 110.00MM NN NW	-10,094,759.08	-9,966,194.80	16,021,256.35	12,993,725.58
3	500729	BEAR	SWAP	08/01/12	02/01/42	633	633	USD-LIBOR-1M / USD-LIBOR-1M 01FEB42 633.08MM NN NN	-5,786,427.24	-7,531,530.93	13,678,962.06	10,605,246.50
4	500968	BOA	SWAP	08/01/12	02/01/42	380	380	USD-LIBOR-1M / USD-LIBOR-1M 01FEB42 379.85MM NN NN	-3,454,969.40	-4,511,475.70	8,163,484.86	6,337,480.28
Sub Total									-27,782,990.70	-33,874,206.29	58,231,169.20	46,052,687.76
HEDGECODE - INTERIMREV												
5	500043	JPM	SWAP	02/01/02	02/01/07	70	70	USD-FIXED / USD-BMA-1M 01 FEB 2007 70.00MM 3.945% (2002-A Sewer Revenue Warrants)	-1,173,471.92	62.28	-62.89	62.59
6	500659	JPM	SWAPTION	02/02/09	01/02/16	200	200	USD-FIXED / USD-BMA-1M 02 JAN 2016 200.00MM 5.069% (1007-A, 2001-A, 2002-C Sewer Revenue Warrants)	-1,358,899.17	-7,933,544.77	1,346,500.30	4,640,022.54
7	500660	JPM	SWAPTION	02/02/09	01/02/16	175	175	USD-FIXED / USD-BMA-1M 02 JAN 2016 175.00MM 5.225% (2002-A, 2002-C)	-1,189,036.78	-6,941,851.68	1,178,187.76	4,060,019.72
Sub Total									-3,721,407.87	-14,875,334.17	2,524,625.17	8,700,104.85
HEDGECODE - SYNFIXED												
8	500047	JPM	SWAP	02/15/02	02/01/42	110	110	USD-FIXED / USD-BMA-1M 01 FEB 2042 110.00MM 5.060% (2002-A Sewer Revenue Warrrants)	-18,014,854.31	30,253,323.59	-48,333,489.13	39,293,406.36
Sub Total									-18,014,854.31	30,253,323.59	-48,333,489.13	39,293,406.36
HEDGECODE - SYNFLOAT												
9	500436	JPM	SWAP	05/01/04	02/01/24	104	104	USD-FIXED-6M / USD-BMA-1M 01FEB24 111.83MM 4.325% NW CANCEL	1,307,978.79	-14,212,355.06	17,927,111.24	16,069,733.15
10	500045	JPM	SWAP	02/01/02	02/03/31	70	70	USD-FIXED / USD-BMA-1M 01 FEB 2031 70.00MM 5.170% CANCEL	1,910,923.36	-15,753,853.79	22,727,775.22	19,240,814.51

No	Our Ref	CustCode	Product	Start	End	Ntl 1	Ntl 2	Description	NPV	ShiftUP	Shift down	Avg Shift
Sub Total									3,218,902.15	-29,966,208.85	40,654,886.46	35,310,547.66
HEDGECODE - SYNREFUND												
11	500017	BOA	SWAP	10/25/02	02/01/40	110	110	USD-LIBOR-1M / USD-FIXED-6M 01FEB40 110.00MM 3.920% NN	-5,768,469.54	16,523,269.47	-24,614,304.41	20,568,786.94
12	500213	BOA	SWAP	08/07/03	02/01/42	263	263	USD-FIXED / USD-LIBOR-1M 01 FEB 2042 263.01MM 3.596% (2003- C Sewer Refunding Warrants)	-2,029,289.22	38,363,064.44	-58,280,682.41	48,321,873.43
13	500037	JPM	SWAP	04/19/01	04/01/11	120	120	USD-FIXED / USD-BMA-1M 01 APR 2011 120.00MM 4.295% (2001-B General Obligation Refunding Warrants)	-4,679,781.57	8,809,611.60	-9,540,856.50	9,175,234.05
14	500015	JPM	SWAP	10/25/02	02/01/40	539	539	USD-FIXED / USD-LIBOR-1M 01 FEB 2040 539.45MM 3.920% (2002-C Sewer Refunding Warrants)	-28,288,975.99	81,031,478.44	-120,710,686.51	100,871,082.48
15	500013	JPM	SWAP	05/01/03	02/01/42	1,036	1,036	USD-FIXED / USD-BMA-1M 01 FEB 2042 1,035.80MM 3.678% (2003-B1-B7 Refunding Warrants)	-20,174,591.53	147,526,587.53	-219,972,761.74	183,749,674.64
16	500211	JPM	SWAP	08/07/03	02/01/42	789	789	USD-FIXED / USD-LIBOR-1M 01 FEB 2042 789.02MM 3.596% (2003-C Sewer Refunding Warrants)	-6,087,867.52	115,089,193.32	-174,842,047.27	144,965,620.30
17	500028	LHMN	SWAP	10/25/02	02/01/40	190	190	USD-LIBOR-1M / USD-FIXED-6M 01FEB40 190.05MM 3.920% NN	-9,955,164.39	28,543,183.09	-42,523,145.50	35,533,164.30
Sub Total									-76,984,139.76	435,886,387.89	-650,484,484.34	543,185,436.14
Grand Total									-123,284,490.49	387,423,962.17	-597,407,292.64	672,542,182.77

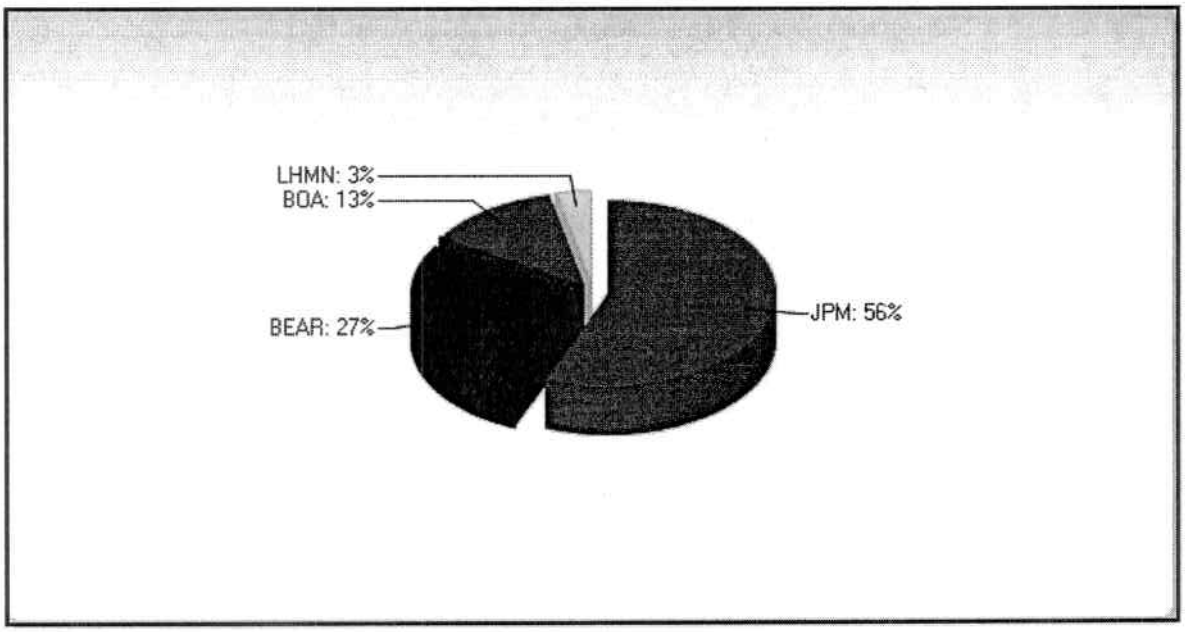
FILTER: Entity = JEFFCTY, Branch = BIRM

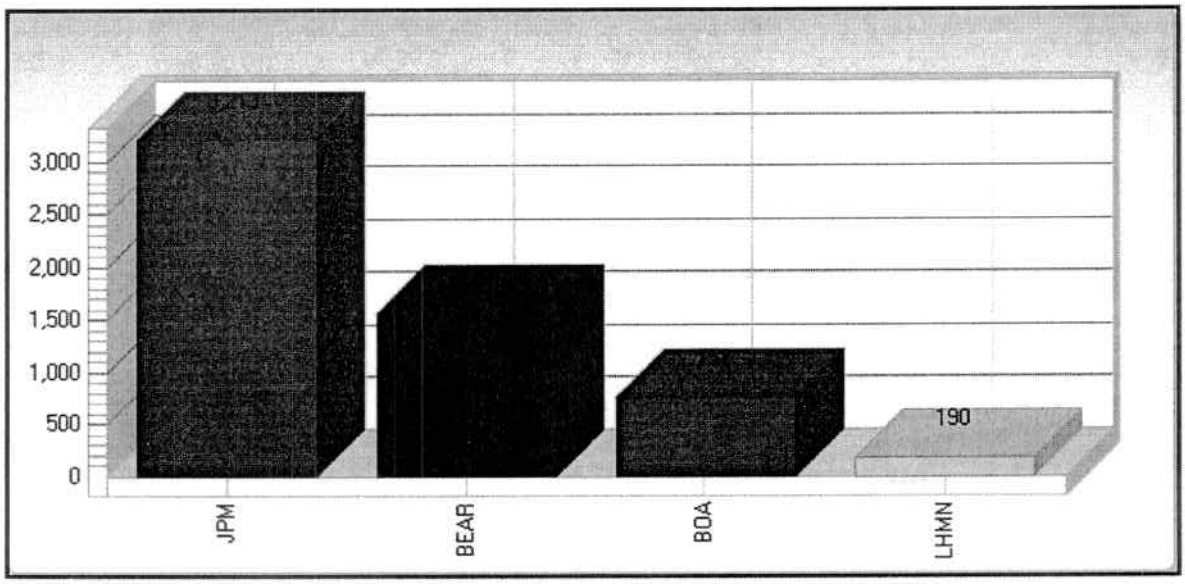
CDR
FINANCIAL PRODUCTS

Customer Notional Allocation (MM's)

By Customer

Value Date - 01/31/2007





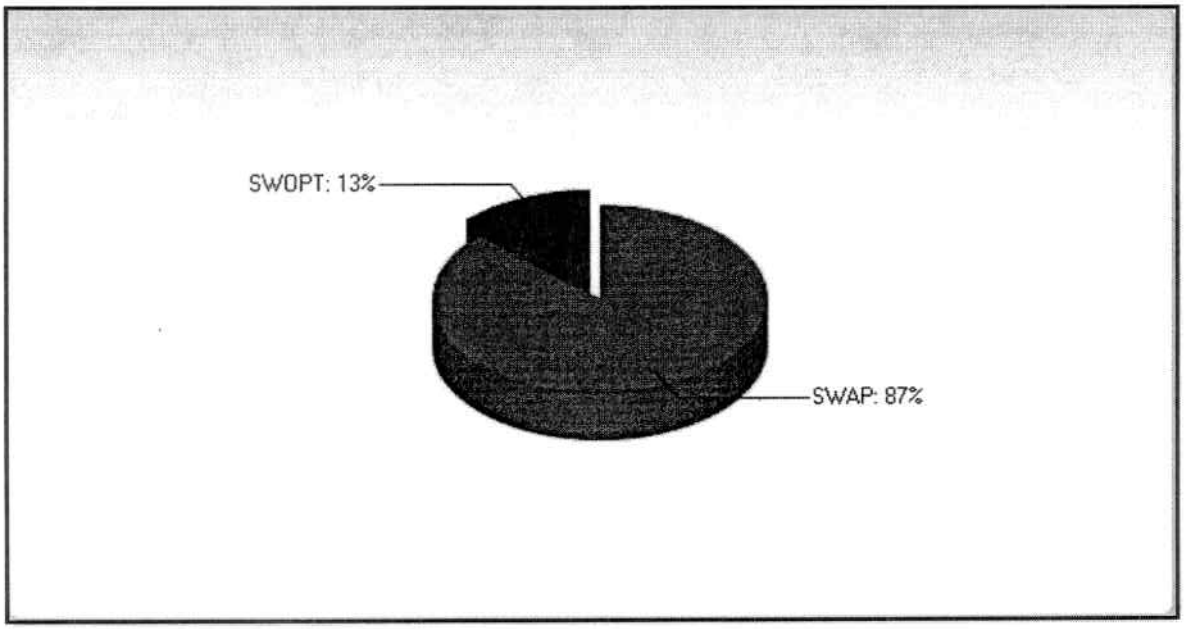
Printed On 2007-02-05 DSN CDRNET User ID CDR4USER

