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September 1, 2011

Elizabeth M. Murphy, Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: NABL Comments Regarding SEC Release 34-64766, File No. S7-25-11,
Business Conduct Standards for Security-Based Swap Dealers and Major Security-
Based Swap Participants

Dear Ms. Murphy:

The following comments are submitted to the Securities and Exchange Commission (the "Commission") by the National Association of Bond Lawyers ("NABL") relating to Release No. 34-64766, dated June 29, 2011 (the "SEC Proposing Release"). The comments were prepared by an ad hoc subcommittee of the NABL Securities Law and Disclosure Committee comprised of those individuals listed on Exhibit I and were approved by the NABL Board of Directors.

NABL is an organization of approximately 2,800 public finance attorneys that exists to promote the integrity of the municipal market by advancing the understanding of and compliance with the law affecting public finance. We respectfully provide this submission in furtherance of that mission.

We thank you for this opportunity. If NABL can provide further assistance, please do not hesitate to contact Penny Rostow in our Washington Office.

Sincerely,

John M. McNally
President, National Association of Bond Lawyers

**COMMENTS
OF THE
NATIONAL ASSOCIATION OF BOND LAWYERS
REGARDING
BUSINESS CONDUCT STANDARDS FOR SECURITY-BASED
SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS,
RELEASE NO. 34-64766 (SEC FILE NO. S7-25-11)**

The following comments are submitted to the Securities and Exchange Commission (the “Commission”) relating to Release No. 34-64766, dated June 29, 2011(the “SEC Proposing Release”).

The SEC Proposing Release requests comments on proposed rules under the Securities Exchange Act of 1934, as amended, that are intended to implement provisions of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank”) relating to certain business conduct standards for security-based swap dealers and major security-based swap participants (collectively, “SBS Entities”).

NABL greatly appreciates the Commission’s efforts to solicit the views of participants in municipal securities markets and to consider them together with those public comments previously received by the CFTC. We commend the SEC for its efforts to seek broader perspective and we believe this additional background data will contribute greatly towards the development of a set of rules that will uphold the legislative intent of Dodd-Frank and contribute to the better functioning of municipal securities markets. Municipal markets will be best served by comprehensive rules that provide clarity and that reflect the realities of the functioning of municipal markets.

We are generally strongly supportive of the Commission’s efforts in the SEC Proposing Release to establish, in a manner consistent with the requirements of Dodd-Frank, a framework for markets in security-based swaps that protects investors with increased transparency and reduced conflicts of interest. We would, however, like to respond to selected questions posed in the SEC Proposing Release and bring to the Commission’s attention potential issues related to the differences between the provisions proposed by the SEC Proposing Release and by the Commodity Futures Trading Commission (the “CFTC”) in the Business Conduct Standards for Swap Dealers and Major Swap Participants with Counterparties, 75 Fed Reg. 80638 (Dec. 22, 2010) (the “CFTC Business Conduct Proposal” and, together with the SEC Proposing Release, the “Proposed Rules”).

Reasonable, Consistent and Comparable Business Conduct Requirements

Although most derivative transactions that are used in connection with municipal securities offerings are “swaps” regulated by the CFTC, some are “securities-based swaps” regulated by the Commission. Derivative transactions are important tools by which issuers of municipal securities and conduit borrowers are able to manage interest rate risks while enjoying the lower yields attributable to variable rate securities, isolate tax risks from borrowing costs, and lock in savings from the future refunding securities that are not yet callable, among other purposes. We believe it is in the interest of issuers and other participants in municipal securities offerings that

the Commission (and CFTC) strike an appropriate balance between protecting participants, on the one hand, and facilitating the free flow of derivative transactions, on the other. In their rule proposals, it appears to us that the Commission has come much closer to striking an appropriate balance than the CFTC.

We note that because there are significant differences between certain provisions contained in the Proposed Rules, market participants potentially could be subjected to different business conduct standards in connection with a single, integrated financing involving multiple swaps but the same participants.¹ If the Commission and the CFTC were to implement different business conduct standard requirements, it could cause unnecessary complexity, cost and inefficiency for market participants, thereby potentially harming the very participants (e.g., states and their political subdivisions) that these Proposed Rules are intended to protect.

We would recommend, in a manner consistent with Dodd-Frank's mandate for agency coordination and consistency, that the SEC and the CFTC continue to work closely with each other to establish reasonable, consistent and comparable business conduct standards for their respective registrants. In addition, we suggest that generally, and as more specifically noted below, the business conduct requirements to be implemented by the SEC and the CFTC follow those contained in the SEC Proposing Release.

