



RESOLUTION

Offering the Positions of the National Association of State Treasurers with Respect to Transparency of Interest Rate Swap Transactions, Registration and Regulation of Financial Advisors and Swap Advisors, Regulation and Transparency of Credit Default Swaps and Related Issues

WHEREAS, the U.S. Congress recently enacted financial regulatory reform legislation, many aspects of which will become evident only through the regulatory process that will occur over the next year or more; and

WHEREAS, there may be additional legislation on these topics that is of interest to state treasurers.

WITH RESPECT TO INTEREST RATE SWAPS

WHEREAS, issuers of bonds may enter into interest rate swaps as a mechanism to reduce interest rate costs by issuing variable rate bonds and entering a swap to create a fixed rate payment or by issuing fixed rate bonds and entering a swap to create a variable rate payment; and

WHEREAS, issuers of state-supported bonds and various public authorities may enter into interest rate swaps and other similar swap agreements that are bilateral and not currently traded on regulated exchanges; and

WHEREAS, the use of interest rate swaps is intended to manage balance sheet risks and to help lower borrowing costs for taxpayers; and

WHEREAS, state and local entities may negotiate preferential collateral requirements on a bilateral basis; and

WHEREAS, interest rate swap agreements are currently not disclosed, cleared centrally, reported, or traded on regulated exchanges, and such agreements lack transparency of costs and fees earned by advisors and counterparties to the transaction; and

WHEREAS, issuers may retain third party interest rate swap advisors or other financial advisors to provide an independent finding that the terms and conditions reflect a fair price as of the date of an interest rate swap's execution and other relevant findings, which may include an analysis of swap counterparties and collateral; and

WHEREAS, banks, broker-dealers and other interest rate swap dealers (and swap dealers in general) involved in the origination of interest rate swaps under current law are not fiduciaries acting on behalf of state and local governments, but rather should be recognized as counterparties with interests that are different from, and may be adverse to, those of the government entity.

NOW, THEREFORE BE IT RESOLVED, by the National Association of State Treasurers that:

- 1) State and local government issuers of municipal securities should be allowed to enter into interest rate swap agreements;
- 2) Independent interest rate swap advisors and financial advisors, acting in the capacity of swap advisers to issuers (collectively entitled “interest rate swap advisers”), must provide advice on the suitability of the terms of the swap agreement and assist in negotiating collateral terms and conditions, and use an appropriate level of diligence to determine that the use of interest rate swaps is for hedging identified risks, lowering borrowing costs, and/or managing balance sheet risks, such as ensuring the appropriate mix of fixed and floating rate exposure;
- 3) To provide transparent prices and fees with counterparties, swap transaction participants or their designees should report interest rate swap transactions, including origination and termination of contracts;
- 4) Interest rate swap advisors have a fiduciary responsibility to municipal securities issuers and should be registered and regulated and required to meet minimum professional standards;
- 5) While swap counterparties and brokers must have a responsibility to determine the sophistication of the government entity and to determine the suitability of a swap transaction for that entity, it would be inappropriate to impose a fiduciary responsibility on swap counterparties and brokers.

WITH RESPECT TO CREDIT DEFAULT SWAPS

WHEREAS, purchasers of bonds and of other financial instruments may enter into Credit Default Swaps in order to hedge their position against adverse financial events, and thereby manage risk; and

WHEREAS, some investors enter into Credit Default Swaps without owning an underlying asset as a way to “bet” that a financial event will make certain assets more or less valuable; and

WHEREAS, Credit Default Swaps are currently not disclosed, cleared centrally, reported, or traded on regulated exchanges; and

WHEREAS, Credit Default Swaps can be written and traded by investors that have no direct interest in the underlying security leading to potentially speculative investments; and

WHEREAS, the Credit Default Swap market is in need of transparency, especially with regard to those transactions related to municipal credits.

NOW, THEREFORE BE IT RESOLVED, by the National Association of State Treasurers that Credit Default Swaps should be regulated at the federal level to reduce systemic risk by requiring:

- 1) standardization surrounding agreements entered into between counterparties of the Credit Default Swap;
- 2) adequate collateral arrangements for the movements of the Credit Default Swaps associated with changes in market value or default;
- 3) an exchange for Credit Default Swap trading to allow for transparency, standardization, elimination of counterparty risk and an overall reduction in fees;
- 4) transparency for all Credit Default Swap issuances and trades to include information as to volumes, prices and major swap characteristics.

WITH RESPECT TO ASSET BACKED SECURITIES

WHEREAS, efforts being discussed to regulate asset-based securities could unintentionally be applicable to many conventional municipal bond programs of state and local issuers.

NOW, THEREFORE BE IT RESOLVED, by the National Association of State Treasurers that regulation of asset-based securities should be clearly defined to exclude municipal securities, as that term is used in the Securities Exchange Act of 1934, as amended.

Approved this 24th Day of August, 2010, by the
National Association of State Treasurers



Hon. James B. Lewis
NAST President
New Mexico State Treasurer