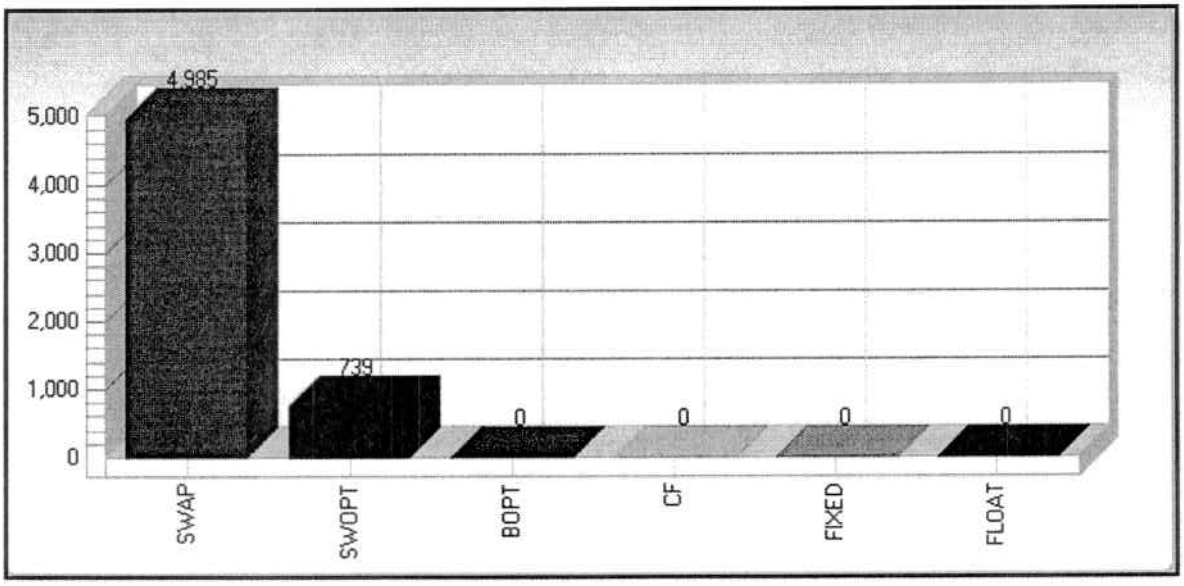
CDR
FINANCIAL PRODUCTS

Portfolio Allocation (MMs)

By Customer

Value Date - 01/31/2007





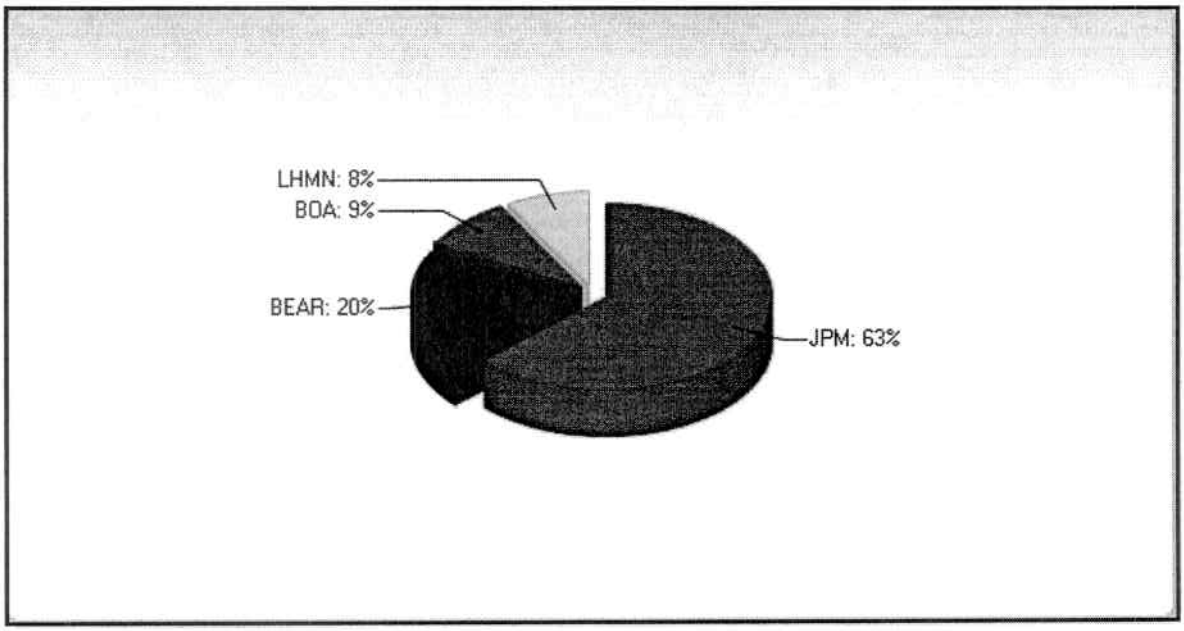
Printed On 2007-02-05 DSN CDRNET User ID CDR4USER

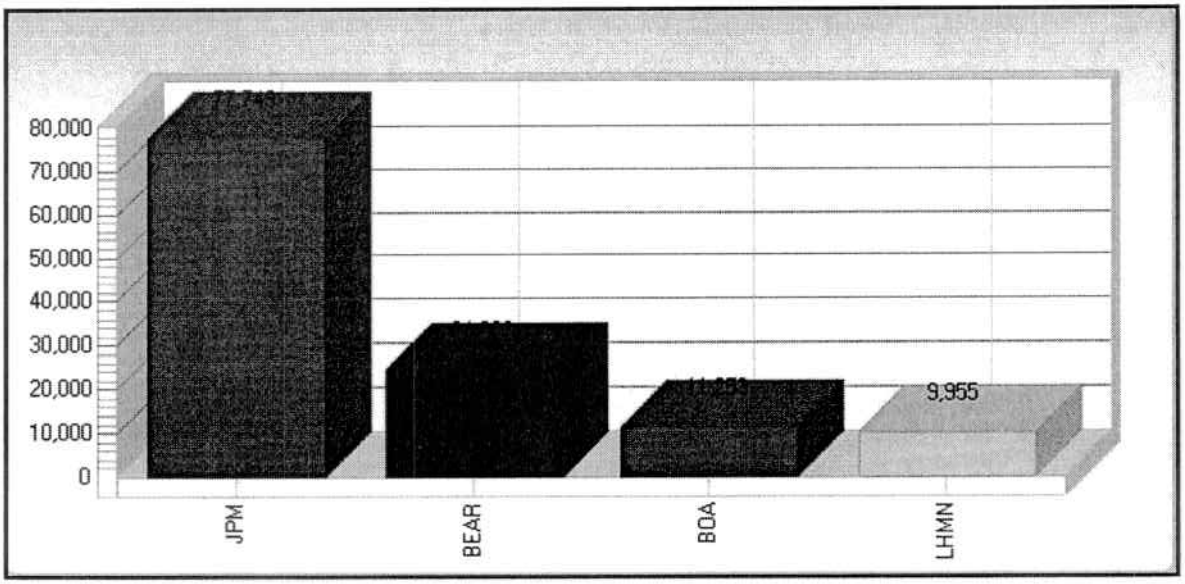
CDR
FINANCIAL PRODUCTS

Customer NPV Loss Allocation (000's)

