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2 **Comments on 8/4 version of**  
3 **Guidelines for Interest Rate and Forward Purchase Agreements**

4 Thank you for the opportunity to comment on the new guidelines. The proposal is a  
5 significant step forward in preventing the abuses and poor decisions of the past.

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7 We respectfully suggest the following additions and changes to the proposal.

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9 A. **Page 3-5, II. Definitions – “Financial Advisor” and “Swap Advisor”.** The  
10 Guidelines state that the Financial and Swap Advisor’s fiduciary duty in a  
11 transaction must strictly be only to the Governmental entity. It is not totally clear  
12 whether this would preclude a related person or corporate entity from also serving  
13 as the underwriter, dealer, or administrator on the same transaction. This wording  
14 should be expanded to specifically forbid related entities from playing other roles  
15 in the same transaction.
- 16 B. **Page 5, III. Procedure – A. Form of Request.** A copy of the complete request  
17 for a Report of Compliance should be required to be posted, for public viewing,  
18 on the Comptroller’s web site within five days of receipt.
- 19 C. **Page 7, III. Procedure – D. Conditions for Entering – Item 3 a-e.** Why are  
20 specific mitigation tactics even mentioned in the guidelines? They should  
21 certainly be required in the presentation to the governing body. However, the  
22 specific mitigation tactics should be developed by the advisors on the transaction.  
23 The estimated range of costs of each of these mitigation tactics should also be  
24 required in the presentation to the governing body.  
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- 26 The fact that some mitigation tactics can severely limit future flexibility should  
27 also be included in the presentation. For example, the high termination charges on  
28 a swap agreement can effectively prevent variable rate debt from being converted  
29 to low interest fixed rate bonds when the opportunity, or necessity (liquidity,  
30 remarketing or roll problem), arises.
- 31 D. **Page 8, III. Procedure – D. Conditions for Entering – Last paragraph.**  
32 Adequate public notice of the submission of a Request for Compliance should be  
33 specified. A period of at least 7 days should be required.
- 34 E. **Page 9, III. Procedure – D. Conditions for Entering – Item G 1 Execution.**  
35 The report to the governing entity should include a detailed listing of all the costs  
36 of the swap, as required by TCA 9-21-151, on a form similar to the CT-0253 bond  
37 transaction form. The cost of the swap should NOT be permitted to be buried in  
38 the swap transaction, as is currently the practice. This new form and CT-0253  
39 forms should be posted on the Comptroller’s web site within 5 days of receipt for  
40 public inspection.
- 41 F. **Page 10, III. Procedure – D. Conditions for Entering – Item G 3 Material**  
42 **Events.** Reports of these material events should be required to be made to the full  
43 governing body. These reports should also be posted on the Comptroller’s web  
44 site for public inspection within 5 days of receipt.
- 45 G. **Page 11, III. Procedure – D. Conditions for Entering – Item G 5**  
46 **Termination.** Reports of termination should be required to be made to the full

1 governing body. These reports should also be posted on the Comptroller’s web  
2 site for public inspection.

3 **H. Page 11, III. Procedure – D. Conditions for Entering – Item H Conflicts.** This  
4 paragraph should specifically prohibit the same, or related, parties from playing  
5 multiple roles in the same transaction, for example advisor and underwriter, or  
6 advisor and administrator.

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8 This section should also be expanded to require clear disclosure that the “loan  
9 programs” being marketed to local governments are NOT State approved or State  
10 supported. Resolutions being provided by marketers to local governments are  
11 leading some legislators to believe they are voting to participate in some kind of  
12 State approved bond program. For example: “WHEREAS, it has been determined  
13 to be in the best interest of the County to finance, through a program known as the  
14 Tennessee Local Government Alternative Loan Program (TN-LOANS)”.

15 **I. Page 12, IV. Guidelines – A. Item 2.** Terms such as “proportional revenue  
16 coverage” or “debt structure that results in an average life of debt less than the  
17 greatest of the three above” are not meaningful to most local legislators and need  
18 further definition and elaboration. The latter would also seem to permit, or  
19 encourage, heavily backend-loaded debt repayment schedules, which could lead  
20 to serious future problems.

21 **J. Page 13, IV. Guidelines – B. General Interest Rate Agreement Requirements**  
22 **– Item 1.** The guidelines should require that interest rate swaps be authorized by  
23 a specific resolution of the governing body within 60 days of issuance of the  
24 swap. The current practice, used by many counties, is to include an authorization  
25 in the initial bond resolution for a swap to be executed, without further legislative  
26 approval, any time during the life of the bond. Thus, swaps can be written on  
27 bonds issued many years ago, without the approval, notification, or even the  
28 knowledge, of the current legislative body.

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30 In addition, guidelines are desperately needed governing the handling of existing  
31 swaps, where the underlying bonds have been refinanced to fixed rate bonds, but  
32 the swaps are left outstanding due to high termination charges. There are costly  
33 swaps in this status, involving huge notional amounts, which are ‘floating in  
34 space’ with no clear guidelines as to what to do about them.

35 **K. Page 15, IV. Guidelines – H. Financial Monitoring.** These mark to market  
36 letters should be required to be kept for the life of the swap agreement. In some  
37 cases, the public is being told that these documents are not available even three  
38 years back.

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40  
41 Respectfully submitted,  
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We respectfully submit one additional comment on the proposed guidelines.

A provision should be added to the Guidelines requiring full, itemized, disclosure of ALL on-going fees associated with a bond issue. The current practice, embodied in the "Recurring Costs" section of the CT-0253 form, itemizes recurring remarketing, liquidity, and credit enhancement fees. Yet, a check of the audit report shows that the "Other Fees on Variable Rate Debt" are nearly double the fees shown on the CT-0253 Forms on the same bond issues. The Guidelines should require full itemization of ALL these additional recurring costs, including administrative and other fees, and the CT-0253 should be changed to show this complete itemization.

Thank you for your hard work on this very important issue.

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