By Customer

Value Date - 01/31/2007



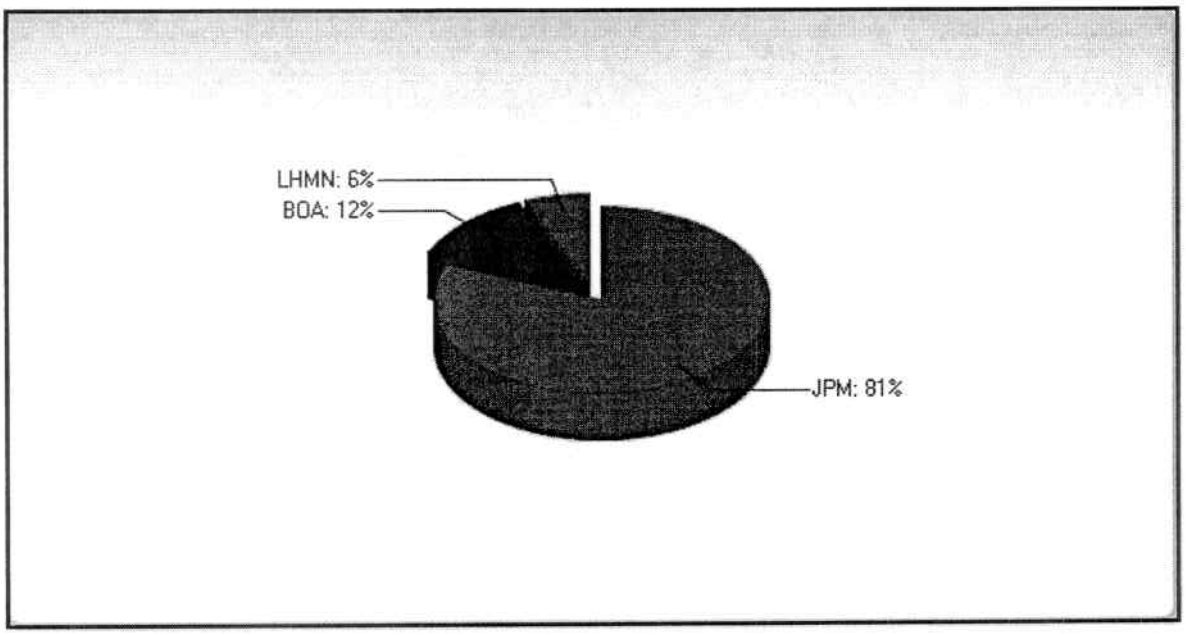


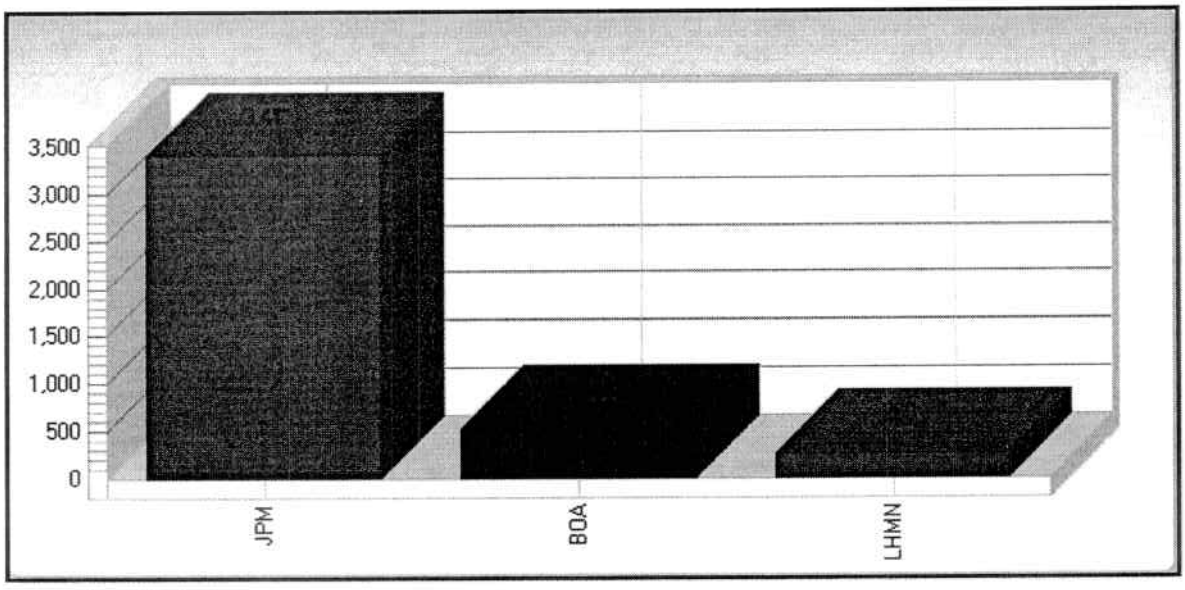
CDR
FINANCIAL PRODUCTS

Customer PVOX Loss Allocation (000's) BY SHIFT1

By Customer

Value Date - 01/31/2007

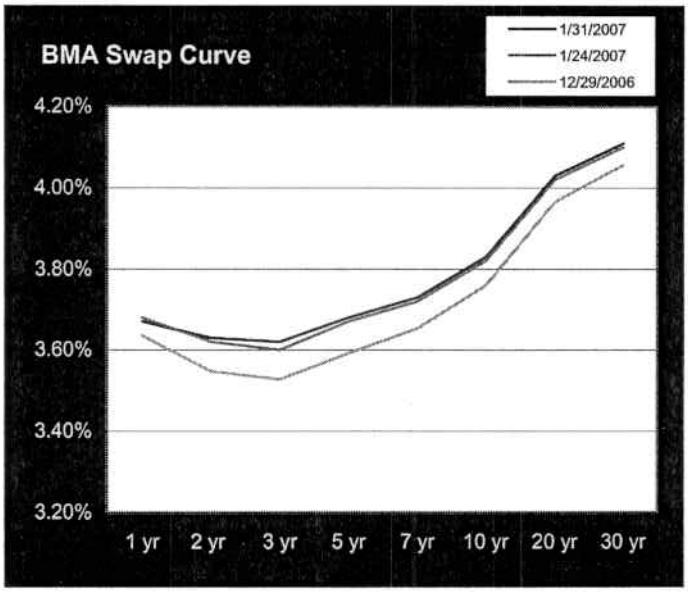


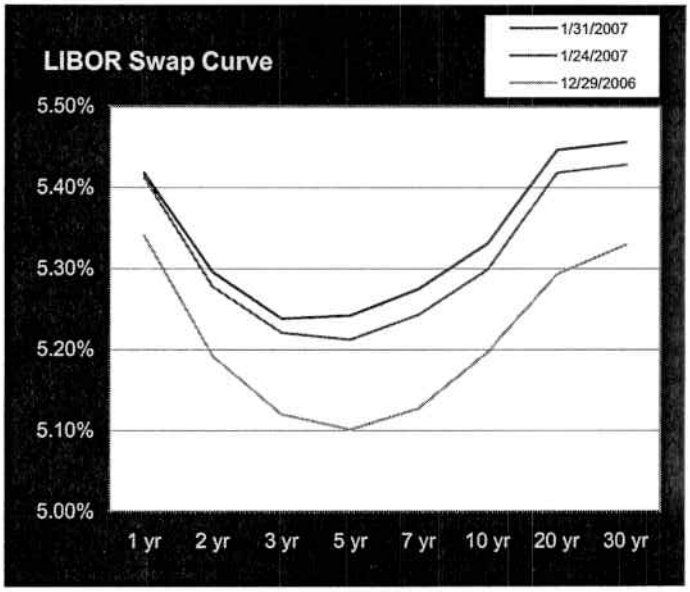


Printed On 2007-02-05 DSN CDRNET User ID CDR4USER

CDR
FINANCIAL PRODUCTS

BMA vs. LIBOR Swap Curve Comparison



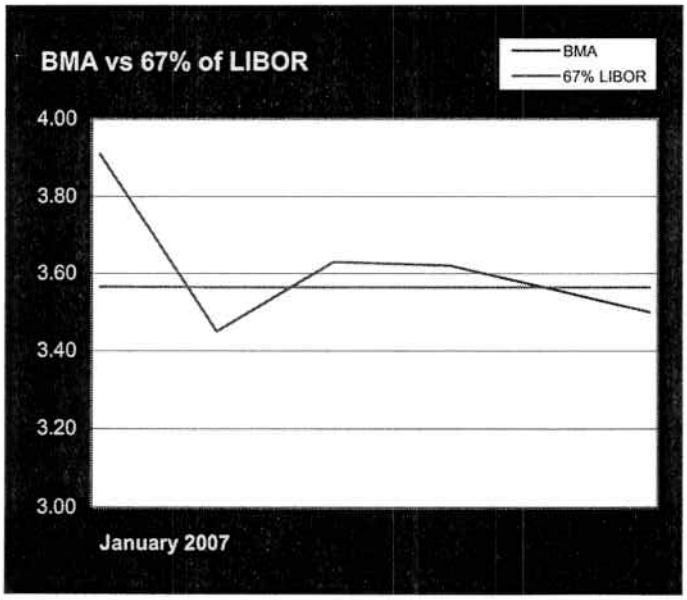


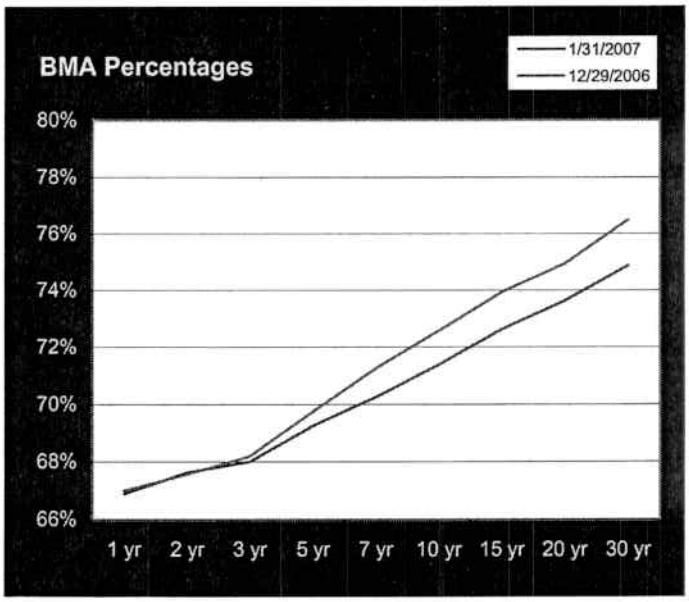
BMA vs. 67% of LIBOR Analysis

Date	BMA	67% LIBOR	Difference
01/31/07	3.50	3.56	(0.06)
01/19/07	3.62	3.56	0.06
01/12/07	3.63	3.56	0.07
01/05/07	3.45	3.56	(0.11)
12/29/06	3.91	3.57	0.34

BMA	67% LIBOR	Difference
3.62	3.56	0.06

*Averages for the month





Volatility Analysis

Volatility is a variable used while pricing options on swaps and caps. It tries to capture the probability of future deviations around the underlying index's mean. The monetary translation of volatility is called Vega which is most valuable when the option is "at the money" and is diminished the further into or out of "the money" it goes. Vega is directly related to the value of an option. In itself, volatility is a measure of the standard deviation of very short-term returns on the underlying asset. As you go further out on the yield curve, volatilities are difficult to predict and the empirical assumptions of large samples cause the distribution to become normal thus eliminating the effect of short term skew and kurtosis. A higher volatility will cause the risk of significant outliers to increase which subsequently increases the standard deviation of the forecasted distribution, thus the option value will increase due to increased risk. Also, term has a major impact on volatilities since the distribution for forward starting and long term is more likely to have a normal distribution around its mean. The London Inter-bank Offered Rate (the "LIBOR") has a traded volatility grid used during the pricing of any option transaction. BMA, however, has no "traded" volatility grid levels, meaning the levels are arbitrary and could potentially be skewed to the benefit of the dealer/provider. It is crucial to have an understanding of the volatility levels applicable to any option based pricing, particularly BMA based swaps.

Volatility levels decreased overall, as noted by comparing the volatility grid from December 29 to January 31 (see tables below). A higher volatility is to the benefit of the owner of the option since it becomes more valuable:

December 29, 2006

Swaption Volatilities

Swap Tenor

OPTION Tenors	1Y	2Y	3Y	4Y	5Y	7Y	10Y	30Y
1Y	16.70000	16.80000	16.50000	16.20000	15.90000	15.30000	14.40000	12.50000
2Y	17.50000	17.30000	17.00000	16.70000	16.30000	15.80000	15.00000	13.00000
3Y	17.70000	17.50000	17.20000	16.90000	16.60000	16.10000	15.20000	13.20000
4Y	17.40000	17.20000	16.90000	16.70000	16.40000	15.80000	15.10000	13.10000
5Y	17.40000	17.00000	16.50000	15.30000	16.20000	15.70000	15.00000	13.10000
7Y	16.40000	16.10000	15.90000	15.50000	15.30000	14.80000	14.30000	12.30000
10Y	15.10000	14.90000	14.70000	14.40000	14.30000	13.80000	13.20000	11.30000
30Y	15.10000	14.90000	14.70000	14.40000	14.30000	13.80000	13.20000	11.30000

January 31, 2007

Swaption Volatilities

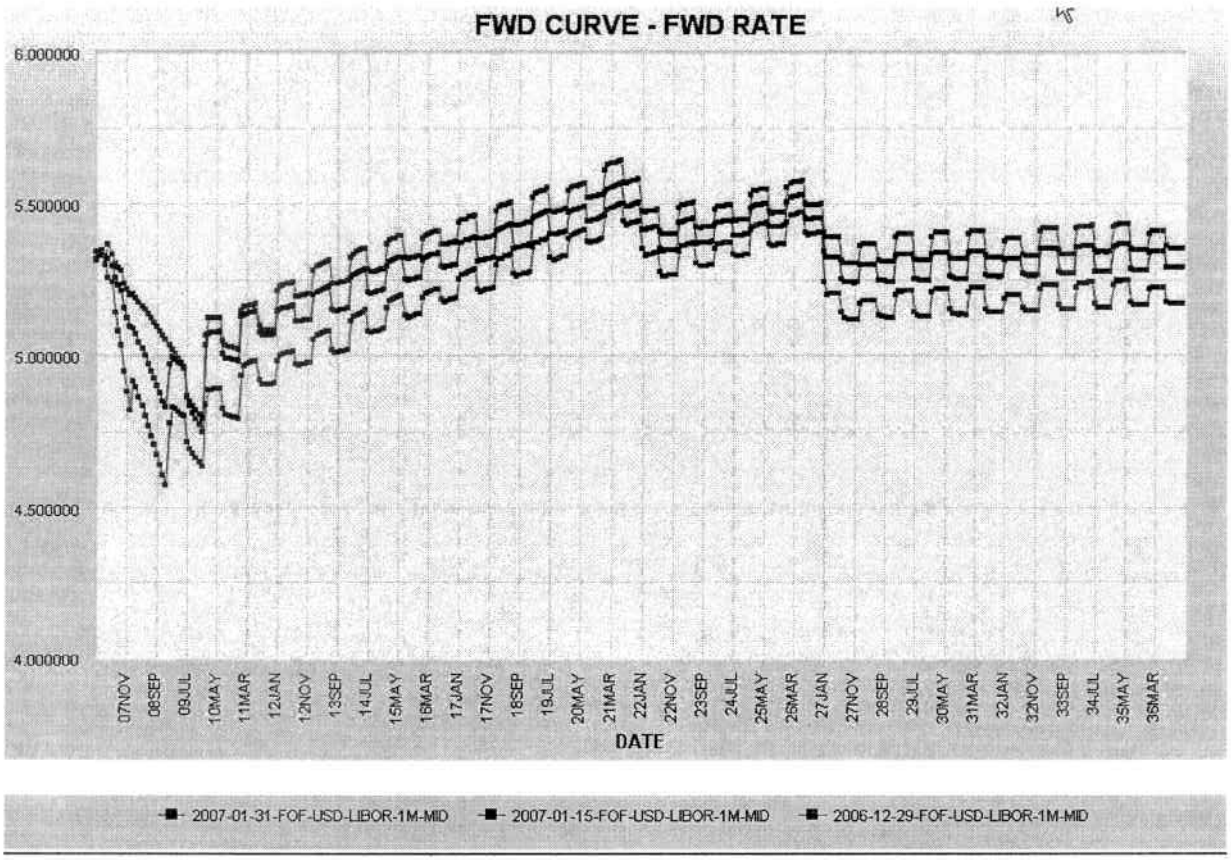
Swap Tenor

OPTION Tenors	1Y	2Y	3Y	4Y	5Y	7Y	10Y	30Y
1Y	13.90000	14.10000	14.00000	13.90000	13.90000	13.50000	12.90000	11.90000
2Y	14.70000	14.50000	14.30000	14.20000	14.00000	13.70000	13.10000	12.00000
3Y	14.90000	14.80000	14.70000	14.40000	14.20000	13.80000	13.30000	12.10000
4Y	14.90000	14.70000	14.50000	14.40000	14.10000	13.80000	13.30000	11.90000
5Y	14.60000	14.50000	14.30000	14.20000	14.00000	13.60000	13.10000	11.80000
7Y	14.30000	14.10000	13.90000	13.70000	13.50000	13.10000	12.70000	11.20000
10Y	13.50000	13.20000	13.00000	12.90000	12.70000	12.40000	12.00000	10.50000
30Y	13.50000	13.20000	13.00000	12.90000	12.70000	12.40000	12.00000	10.50000

Forward Curves

When pricing swaps, CDR uses the zero coupon method which assumes that rates on the forward curve fully anticipate the spot curve. We can then reset the forecasted payments by using the current forward curve to estimate future payments and subsequently use the spot curve to calculate a present value of the netting of those payments. By using a very complex and comprehensive pricing platform, CDR eliminates human error and provides transparent pricing on any esoteric or plain vanilla transaction. Below you can analyze the one month LIBOR forward curve and its change during the valuation period. The curves are assigned colors on the respective valuation dates as follows:

Green	December 29, 2006
Blue	January 15, 2007
Red	January 31, 2007



Rates continue to push upward on the forward curve but the curve remains slightly inverted.

Conclusion

As reflected in this report, the County's swap portfolio has a negative mark to market of ($75,847,253)[3]. This evaluation is analogous to the market value of fixed rate bonds as rates increase, as both issuing fixed rate bonds or issuing floating rate bonds with a swap to fixed result in a fixed obligation to the County. A negative mark to market is not critical as long as the County maintains its credit rating. As interest rates rise, the negative mark to market on the portfolio will become positive. Furthermore, as swaps move closer to maturity, the negative mark to market will be reduced since it is discounted over a shorter time period. A positive mark to market for an individual swap should be monitored closely; those counterparties whose swaps have a positive mark to market should begin to deliver collateral to the County per the requirements of each credit support annex.

If you have any questions or comments regarding the material presented, please call Evan Zarefsky at (310) 273-9384 or Mark Salimena at (215) 246-3438.

[3] The indicative pricing information which appears herein reflects the subjective opinion of CDR Financial. CDR Financial makes no representations or guarantees regarding the accuracy, reliability, or completeness of the pricing information. As this is our opinion, all price indications are subject to change without notice. We are not liable for any damages, including loss of profits, which may result from any reliance on this information. By providing this information to you, CDR Financial is not creating any independent obligation to enter into or liquidate derivative transactions at indicated prices.

EXHIBIT O

Dow Jones Indexes

Corporate Bond Index

Corporate Bond Index FAQs

FREQUENTLY ASKED QUESTIONS

Why is the Dow Jones Corporate Bond Index equal weighted instead of market-value weighted?

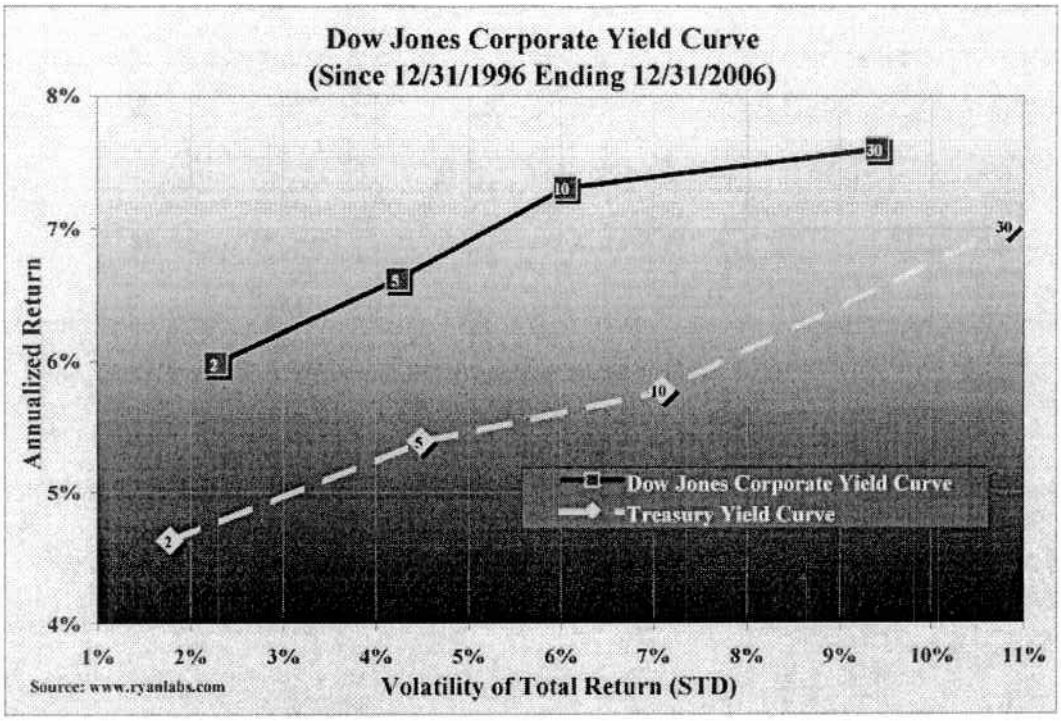
Market–value–weighted bond indexes skew the risk/reward calculations to the bonds with the greatest weights (amount outstanding). This tilt distorts the risk/reward behavior measurements, especially when the weights change due to monthly rebalancing. Investors usually analyze each bond independently when making their investment decisions. Moreover, it is difficult to weight a bond index accurately by market value because the amounts outstanding of each component could be unclear due to stripping (on governments), prepayments (on mortgages) and call features (on corporates). The Dow Jones Corporate Bond Index contains only "bullet bonds" – which are non–callable prior to their maturity – so it is feasible that an accurate market–value–weighted index could be calculated. However, it still would be difficult to determine the portion of each bond issue that is truly available to investors – the "free float–adjusted weighting" system that is becoming popular in indexes – since these securities tend to migrate relatively quickly into the portfolios of long–term investors.

Why only 96 bonds?

As with equity markets, a small, diversified portfolio of key large issues can provide reasonable representation of a market or a sector. For example, the world's most widely followed stock market indicator, the Dow Jones Industrial Average, has just 30 components. Institutional investors tend to concentrate on large–capitalization issues, and it is impossible to buy the thousands of bonds in any broad bond index. Because there is no bond exchange, smaller issues often have pricing problems that could distort the risk/reward behavior of an overall index. In practice, the majority of money managers have small portfolios (less than 100 names) and concentrate on the highly liquid (larger and newer) issues. The Dow Jones Corporate Bond Index does, too, and its investability is one of its key features.

Why is the index constructed as a yield curve?

The market risk (systematic risk) in bonds is interest–rate risk. This normally accounts for more than 90% of a bond's returns. Consequently, a proper bond index should measure this risk. Because bonds with shorter maturities have lower durations than bonds with longer maturities, this capability requires a yield curve construction and subset of indexes to properly measure the risk/reward of a two–year sector maturity separate and distinct from a five&ndsah;, 10– or 30– year maturity sector. The Dow Jones Corporate Bond Index is unique in providing such data and methodology.



Where do the prices come from?

Since there is no bond exchange, it is important that prices come from an unbiased third party that is in the business of providing daily bond pricing. Currently, prices come from the Reuters EJV system, which minimizes the trading or investment banking biases that can color the pricing contribution to index calculation.

How does the Dow Jones Corporate Bond Index compare with other corporate bond indexes?

For the period beginning with the start of Dow Jones Corporate Bond Index data on 12/31/96 and ending 12/31/2006, the Dow Jones Corporate Bond Index relative to the Lehman Credit Bond Index had a correlation of 94.31, a beta of 1.10 and annualized tracking error of 165bps. Table 1 provides total return, standard deviation and Sharpe ratio comparisons.

Table 1

	Dow Jones	*Lehman*	*Difference*
Annualized Total Return	6.93	6.56	0.37
Standard Deviation	5.27	4.55	0.72
Sharpe Ratio (old)	0.56	0.57	-0.01

What is Ryan Labs?

Ryan Labs is a fixed income asset manager based in New York City. The firm is also a leader in index creation and publication of fixed income indexes. Ryan Labs is an innovator in the area of bond indexes: Cash, GIC, Treasury, Agency, Corporate, Preferred Stock and Liability indexes.

If you have any questions, please contact:

Greg Finkelman, Index Analyst	646-708-8042
Zack Matos, Operations Manager	646-708-8050
Geraldine Michalik, Ph. D., Director of Credit Research	646-708-8054
Sean McShea, President	646-708-8052

All data as of December 31, 2006

This document contains comparisons, assertions, and conclusions regarding the performance of the Dow Jones Corporate Bond Index based on backtesting, i.e., calculations of how the index might have performed in the past if it had existed. The Dow Jones Corporate Bond Index was not designed, and was not calculated, between 1996 and 2002. Backtested performance information is purely hypothetical and is provided in this document solely for informational purposes.

EXHIBIT P

Glossary of Municipal Securities Terms

Second Edition (January 2004)

This glossary of terms used in the municipal securities industry is a complete revision of the MSRB's 1985 glossary (known as the "purple book"), which was itself an adaptation from the Glossary of Municipal Bond Terms published by the Division of Bond Finance of the State of Florida in 1983.

- **Preface and Acknowledgements**
- **How to Use the Glossary**
- **Alphabetical Listing of Terms**

Click on a letter below to view all defined terms beginning with that letter:

A B C D E F G H I J K L M N O P Q R S T U V W X Y Z

- **Search for Terms**

Search for terms defined in the Glossary:

interest rate SEARCH

Full text search for words used within the Glossary:

SEARCH

- **Feedback**

Contact us with any suggested corrections, additions or deletions for the Glossary. (Do **not** use this link to submit questions or information unrelated to the Glossary or that require a timely response.)

YIELD – The annual rate of return on an investment, based on the purchase price of the investment, its coupon rate and the length of time the investment is held.

Print This Page

INTEREST RATE – The annual rate, expressed as a percentage of principal, payable for use of borrowed money. **See: COUPON.**

Print This Page

EXHIBIT Q

U. S. Securities Law for International Financial Transactions and Capital Markets

11/29/07 ARA

Filing Instructions

Special Note: Before filing this release, make sure your volumes are up-to-date. If the following release information appears at the bottom of the title pages of your volumes, "2006 Thomson/West, Rel. 4, 12/2006", your volumes are up-to-date; follow the filing instructions below. If you do not see this release information, please contact West Customer Service (phone 1-800-328-4880, fax: 1-800-340-9378) for updating assistance before filing this release.

by Guy P. Lander

Remove Pages:	Insert New Pages:
Volume 14	
Unnumbered to lxxiv	Unnumbered to lxxviii
1-51 to 1-52	1-51 to 1-52.1
Volume 14A	
Unnumbered to xxiii	Unnumbered to xxiii
9-1 to 9-74	9-1 to 9-103
Volume 14B	
Unnumbered to xix	Unnumbered to xxii
13-1 to 13-425	13-1 to 13-791
Tbl of L&R-1 to Tbl of L&R-92	Tbl of L&R-1 to Tbl of L&R-110
Tbl of Cases-1 to Tbl of Cases-9	Tbl Add Auth-1 to Tbl Add Auth- 22*
Add Auth-1 to Tbl of Add Auth-21	Tbl of Cases-1 to Tbl of Cases-10
Index-1 to Index-96	Index-1 to Index-102

***The order in which the end matter apepars in this product has changed. Please remove and file new pages according to these filing instructions.**

For Customer Assistance Call 1-800-328-4880

www.west.thomson.com

Mat #40205074

contracts," investors (i.e., non-dealers) are taxed on gains or losses only when they are realized, and these gains or losses generally are treated as short-term capital gains or losses. "Dealer securities futures contracts" will be marked to market, and gains or losses on those contracts generally will be treated as 60 percent long-term and 40 percent short-term capital gains or losses.[1]

§ 1:32 What is a security?—Swaps

The CFMA has clarified the status of swap transactions under the Securities Act and the Exchange Act. As a result of the CFMA, a "swap agreement" (as defined) is not a "security" under the Securities Act or the Exchange Act.[1] However, a "security-based swap agreement" (as defined) is subject to certain antifraud, antimanipulation, and insider trading provisions of the Securities Act and the Exchange Act. Nevertheless, the SEC is prohibited from registering any security-based swap agreement or issuing rules or orders that could operate as prophylactic measures against fraud, manipulation, or insider trading concerning any security-based swap agreement.[2]

Specifically, the CFMA amended the GLB Act, the Securities Act, and the Exchange Act by: (a) defining the terms "swap agreement," "security-based swap agreement," and "non-security-based swap agreement;" (b) stating that the definition of "security" in Section 2(a)(1) of the Securities Act and Section 3(a)(10) of the Exchange Act does not include any "non-security-based swap agreement" or any "security-based swap agreement;" and (c) making specified antifraud, antimanipulation, and insider trading provisions of the Securities Act and the Exchange Act, including judicial precedents under those provisions, applicable to security-based swap agreements to the same extent that those provisions are applicable to securities, but subject to specific limitations on the SEC's authority. The CFMA amended the Securities Act and the Exchange Act to: (a) prohibit the SEC from registering or requiring the registration of any security-based swap agreement, (b) provide that any such registration of a security-based swap agreement is void, and (c) prohibit the SEC from issuing rules imposing reporting or recordkeeping requirements, procedures, or standards as prophylactic measures against fraud, manipulation, or

---

[Section 1:31]

[1]Harold S. Bloomenthal & Samuel Wolff, Emerging Trends in Securities Law 459 (2001 to 2002 ed. 2001).

[Section 1:32]

[1]However, the CFMA did not amend the definition of "security" in either the Investment Company Act or the Advisers Act concerning the status of swap transactions under those Acts.

[2]Harold S. Bloomenthal & Samuel Wolff, Emerging Trends in Securities Law 465 & n.20 (2001 to 2002 ed. 2001).

insider trading concerning any security-based swap agreement.[3] Each of these amendments is discussed below.

The CFMA amended Title II of the GLB Act by adding Sections 206A, 206B, and 206C, which define the terms swap agreement, security-based swap agreement, and non-security-based swap agreement, respectively. Generally, as used in Section 206A, the term "swap agreement" means any agreement, contract, or transaction between eligible contract participants (as defined in Section 1a(12) of the CEA as in effect on December 21, 2000) (ECPs),[4] other than a person that is an ECP under Section 1a(12)(C) of the CEA, the material terms of which (other than price and quantity) are subject to individual negotiation, and that is described in paragraph (a)(1), (2), (3), (4), or (5) of Section 206A of the GLB Act. These paragraphs describe an agreement, contract, or transaction that:

(1) is a put, call, cap, floor, collar, or similar option of any kind for the purchase or sale of, or based on the value of, one or more interest or other rates, currencies, commodities, indices, quantitative measures, or other financial or economic interests or property of any kind;

(2) provides for any purchase, sale, payment or delivery (other than a dividend on an equity security) that is dependent on the occurrence, non-occurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence;

(3) provides on an executory basis for the exchange, on a fixed or contingent basis, of one or more payments based on the value or level of one or more interest or other rates, currencies, commodities, securities, instruments of indebtedness, indices, quantitative measures, or other financial or economic interests or property of any kind, or any interest therein or based on the value thereof, and that transfers, as between the parties to the transaction, in whole or in part, the financial risk associated with a future change in any such value or level without also conveying a current or future direct or indirect ownership interest in an asset (including any enterprise or investment pool) or liability that incorporates the financial risk so transferred, including any such agreement, contract, or transaction commonly known as an interest rate swap, including a rate floor, rate cap, rate collar, cross-currency rate swap, basis swap, currency swap, equity index swap, equity swap, debt index swap,

---

[3]Harold S. Bloomenthal & Samuel Wolff, Emerging Trends in Securities Law 465 to 466 & n.20 (2001 to 2002 ed. 2001).

[4]ECPs are a category of institutional or commercial counterparties such as: financial institutions; insurance companies; corporations, partnerships, trusts, or other entities with assets exceeding $10 million; and governmental entities. See CEA § 1a(12), 7 U.S.C.A. § 1a(12). This definition is based on, and substantially similar to, the definition of "eligible swap participant" in Part 35 of the CFTC's rules. Bloomenthal & Wolff, Emerging Trends in Securities Law, at 466 n.21.

debt swap, credit spread, credit default swap, credit swap, weather swap, or commodity swap;

(4) provides for the purchase or sale, on a fixed or contingent basis, of any commodity, currency, instrument, interest, right, service, good, article, or property of any kind; or

(5) is any combination or permutation of, or option on, any agreement, contract, or transaction described in any of paragraphs (1) through (4).[5]

However, Section 206A(b) of the GLB Act specifically excludes certain categories of financial instrument from the term "swap agreement." Under Section 206A(b), the term "swap agreement" does not include:

(a) any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities, including any interest therein or based on the value thereof;

(b) any put, call, straddle, option, or privilege entered into on a national securities exchange registered under Section 6(a) of the Exchange Act relating to foreign currency;

(c) any agreement, contract, or transaction providing for the purchase or sale of one or more securities on a fixed basis (i.e., a forward contract);

(d) any agreement, contract, or transaction providing for the purchase or sale of one or more securities on a contingent basis, unless the agreement, contract, or transaction predicates the purchase or sale on the occurrence of a bona fide contingency that might reasonably be expected to affect or be affected by the creditworthiness of a party other than a party to the agreement, contract, or transaction;

(e) any note, bond, or evidence of indebtedness that is a security as defined in Section 2(a)(1) of the Securities Act or Section 3(a)(10) of the Exchange Act; or

(f) any agreement, contract, or transaction that is: (A) based on a security; and (B) entered into directly or through an underwriter (as defined in Section 2(a) of the Securities Act) by the issuer of that security for the purposes of raising capital, unless the agreement, contract, or transaction is entered into to manage a risk associated with capital raising. Exclusions (a) through (e) above apparently are intended to clarify that traditional security derivatives, such as options on securities, forward contracts for the purchase or sale of securities, and equity-linked notes are still securities for all purposes under the federal securities laws.[6]

Additionally, Section 304 of the CFMA states that nothing in the

---

[5]GLB Act § 206A(a), Pub.L. 106-102, Title II, § 206A(a), as added Pub.L. 106-554, § 1(a)(5) [Title III, § 301(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A-449-50.

[6]GLB Act § 206A(b), Pub.L. 106-102, Title II, § 206A(b), as added Pub.L. 106-554, § 1(a)(5) [Title III, § 301(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A-450-51];

CFMA or the amendments made by it "shall be construed as finding or implying that any swap agreement is or is not a security for any purpose under the securities laws."[7] Section 304 should rebut any presumption that a swap transaction that is not covered by the definition of "swap agreement" in Section 206A is a security for any purpose under the securities laws. For this purpose, another provision of the CFMA (Section 206A(c) of the GLB Act) clarifies that the term "swap agreement" in Section 206A includes a master agreement that provides for such agreements, contracts, or transactions, together with all supplements to any such master agreement, even if the master agreement also contains an agreement, contract, or transaction that is not a swap agreement under Section 206A(a) and (b), except that, in that case, the master agreement is considered to be a swap agreement under Section 206A only for each agreement, contract, or transaction under the master agreement that is a swap agreement under Section 206A(a) and (b).[8]

As defined in Section 206B of the GLB Act, a "security-based swap agreement" is a swap agreement (as defined in Section 206A) of which a material term is based on the price, yield, value, or volatility of any security or any group or index of securities, or any interest therein.[9] For example, an equity index swap is a "security-based swap agreement" under Section 206B.[10]

As defined in Section 206C of the GLB Act, a "non-security-based swap agreement" is any swap agreement (as defined in Section 206A) that is not a security-based swap agreement (as defined in Section 206B).[11] For example, a currency swap or a commodity swap is a "non-security-based swap agreement" under Section 206C.[12]

The CFMA then amended the Securities Act and the Exchange Act by adding Section 2A of the Securities Act and Section 3A of the Exchange Act to address the treatment of "non-security-based swap

---

Bloomenthal & Wolff, Emerging Trends in Securities Law, at 467 to 468. (The SEC has exempted most standardized options from all provisions of the Securities Act, other than the § 17 antifraud provision, as well as the Exchange Act registration requirements. See § 1:30.)

[7]Section 304 also states that nothing in the CFMA or the amendments made by it "shall be construed as finding or implying that any swap agreement is or is not a futures contract or commodity option for any purpose under the [CEA]." CFMA § 304, Pub.L. 106-554, [Title III, § 304], Dec. 21, 2000, 114 Stat. 2763, 2763A-457.

[8]GLB Act § 206A(c), Pub.L. 106-102, Title II, § 206A(c), as added Pub.L. 106-554, § 1(a)(5) [Title III, § 301(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A-451; Bloomenthal & Wolff, Emerging Trends in Securities Law, at 468.

[9]GLB Act § 206B, Pub.L. 106-102, Title II, § 206B, as added Pub.L. 106-554, § 1(a)(5) [Title III, § 301(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A-451.

[10]Bloomenthal & Wolff, Emerging Trends in Securities Law, at 468.

[11]GLB Act § 206C, Pub.L. 106-102, Title II, § 206C, as added Pub.L. 106-554, § 1(a)(5) [Title III, § 301(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A-451.

[12]Bloomenthal & Wolff, Emerging Trends in Securities Law, at 468.

agreements" and "security-based swap agreements" under the Securities Act and the Exchange Act.[13] Section 2A(a) of the Securities Act and Section 3A(a) of the Exchange Act exclude any "non-security-based swap agreement" (as defined in Section 206C) from the definition of "security" in Section 2(a)(1) of the Securities Act and Section 3(a)(10) of the Exchange Act.[14] Non-security-based swap agreements are not subject to any SEC regulation, including antifraud enforcement authority.[15]

Section 2A(b) of the Securities Act and Section 3A(b) of the Exchange Act then address "security-based swap agreements." These sections exclude any "security-based swap agreement" (as defined in Section 206B) from the definition of "security" in Section 2(a)(1) of the Securities Act and Section 3(a)(10) of the Exchange Act. Sections 2A(b) and 3A(b) also prohibit the SEC from registering, or requiring, recommending, or suggesting the registration of, any security-based swap agreement under the Securities Act or the Exchange Act, and provide that any registration statement under either Act for a security-based swap agreement "shall be void and of no force or effect." Additionally, except for reporting requirements under Section 16(a) of the Exchange Act, Sections 2A(b) and 3A(b) prohibit the SEC from (a) adopting, interpreting, or enforcing rules, or (b) issuing orders of general applicability, that impose reporting or recordkeeping requirements, procedures, or standards as prophylactic measures against fraud, manipulation, or insider trading for any security-based swap agreement.[16] Subject to the restrictions and limitations of Sections 2A(b) and 3A(b), security-based swap agreements (as defined in Section 206B) are subject to SEC antifraud, antimanipulation, and anti-insider trading enforcement authority under Section 17(a) of the Securities Act and Sections 9(a)(2) to (5), 10(b), 15(c)(1), 16(b), 20(d), and

---

[13]See CFMA §§ 302, 303(a), Pub.L. 106-554, [Title III, §§ 302, 303(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A-451-53; Securities Act § 2A, 15 U.S.C.A. § 77b-1; Exchange Act § 3A, 15 U.S.C.A. § 78c-1.

[14]Securities Act § 2A(a), 15 U.S.C.A. § 77b-1(a); Exchange Act § 3A(a), 15 U.S.C.A. § 78c-1(a).

[15]2 Loss & Seligman, Securities Regulation 1138.13 n.497 (3d ed. 1999 & Supp. 2002).

[16]See Securities Act § 2A(b)(1) to (3), 15 U.S.C.A. § 77b-1(b)(1) to (3); Exchange Act § 3A(b)(1) to (3), 15 U.S.C.A. § 78c-1(b)(1) to (3); 2 Loss & Seligman, Securities Regulation, at 1138.13 n.497. See also Securities Act § 2A(b)(4), 15 U.S.C.A. § 77b-1(b)(4); Exchange Act § 3A(b)(4), 15 U.S.C.A. § 78c-1(b)(4) (references in the Securities Act and the Exchange Act to the "purchase" or "sale" of a security-based swap agreement (as defined in § 206B) mean the execution, termination (before its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap agreement, as the context may require).

21A(a)(1) of the Exchange Act.[17]

The CFMA amendments discussed immediately above, together with other CFMA amendments to the CEA that provide for clear-cut exclusions or exemptions from regulation under the CEA for swap and similar transactions (including for transactions entered into on electronic trading platforms), were intended to (and generally do) provide greater legal certainty for market participants. Consequently, because certain types of swap transactions can be treated as "security-based swap agreements," which are *not* securities, a dealer may engage in these transactions through a U.S. affiliate that is not a registered broker-dealer or through a foreign affiliate without complying with Rule 15a-6. This results in operational and capital efficiencies.[18]

First, the CFMA confirms the general market view that most types of conventional swap transactions are not securities under the Securities Act or the Exchange Act and may be effected through a U.S. affiliate that is not a registered broker-dealer or though a foreign affiliate without complying with Rule 15a-6. Second, because the exclusions from the definition of "swap agreement" in Section 206A cover options on securities, purchases or sales of securities on a fixed basis (such as forward contracts), and purchases or sales of securities on a contingent basis (subject to an exception discussed below), dealers generally will still effect these transactions though a U.S. affiliate that is a registered broker-dealer or though a foreign affiliate under Rule 15a-6. Accordingly, it seems that the CFMA probably will not have a major effect on how a dealer conducts an over-the-counter equity derivatives business. For example, a cash-settled total return swap on equity securities without any option elements, including on an individual equity security or on a group or index of securities, may be treated as a "security-based swap agreement" rather than as a "security" under

---

[17]See CFMA §§ 302(b), 303(b) to (l), Pub.L. 106-554, [Title III, §§ 302(b), 303(b) to (l)], Dec. 21, 2000, 114 Stat. 2763, 2763A-452-456; 2 Loss & Seligman, Securities Regulation, at 1138.13 n.497.

As amended by the CFMA, § 10(b) of the Exchange Act prohibits any manipulative or deceptive device or contrivance in connection with the purchase or sale of any security-based swap agreement (as defined in § 206B). Rules adopted under § 10(b) that prohibit fraud, manipulation, or insider trading (but not rules imposing or specifying reporting or recordkeeping requirements, procedures, or standards as prophylactic measures against fraud, manipulation, or insider trading), and judicial precedents decided under § 10(b) and rules adopted thereunder that prohibit fraud, manipulation, or insider trading, apply to security-based swap agreements (as defined in § 206B) to the same extent as they apply to securities. Additionally, judicial precedents decided under § 17(a) of the Securities Act and §§ 9, 15, 16, 20, and 21A of the Exchange Act, and judicial precedents decided under applicable rules adopted under those sections, apply to security-based swap agreements (as defined in § 206B) to the same extent as they apply to securities. Exchange Act § 10(b), 15 U.S.C.A. § 78j(b).

[18]Bloomenthal & Wolff, Emerging Trends in Securities Law, at 472.

the Securities Act or the Exchange Act. However, it is still prudent for a dealer to treat a combination of several options on securities that is documented as a swap transaction on standardized forms of documentation as a security under the Securities Act and the Exchange Act. Because the applicability of the definition of "swap agreement" and the exclusions from that definition may depend on whether a transaction can be viewed as a securities option, marking the boundaries between them is very important under the CFMA. Third and last, the CFMA may have a more significant effect on the treatment of certain credit derivatives under the securities laws. For example, the general definition of swap agreement in Section 206A(a)(3) includes a specific reference to certain credit derivatives. Additionally, the exclusions from the definition of swap agreement include options on securities in Section 206A(b)(1) and contingent purchases or sales of securities in Section 206A(b)(3). Section 206A(b)(3) carves out contingent purchases and sales of securities provided they are predicated on "the occurrence of a bona fide contingency that might reasonably be expected to affect or be affected by the creditworthiness of a [third] party." Therefore, a dealer may conclude that certain types of credit derivative transactions may be treated as security-based swap agreements, rather than as securities under the Securities Act or the Exchange Act, even though they have certain option features.[19]

---

[19]Bloomenthal & Wolff, Emerging Trends in Securities Law, at 472 to 473.

EXHIBIT R

June 29, 2007

EXPOSURE DRAFT SUPPLEMENT

Proposed Statement of the Governmental Accounting Standards Board: Plain-Language Supplement

Accounting and Financial Reporting for Derivative Instruments

This plain-language supplement to an Exposure Draft of a proposed Statement of Governmental Accounting Standards is issued by the Board for public comment. Written comments should be addressed to:

Director of Research and Technical Activities
Project No. 26-4

Comment Deadline: October 26, 2007

GASB

Governmental Accounting Standards Board
of the Financial Accounting Foundation

To order additional copies of this supplement (Product Code No. GE67S) or copies of the full Exposure Draft (Product Code No. GE67, contact the GASB Order Department at 1-800-748-0659, or order online at www.gasb.org.

Proposed Statement of the Governmental Accounting Standards Board: Plain-Language Supplement

Accounting and Financial Reporting for Derivative Instruments

June 29, 2007

CONTENTS

Page Number

Overview 1
What Is a Derivative? 1
What Are Examples of Derivatives? 2
Interest Rate Swaps 2
What Does the GASB Consider to Be a Derivative? 3
Why Is the GASB Setting Accounting and Reporting Standards for Derivatives? 4
Risks Posed by Derivatives 4
The GASB's Project on Derivatives 4
What Is the GASB Proposing? 5
What Information Would Be Reported about Derivatives in the Financial Statements? 5
What Information Would Be Disclosed about Derivatives in the Notes to the Financial Statements? 6
Information about Hedging Derivative Instruments 6
Disclosures for Investment Derivative Instruments 7
Contingent Liabilities 7
How Would a Government Identify and Report a Hedging Derivative Instrument? 8
A Hedging Derivative Instrument That Ends Early or Ceases to Be Effective 9
How Would the Effectiveness of a Potential Hedging Derivative Instrument Be Evaluated? 9
Consistent Critical Terms 9
Quantitative Methods 10
Synthetic Instrument Method 10
Dollar-Offset Method 10
Regression Analysis 11
Other Quantitative Methods 11
How Would Derivatives with Up-Front Payments Be Reported? 11
How Are These Proposed Standards Different from the Proposals in the Preliminary Views? 11
What Information Does the GASB Need to Proceed with This Project? 13
How Can You Share Your Opinions with the GASB? 13
What Is the Purpose of This Supplement? 14

Page Number

What Is the GASB? 15
How Does the GASB Set Standards? 15
Financial Statement User Response Form 17

This document is a plain-language supplement to an Exposure Draft of a proposed Statement, *Accounting and Financial Reporting for Derivative Instruments,* issued by the Governmental Accounting Standards Board. This supplement is prepared for citizens, taxpayers, elected representatives, municipal analysts, and other external users of governmental financial information and uses a minimum of technical terminology. The supplement references the Exposure Draft and should be read in conjunction with it. The Exposure Draft can be downloaded from the same location as this supplement: www.gasb.org/exp/. Questions for users of governmental financial information and instructions for responding may be found on page 13.

OVERVIEW

The Governmental Accounting Standards Board (GASB) is proposing that the fair value of financial arrangements called "derivatives" or "derivative instruments" be reported in the financial statements of state and local governments. If a derivative effectively hedges (significantly reduces) an identified risk of losing cash flows or fair values, then its annual fair value changes would be deferred until the derivative ends or ceases to be effective. At that time, the accumulated changes, if any, would be reported as investment income or loss. The annual change in the fair value of other derivatives would be reported immediately as investment income or loss. The GASB also is proposing that additional information about derivatives be disclosed in the notes to the financial statements, including identification of the risks to which hedging derivative instruments themselves expose a government.

WHAT IS A DERIVATIVE?

A derivative is a unique and often complex financial arrangement that a government may enter into with another party, typically a private financial firm. The value of a derivative or the cash it provides to a government (or that it requires a government to pay) is based on changes in market prices, such as interest rates or commodity prices, in a separate transaction or agreement. In other words, the value or cash flows of a derivative derive from (are determined by) how market prices change in the separate transaction or agreement.

Governments enter into derivatives for at least four reasons:

- Governments often intend derivatives to be *hedges.* This type of derivative is an attempt to significantly reduce a specific financial risk that a government identifies, such as the risk of increasing costs.
- Some governments find that they can *lower their borrowing costs* by entering into a derivative in connection with debt they issue.
- Some governments engage in derivatives that are investments—governments are trying to *generate income,* as they would by buying U.S. Treasury bonds or depositing cash into a savings account.

- Some governments enter into derivatives to manage their cash flows. These derivatives may include an up-front cash payment to the government from the other party. The payment arrangements or terms of the derivative agreement essentially provide for the repayment of the up-front cash.

What Are Examples of Derivatives?

A simple example of a derivative is an *interest rate lock*—an agreement between a government and a lender that ensures the government will get a specific interest rate when it ultimately issues bonds or another form of debt. It is essentially the same as the rate lock that a person might obtain on a home mortgage. A government might enter into such an agreement if it believes interest rates will rise before it is ready to issue its debt.

A government that purchases significant quantities of a commodity, such as gasoline or heating oil, might enter into a derivative called a *futures contract* in order to protect itself against increases in the price of the commodity. Futures contracts are agreements to buy or sell a product for a specific price on a specific future date; they are traded actively in futures exchanges. A transit authority that needs to purchase fuel for its buses throughout the year, for example, might be concerned that fuel prices are going to rise. In June, the authority might purchase a futures contract for 420,000 gallons in September at $2.60 per gallon, the price the market expects the fuel to command in that month. The authority does not plan to buy the fuel covered by the contract (though it is entitled do so). Rather, it plans to use the contract to offset the higher prices when it actually does buy fuel in the future. If the price of fuel rises above $2.60 per gallon, the futures contract provides cash payments to the authority, offsetting the higher fuel price the authority has to pay. Essentially, the authority has converted the variable, uncertain price of fuel into a fixed, known price.

Interest Rate Swaps

One of the most common examples of a derivative entered into by a government—an interest rate swap—is related to debt issued by the government. Some governments have found that entering an interest rate swap and issuing variable-rate debt (bonds with an interest rate that rises and falls as market interest rates change) results in lower borrowing costs than if they had issued debt with a fixed interest rate without a derivative. A government issues variable-rate debt, for example, and also enters into a swap in which it agrees to pay a fixed interest rate to a financial firm, usually larger than the interest it currently pays on the variable-rate debt. In return, the firm agrees to pay the government an amount that is expected to offset the government's interest payments to the owners of the bonds—an amount that changes as market interest rates change.

Such a transaction is shown in Illustration 1, beginning on page 52 of the Exposure Draft. The government issues $100 million of variable-rate debt. At the same time, the government also enters into an interest rate swap in which it agrees to pay a fixed rate of 3.807 percent to a firm, in return for receiving a variable payment from the firm that is based on the Securities Industry and Financial Markets Association (SIFMA) swap index. (The SIFMA swap index tracks the prevailing rates on variable-rate debt issued by state and local governments.) The SIFMA-based payment from the firm is expected to roughly equal the interest payment the government is required to make to the bondholders. The

ultimate effect of the swap is to "fix" the government's interest payment at 3.807 percent. This rate is intended to be a lower interest rate than the government could have obtained by issuing fixed-rate debt.

The payments on the derivative do not actually change hands—only the difference between the variable rate (the SIFMA swap index in the example above) and the fixed rate (3.807 percent) is paid. As long as the variable rate remains below 3.807 percent, the government's required payment is larger than the firm's, and the government pays the firm the difference. If interest rates rise above 3.807 percent, on the other hand, then the firm's required payment is larger than the government's, and the firm pays the difference to the government.

This kind of derivative is known as a "pay-fixed, receive-variable" swap. Governments sometimes enter into "pay-variable, receive-fixed" swaps in which they pay the firm an amount that varies with interest rates, while receiving a consistent amount from the firm. The side of a swap a government takes depends on what the government is trying to achieve; in this way, swaps offer significant flexibility.

Not only are the cash flows of an interest rate swap (payments to and from a government) determined by changes in the market interest rates but also the *value* of the derivative. Unless cash changes hands when the hedge is first entered into, it begins with a zero value. The value of the swap changes as interest rates rise or fall. If interest rates were to drop after a government entered into a swap like the one described above, then the value of the swap would grow. In fact, the swap would have a growing *negative* value from the government's perspective, representing a liability—an amount the government would have had to pay the firm if the swap had been terminated at that time. The value of the swap in Illustration 1 grows to negative $4.8 million as the SIFMA swap index declines in the first 2 years. If the SIFMA swap index had risen, the swap's value also would have grown, but *positively* from the government's perspective, representing an asset—an amount the government would have been paid by the firm if the swap had been terminated at that point.

What Does the GASB Consider to Be a Derivative?

The definition of what constitutes a derivative may vary depending upon whom you ask. The GASB is proposing that its accounting and financial reporting standards for derivatives apply to *financial arrangements with values or cash payments that are based on what happens in separate transactions, agreements, or rates,* and that have these characteristics:

- *The financial arrangements are leveraged.* This means they require minimal or no initial investment on the part of a government but nevertheless achieve changes in fair value that would have required a far larger initial investment.
- *The financial arrangements can be settled early* with a cash payment or the transfer of an equivalent asset.

WHY IS THE GASB SETTING ACCOUNTING AND REPORTING STANDARDS FOR DERIVATIVES?

The number and dollar amount of derivatives entered into by governments is substantial and growing rapidly. The complexity and variety of derivatives also are increasing significantly.

Risks Posed by Derivatives

Although a government may enter into a derivative in order to minimize an identified risk, the derivative itself could expose a government to risks it otherwise would not have faced. *Credit risk,* for instance, is the chance that the firm (the counterparty) will not make good on its promise to pay the government. The longer a derivative lasts, the greater the risk to a government that changes in interest rates could reduce the value of the transaction to the government; this is called *interest rate risk.* The possibility that a derivative may end earlier than expected, thus depriving a government of the protection from risk and potentially requiring it to make a significant termination payment, is known as *termination risk.*

In some derivatives, the amount received by the government from the firm is based on one market rate and the amount the government pays to its bondholders is based on a different rate. For instance, one may be based on the SIFMA swap index, while the other is based on a percentage of the London Interbank Offered Rate (LIBOR). If the rate determining the firm's payments to the government decreases more than the rate determining the government's payments to the bondholders, then the government will receive less from the firm than it has to pay out to the bondholders. The possibility that this may occur is *basis risk.*

Rollover risk exists when the derivative does not last as long as the associated debt is outstanding. For instance, an interest rate swap might have a 10-year term, but the variable-rate debt matures in 30 years. Consequently, after the derivative ends, the government no longer is protected against rising interest rates and may not be able to enter into a new derivative with similar terms. *Market-access risk* is the chance that a government will not be able to issue debt (for example, in a bond refunding) or that doing so will become more expensive. Finally, *foreign currency ris*k is the possibility that changes in exchange rates will adversely affect the value of a derivative.

The GASB's Project on Derivatives

The GASB has been working to set standards for the accounting and reporting of derivatives because the public needs more information about these transactions. The risk of the loss of cash flows, for instance, is important to a state legislator or city council member trying to identify what resources will be available to fund programs, or to a taxpayer association concerned that taxes would have to be raised to cover the loss, or to a municipal bond analyst evaluating a government's ability to make its debt service payments when they come due.

To evaluate the risks that derivatives potentially pose to the financial health of governments, the public needs to understand the nature of these transactions, how their values and cash flows change over time, and their inherent risks. Although current standards require governments to disclose information about their derivatives in the notes to the financial statements, few derivatives are reported in the financial statements themselves.

The GASB has conducted research on derivatives and deliberated possible standards for several years. In April 2006, the GASB issued a Preliminary Views document that laid out initial ideas about how to account for and report derivatives, identified related issues, and sought public feedback. In addition to receiving over 90 comment letters in response to the Preliminary Views, the GASB conducted two public hearings, two panel discussions that brought together constituents from different perspectives, and a roundtable discussion for external financial statement users. Over the past year, the GASB has been analyzing the input it received and reconsidering the preliminary approach outlined in the Preliminary Views based on what it has heard.

The Exposure Draft that this supplement accompanies incorporates many of the recommendations made in response to the Preliminary Views. The Exposure Draft proposes new standards for accounting for and reporting derivatives and explains the reasoning behind the proposals. The GASB is seeking feedback from the public regarding the appropriateness of these proposals and the usefulness of the information that would result if governments implemented them.

WHAT IS THE GASB PROPOSING?

The GASB is proposing that the fair value of derivatives be reported in the financial statements. Fair value is either the price an item is expected to garner if sold on the open market between two unrelated willing parties or the value of future cash flows in today's dollars. One type of derivative, a synthetic guaranteed investment contract, would be reported at contract value instead of fair value. Governments also would be required to disclose information about their derivatives in the notes to the financial statements.

What Information Would Be Reported about Derivatives in the Financial Statements?

In general, the fair value of a derivative as of the end of the fiscal year covered by the financial statements would be reported in the balance sheets (such as the statement of net assets). However, the annual changes in the fair value of a *hedging derivative instrument* would be *deferred*—reported as deferred inflows and deferred outflows on the balance sheets. A hedging derivative instrument significantly reduces financial risk by substantially offsetting the changes in cash flows or fair values of the item the derivative is associated with. (For more about the characteristics of a hedging derivative instrument, see the section on page 8 about how to identify a hedging derivative instrument.)

Deferral of changes in fair value would last until the derivative ends or the hedge ceases to be effective (that is, to significantly reduce risk), at which time the accumulated gains or losses, if any, would be reported as investment income or loss in the change statements (such as the statement of revenues, expenditures, and changes in fund balances). For other derivatives, the increase or decrease in fair value would be reported immediately as investment income or loss, respectively.

What Information Would Be Disclosed about Derivatives in the Notes to the Financial Statements?

The Exposure Draft would require a note disclosure that includes summary information about a government's derivatives. The government's derivatives would be divided among those related to the government's governmental activities, its business-type activities, and its fiduciary funds. Within each of those three groups, the derivatives would be sorted into (1) hedging derivative instruments (distinguishing between fair value hedges and cash flow hedges) and (2) investment derivative instruments. Individual derivative instruments would be totaled by type under those categories, and the following information would be presented about them (see the example on page 143 of the Exposure Draft):

- Notional amount (that is, the amount—stated in dollars, shares, gallons, and so on—on which payments depend)
- Fair value as of the date of the financial statements and the locations in the financial statements where it is reported (this disclosure will be helpful because the amounts disclosed in the notes are aggregated in the financial statements)
- Changes in fair value during the year and the locations in the financial statements where those changes are reported
- The fair value of derivatives that were reclassified from a hedging derivative instrument to an investment derivative instrument during the year because they no longer substantially offset changes in cash flows or fair values
- The amount removed from the deferred inflows and outflows in the balance sheets and reported as investment income or loss during the year (for instance, because a derivative ended).

Information about Hedging Derivative Instruments

Governments would provide additional information about their hedging derivative instruments. Although governments would be allowed to aggregate their hedging derivative instruments, the differences in the terms of the derivatives may lead to this information being disclosed individually for many of them. The information would include:

- An explanation of a government's objective for entering into the hedging derivative instrument and how it planned to achieve that objective
- Significant terms of the derivative, such as:
  - Notional amount

  - The indexes or interest rates it is based on, including any limitations on the impact that changes in the indexes or rates can have on the derivative
  - Options embedded in the derivative
  - Starting and ending dates
  - The amount of cash that changed hands, if any, when the derivative was initiated
- If the item being hedged is debt, then the government would disclose the net cash flows of the hedging derivative (see page 147 of the Exposure Draft)
- The risks to which the derivative exposes the government (see pages 145 and 146 of the Exposure Draft):
  - Termination risk—a government discloses any terminations that occurred during the year, dates that its remaining derivatives may be terminated, and unusual provisions for termination
  - Credit risk—if a derivative exposes it to credit risk, a government reports:
    - The credit quality rating of the firm
    - The maximum potential loss if the firm fails to fulfill its obligations
    - The collateral or other security supporting the derivatives
    - Significant concentrations of credit risk with a particular firm or group of firms
  - Interest rate risk—a government describes the terms of its derivatives that increase its exposure to interest rate risk
  - Basis risk—a government discloses the derivative's payment terms and any payment terms of the associated debt
  - Rollover risk—a government discloses the maturity of the derivative and the subsequent maturity of the associated debt
  - Market-access risk—a government indicates if it is exposed to the risk of being unable to borrow
  - Foreign currency risk—a government discloses the U.S. dollar balances of derivatives that expose it to foreign currency risk, organized by type of currency and type of derivative.

Disclosures for Investment Derivative Instruments

For derivatives that are investments, governments would disclose the credit risk information described above (as well as include those derivatives in the summary information disclosure). Otherwise, governments would apply the disclosure requirements for investments set forth in GASB Statement No. 40, *Deposit and Investment Risk Disclosures*. Hedging derivative instruments that no longer substantially offset changes in cash flows or fair values also would be disclosed following the provisions of Statement 40.

Contingent Liabilities

Governments also would disclose any contingent liabilities included in their derivatives. A contingent liability is a possible future liability that would arise if certain conditions occur. An example is a requirement that a government post collateral if its credit rating declines. A government with a derivative containing a contingent liability would present a note disclosure including:

- A description of the contingency and the circumstances that would trigger it
- The total fair value of all derivatives containing contingent liabilities
- The total amount the government would have to post as collateral if the triggering circumstances occurred
- Any amounts posted as collateral by the government during the year.

How Would a Government Identify and Report a Hedging Derivative Instrument?

For a derivative to be considered a hedging derivative instrument, it would have to be (1) associated with an item that is eligible to be hedged and (2) determined to be *effective.*

Items eligible to be hedged are reported in the financial statements using a measurement other than fair value. They could be a single asset or liability, a group of similar assets or liabilities, or a specific expected exchange of resources in the future that exposes a government to a risk of losing cash flows or fair value. An example of a "hedgeable" item is variable-rate debt, which exposes a government to the risk of increasing interest rates and therefore larger interest payments to the bondholders. On the other hand, investments generally are not considered hedgeable for financial reporting purposes because they are already reported at fair value in the financial statements, and changes in their fair value already run through the change statements. For the purposes of these proposed standards, a derivative associated with a hedgeable item is known as a *potential hedging derivative instrument.*

A hedging derivative instrument is a potential hedging derivative instrument that is effective. *Effective* means that the derivative significantly reduces an identified financial risk by providing changes in fair values or cash flows that substantially offset the changes in fair values or cash flows of the associated item being hedged. As noted above, the changes in fair value of a hedging derivative instrument would be reported in the balance sheet or similar financial statement as deferred inflows (accumulated increases in fair value) or deferred outflows (accumulated decreases in fair value), rather than being reported as investment income or loss in a government's change statements. Each year's change in fair value would be added to the deferrals in the balance sheets. If the hedging derivative instrument remains effective and continues until its planned conclusion, the deferrals will balance out the value of the derivative until that value declines to zero when it concludes.

For the interest rate swap in Illustration 1 (page 52 of the Exposure Draft), the fair value of $2,984,833 is reported on the liability side of the balance sheets as of June 30, 20X1, and the decrease in fair value is reported as a deferred outflow of $2,984,833 on the asset side. (See page 58 of the Exposure Draft.) The amount by which the government's payment exceeded the firm's—$2,117,846—is reported as interest expense or expenditure, in addition to the interest paid or due to the holders of the variable-rate debt. (If the firm's required payment exceeded that of the government's, however, the difference would have offset a portion of the interest expense or expenditure related to the variable-rate debt.) In the financial statements for the fiscal year that ended on June 30, 20X2, the balance sheets include the swap at a fair value of negative $4,786,631, and the

decrease in fair value of $1,801,798 is added to the deferred outflow account (for a total of $4,786,631).

A Hedging Derivative Instrument That Ends Early or Ceases to Be Effective

If a hedging derivative instrument is terminated prior to its expected ending date or ceases to be effective, the accumulated deferrals would be removed from the balance sheets and reported as investment income or loss in the change statements. If a hedging derivative instrument is associated with an expected future exchange of resources that is no longer probable to occur, then the accumulated deferrals also would be reported immediately in the change statements.

The swap in Illustration 1 ends when planned and remains effective throughout the period of the hedging derivative instrument. The value of the swap declines to zero when it concludes and there is no income or loss. However, when a hedging derivative instrument ends early or ceases to be effective, the accumulated deferrals from prior years would be reported as investment income or loss, plus or minus the changes in fair value for that year. Illustration 4 (beginning on page 76 of the Exposure Draft) depicts a derivative that ceases to be effective during the fiscal year that ended on June 30, 20X3. The financial statements for 20X3 report the accumulated deferred charges as of the end of fiscal year 2003—$4,000,154—less the increase in the derivative's fair value in 2004—$2,463,868—as an investment loss. In other words, $1,536,286 is deducted from the amount reported as investment income in the change statements.

Once a hedging derivative instrument is no longer effective (that is, when it no longer falls within the parameters described below and therefore is no longer substantially offsetting changes in fair values or cash flows), the deferral of fair value changes would cease. Thereafter, annual changes in fair value would be reported in the change statements as investment income or loss. The fair value of the derivative in Illustration 4 increases by $1,536,286 in fiscal year 20X4, and that amount is reported as investment income.

How Is the Effectiveness of a Potential Hedging Derivative Instrument Evaluated?

As of the end of each period for which governments prepare financial statements (typically, the end of the fiscal year), the GASB proposal would require them to evaluate the effectiveness of each potential hedging derivative instrument established during the period. Effective hedging derivatives would be reevaluated as of the end of each succeeding fiscal year to determine if they remain effective. Governments would be allowed to use two types of approaches to evaluating effectiveness—consistent critical terms or quantitative methods. (Appendix D of the Exposure Draft includes flowcharts that lay out the steps involved in evaluating effectiveness.)

Consistent Critical Terms

If the critical terms of the potential hedging derivative instrument and the terms of the item it is hedging are the same—for instance, the ending date of an interest rate swap is the same as the maturity date of the bonds, both are based on the SIFMA swap index, and so on—then the potential hedging derivative instrument is presumed to be effective.

Under such circumstances, any change in the cash flows or fair value of the item being hedged is offset by changes in the cash flows or fair value of the potential hedging derivative. If a government uses the consistent critical terms method and finds that the potential hedging derivative instrument does not have critical terms that are consistent with the hedged item, then it would evaluate it again using one or more quantitative methods.

Quantitative Methods

The Exposure Draft identifies three quantitative methods that may be used for evaluating effectiveness—synthetic instruments, dollar-offset, and regression analysis. These methods measure the degree to which the changes in the fair value or cash flows of the potential hedging derivative instrument offset those of the item being hedged. The Exposure Draft also allows for other acceptable quantitative methods that meet qualifying criteria to be employed. A potential hedging derivative that is not determined to be effective using one of the quantitative methods may be reevaluated using another method.

Synthetic Instrument Method

A synthetic instrument is the combination of an item being hedged and a potential hedging derivative instrument to create a theoretical instrument. The synthetic instrument method involves the calculation of an interest rate (or commodity rate, as appropriate) for the synthetic instrument based on the actual experience following the start of the hedge. The synthetic rate is then compared with the fixed-rate portion of the derivative.

If the synthetic rate is no less than 90 percent and no greater than 111 percent of the fixed rate as of the date of the financial statements, then the fair values or cash flows of the potential hedging derivative instrument substantially offset those of the item being hedged. Therefore, the potential hedging derivative instrument is considered effective for financial reporting purposes and is treated as a hedging derivative instrument. If the synthetic rate is outside that range, a government would examine the rates over the life of the derivative thus far. If the synthetic rate over that period falls within the 90 to 111 percent range, then the potential hedging derivative instrument is considered effective for financial reporting purposes. However, even if the synthetic rate as of the date of the financial statements or over the life of the derivative thus far falls within the range, a government may yet determine that the hedge is not effective for financial reporting purposes because new conditions in the market, such as a change in tax rates, make it unlikely that the hedging derivative instrument will remain effective going forward.

Dollar-Offset Method

The dollar-offset method divides changes in the fair values or cash flows of the hedged item with those of the potential hedging derivative instrument, or vice versa. As long as the result of this calculation falls within a range of 80 to 125 percent, the changes in fair values or cash flows substantially offset and the potential hedging derivative instrument is considered effective for financial reporting purposes. Like the synthetic instrument method, the dollar-offset method can be applied to the period covered by the financial statements or over the life of the derivative.

Regression Analysis

Regression analysis examines the statistical relationship between changes in the fair values or cash flows of a hedged item and its associated potential hedging derivative. For a potential hedging derivative instrument evaluated using regression analysis to be considered effective for financial reporting purposes, the analysis should produce:

- An R-squared of at least 0.80
- An F-statistic that indicates statistical significance at the 95 percent confidence level
- A regression coefficient for the slope between –1.25 and –0.80.

Other Quantitative Methods

Governments would be allowed to employ other generally utilized quantitative methods for evaluating effectiveness that are based on established principles of financial economic theory. Those methods also would have to be able to demonstrate that the changes in cash flows or fair values of a potential hedging derivative instrument substantially offset the changes in cash flows or fair values of the hedged item.

How Would Derivatives with Up-Front Payments Be Reported?

When a firm makes a cash payment to a government at the start of a derivative, it expects to recoup that payment—it is essentially a loan. The terms of the derivative will incorporate the repayment of the up-front cash payment, perhaps by requiring payments to the firm based on a fixed rate that is greater than prevailing market rates (referred to as "off-market" rates). Such a derivative would be considered a *hybrid instrument*—the combination of a derivative and a "companion" instrument that is not reported at fair value in the financial statements, such as a debt issuance. The Exposure Draft would require governments to report the derivative portion of a hybrid instrument separately from the companion instrument in the financial statements. Therefore, governments receiving cash from a firm when entering a derivative would report a liability on the balance sheets equal to the cash they received; the remainder of the transaction—the actual derivative—would be subject to the reporting requirements discussed above. Each year while the derivative is in place, a portion of the government's payments to the firm would be reported in the financial statements as a repayment that reduces the outstanding liability in the balance sheets. In Illustration 5, beginning on page 85 of the Exposure Draft, you can see that the government is reporting annual debt service expenditures ($627,890) and interest expenses ($115,558) related to the repayment of the cash provided by the firm.

HOW ARE THESE PROPOSED STANDARDS DIFFERENT FROM THE PROPOSALS IN THE PRELIMINARY VIEWS?

The basic reporting requirements laid out in the Preliminary Views document have been retained—derivatives would be reported at fair value in the balance sheets, and the change in fair value would be reported as investment income or loss in the change

statements, except for hedging derivative instruments, in which case fair value changes would be deferred until the derivative ends or ceases to be effective. However, the GASB did make several notable changes to its original proposals based on the public feedback it received and further study.

- In the Preliminary Views, for a derivative to be considered a hedging derivative instrument, a government's declared objective for entering into the derivative would have had to be hedging a specific risk. Because of difficulties that could be encountered in documenting a government's objective—and therefore the possibility that otherwise eligible derivatives would be disqualified because proper documentation was not available—that requirement was dropped. However, the disclosure of the government's objective is still proposed to be carried forward.
- In addition to the quantitative methods for evaluating the effectiveness of potential hedging derivative instruments identified in the Preliminary Views, governments would be allowed to use other quantitative methods that meet certain qualifying criteria.
- One type of derivative—synthetic guaranteed instrument contracts (SGICs)—would be reported at contract value, rather than fair value. This is consistent with the fact that annual gains and losses on SGICs are not immediately recognized but are spread over the remaining life of the investments that underlie them.
- Rather than applying a single set of disclosure requirements to all derivatives, as proposed in the Preliminary Views, governments would instead disclose investment derivatives following the same standards applied to other investments.
- The proposed note disclosure of basic summary information has been simplified. Initially, the GASB had proposed requiring information about how the fair value of each individual derivative changed during the year. The Exposure Draft would allow governments to aggregate derivatives by type, though it also requires that they be divided among categories of derivatives—cash flow hedges, fair value hedges, and investments—and presented according to whether they are associated with governmental activities, business-type activities, or fiduciary funds. Additional disclosures for hedging derivatives also could be made for groups of derivatives in the aggregate. However, differences in the terms of the derivatives would likely lead to the additional information being disclosed individually for many of them.
- Proposed disclosures of information about the methods a government used to evaluate the effectiveness of its potential hedging derivative instruments and the results of the evaluation are eliminated. (Governments that use a qualifying method other than those in the Exposure Draft would, however, disclose the identity and characteristics of that method and the results of evaluations using it.) Also eliminated is a proposed requirement to calculate and disclose the amount of ineffectiveness in hedging derivatives that are determined to be effective using one of the quantitative methods.
- Disclosures are added relating to contingent liabilities contained in derivatives and to SGICs.

WHAT INFORMATION DOES THE GASB NEED TO PROCEED WITH THIS PROJECT?

When the GASB sets standards, a crucial part of its "due process" activities is the publication of proposals for public discussion and comment. The GASB relies on the comments of the people who prepare and audit financial statements to assess the technical accuracy and appropriateness of its proposals. The GASB often poses questions regarding critical issues in its proposed standards.

The users of financial statements, on the other hand, are in the best position to help the GASB understand whether or not the information to be provided by its proposals is useful for fulfilling their need for governmental financial information. The substance of the comments from each of the GASB's constituents is more important to the GASB's deliberations than the total number of people for or against a certain proposal. An Exposure Draft is not an opinion poll, and the GASB's ultimate decisions are not necessarily those with the most popular support.

You can help the GASB to complete this project by reviewing the proposal with the following questions in mind:

1. How would the information about derivatives required by the Exposure Draft be useful to your work, the decisions you make, or the research you conduct? If it would not be useful to you, why would it not be relevant?
2. The GASB made several changes to the disclosure requirements first proposed in the Preliminary Views. (See pages 11 and 12 of this supplement.) How have these changes improved or reduced the usefulness of the information? (Please be as specific as possible.)
3. How could the proposed requirements be improved to provide information that is more useful to you?

HOW CAN YOU SHARE YOUR OPINIONS WITH THE GASB?

There are two general ways to provide feedback to the GASB—submitting written comments and participating in GASB public hearings and forums. In either case, it is essential to the Board to receive feedback from you that answers the questions presented above. You may also wish to address other issues raised in the Exposure Draft.

If you would like to submit written comments to the GASB about these proposals, there are three ways you may do so:

- Internet-based questionnaire—your comments can be entered and submitted electronically using a questionnaire that can be found at http://www.gasb.org/survey/cgi-bin/dpls2.html
- By email—send your comments to director@gasb.org
- By traditional mail—complete the form at the end of this supplement or include your comments in a letter and mail to:

Director of Research and Technical Activities
Project No. 26-4
Governmental Accounting Standards Board
401 Merritt 7, PO Box 5116
Norwalk, CT 06856-5116

Submissions are requested by October 26, 2007.

On November 1, 2007, the GASB is holding a public hearing and a roundtable for financial statement users at the New York City Office of Management and Budget, 75 Park Place, 8th Floor, Rooms S1 and S2, New York. The roundtable will begin at 9:00 a.m. and the public hearing at 11:00 a.m. The roundtable is an opportunity for external users of governmental financial information (analysts in the financial community, elected representatives, members of the press, taxpayer groups, citizens, and so on) to provide input in an open discussion with one another.

If you wish to speak at the hearing, you should notify the GASB of your intent in writing and submit a copy of your comments, using the address above, no later than October 12. You can testify in person or via telephone. Please read the participation requirements in the notice of public hearing in the Exposure Draft.

If you wish to participate in the user roundtable, written comments are not required, but you need to notify the GASB of your intent. Observers are welcome at the hearings and roundtable. You can register to participate in or observe the roundtable by submitting your name and affiliation to Ragan Vincent at 203-956-5372 or rpvincent@gasb.org no later than October 26.

WHAT IS THE PURPOSE OF THIS SUPPLEMENT?

To help achieve its mission of setting accounting standards that result in information that is useful for making decisions, the GASB is taking steps to communicate with the public in a more understandable and broadly accessible manner. In particular, the GASB occasionally uses "plain-language" supplements in conjunction with its due process documents (the publications it releases to obtain feedback on proposed changes to governmental accounting and financial reporting standards).

This document is a plain-language supplement that accompanies an Exposure Draft containing proposed changes to the information that state and local governments are required to report about derivatives transactions—*Accounting and Financial Reporting for Derivative Instruments.* The intention of this plain-language supplement is to make it easier for you to participate knowledgeably in the GASB's standards-setting activities. The supplement attempts to achieve this goal by (1) presenting the proposals with as little of the Exposure Draft's technical and implementation-oriented vocabulary as possible and (2) focusing on the impact the proposals will have on the information you will find in government financial statements. This supplement focuses on the information that most typically would result from the proposed new standards and does not address certain circumstances that are less common. The complete details of the proposals can be found in the Exposure Draft, which more fully explains the GASB's specific proposals and its reasons for making them.

The GASB hopes that, as a result of its efforts to present its proposed standards in less technical language, more users of governmental financial information will comment on its proposals. The GASB will consider this feedback, and that expressed in the public hearing and user roundtable, during its deliberations prior to releasing final accounting and financial reporting standards for derivatives.

WHAT IS THE GASB?

The GASB is the private, nonpartisan, nonprofit organization that is recognized as the setter of the standards that U.S. state and local governments follow when accounting for their finances and reporting them to the public. The GASB was founded in 1984 under the auspices of the Financial Accounting Foundation (FAF), which appoints the GASB's Board, raises its funds, and oversees its activities. The FAF also oversees the Financial Accounting Standards Board, which establishes standards for the private sector and not-for-profit organizations. The mission of the GASB is to establish and improve standards of state and local governmental accounting and financial reporting that will:

- Result in useful information for users of financial reports, and
- Guide and educate the public, including issuers, auditors, and users of those financial reports.

Although the GASB does not have the power to enforce compliance with the standards it promulgates, the authority for its standards is recognized under the Code of Professional Conduct of the American Institute of Certified Public Accountants. The Code requires auditors to note any departures from GASB standards when they express an opinion on financial reports that are presented in conformity with generally accepted accounting principles. Also, legislation in many states requires compliance with GASB standards, and governments usually are expected to prepare financial statements according to those standards when they issue bonds or notes or otherwise borrow from public credit markets.

The GASB is composed of a full-time chair and six part-time members drawn from various parts of the GASB's constituency—state and local government finance officers, auditors, the accounting profession, academia, and persons who use financial statement information. The GASB has a professional staff drawn from similar constituencies as the Board. The staff works directly with the Board and its task forces, conducts research, analyzes oral and written comments received from the public, and drafts documents for consideration by the Board.

HOW DOES THE GASB SET STANDARDS?

The GASB follows the set of "due process" activities enumerated in its published rules of procedure before issuing its standards. Due process is stringent and is designed to permit timely, thorough, and open study of financial accounting and reporting issues by the preparers, attestors, and users of financial reports in order to encourage broad public participation in the standards-setting process.

For many issues it addresses, the GASB:

- Appoints an advisory task force of outside experts
- Studies existing literature on the subject and conducts or commissions additional research if necessary
- Publishes for public comment a discussion document setting forth the issues and possible solutions
- Conducts public hearings and forums
- Broadly distributes an Exposure Draft of a proposed standard for public comment.

Significant steps in the process are announced publicly. The GASB's meetings are open to public observation and a public record is maintained. The GASB also is advised by the Governmental Accounting Standards Advisory Council, a 29-member group appointed by the FAF and representing a wide range of the GASB's constituents.

Additional information about the GASB and its activities may be found at www.gasb.org.

FINANCIAL STATEMENT USER RESPONSE FORM

Please complete this form and submit it to the GASB at the address listed on page 14 of this supplement. (Use additional pages if necessary.) Alternatively, you can submit your comments by using the Internet questionnaire at http://www.gasb.org/survey/cgi-bin/dpls2.html or via email to director@gasb.org.

Name (required) _____

Title _____

Organization (required) _____

Address (required) _____

Address _____

City, state, zip (required) _____

Email _____

Telephone _____

1. How would the information about derivatives required by the Exposure Draft be useful to your work, the decisions you make, or the research you conduct? If it would not be useful to you, why would it not be relevant?

2. The GASB made several changes to the disclosure requirements first proposed in the Preliminary Views. (See pages 11 and 12 of this supplement.) How have these changes improved or reduced the usefulness of the information? (Please be as specific as possible.)

3. How could the proposed requirements be improved to provide information that is more useful to you?

THANK YOU!
Please return to:
GASB
Director of Research and Technical Activities
Project 26-4
401 Merritt 7, PO Box 5116
Norwalk, CT 06856-5116