Finally, we note that the meaning of the phrase "act as an advisor to a special entity" is critical to several regulatory rulemakings and we believe that this term should be applied as consistently as possible. We ask, therefore, that the Commission staff responsible for the development of the Commission's final rule on business conduct standards coordinate with Commission staff members working on rules regarding municipal advisors, as well as the Municipal Securities Rulemaking Board and the CFTC.

Amendments to Existing SBS Transactions

Both market and legal compliance factors contribute to the amendment of swaps in the municipal market. Amendments to SBS transactions are frequently time-sensitive and do not alter the established relationship between the SBS Entity and its counterparty. We therefore recommend that the Proposed Rules not apply to amendments to existing SBS transactions after the effective date of the Proposed Rules.

Counterparties to Special Entities

An SBS Entity counterparty to a "special entity," which include municipalities, pension plans, endowments and similar entities, is required under Dodd-Frank to have a reasonable basis to believe that the special entity has a qualified independent representative. We support the Proposing Release's "safe harbor" independence test, which provides that the representative would be deemed to be independent of the SBS Entity if, within the past year, the representative

¹ For example, a financing for a state or one of its political subdivisions involving the same dealers and participants could include both an optional forward purchase agreement for municipal bonds or a matched rate interest rate swap or basis swap (that is, a security-based swap subject to the SEC rules) and an index-based interest-rate swap (subject to the CFTC rules).

(i) is not and was not an associated person of the SBS Entity and (ii) has not received more than ten percent of its gross revenues directly or indirectly from the SBS Entity.² We believe that market participants will benefit from greater certainty provided by the safe harbor included in the SEC Proposing Release.

Clarification of “Special Entity”

We note that the Commission has solicited comments as to whether clarification of the definition of “special entity” is necessary. We recommend that the Commission address the scope of the ‘endowment’ prong of the definition of “special entity” by clarifying that it does not encompass a non-profit organization, the assets of which may include funds designated by it as an endowment, but, instead, is limited to an endowment that itself enters into swaps. This recommendation is consistent with the definition of “special entity,” which does not by its terms include non-profit organizations and is important to the financing activities of hospitals and universities, which, as borrowers in the tax-exempt and taxable markets, are frequent users of swaps.

Advisors to Special Entities

We also support the addition of safe harbor provisions protecting a security-based swap dealer from being deemed to be an advisor to a special entity. We believe that market participants will benefit from greater certainty provided by the safe harbor included in the SEC Proposing Release.

Reliance on Counterparty Representations

We note that the Commission has solicited comment on two alternative standards for reliance on representations of a counterparty to satisfy the requirements under various proposed business conduct standards, such as know-your-counterparty, verification of counterparty eligibility, institutional suitability, and requirements relating to special entities. The first proposed standard would permit an SBS Entity to rely on a representation from a special entity unless it knows that the representation is not accurate. The second proposed standard would permit an SBS Entity to rely on a representation unless the SBS Entity has information that would cause a reasonable person to question the accuracy of the representation. In either case, provided that the SBS Entity had no knowledge of “red flags” or “suggestions” of irregularity, the SBS Entity would not be required to undertake potentially costly, prolonged, and intrusive due diligence.³

² The CFTC Business Conduct Proposal, on the other hand, included a new, three-prong independence test, including a determination as to whether or not a “material business relationship” exists between the representative and the swap dealer or major swap participant.

³ Of the two approaches proposed by the SEC, we generally prefer the first proposed standard, which is entirely subjective since this approach depends exclusively on an evaluation of the information in the possession of the SBS Entity. We believe that the objective element of the second proposed standard could cause uncertainty and additional cost for market participants because it is dependent on what a reasonable person would conclude if such person had the same information as the SBS Entity. We note that it could be expensive and time-consuming for SBS Entities that are large organizations to search out information that, if known to a reasonable person, might raise questions about an entity’s representations, and that any requirement that they do so before initiating a trade could

For these reasons, we believe the Proposing Release’s approach is preferable to that of the CFTC Business Conduct Proposal, which includes an affirmative diligence requirement that imposes an obligation on a swap dealer or major swap participant to establish a “reasonable basis” to believe that its counterparty’s sufficiently detailed representations are reliable.

Certain Duties of SBS Entities Mandated by Dodd-Frank

Finally, we support the Commission’s proposal to require SBS Entities to adopt, without any specific prohibitions or additional requirements, written policies and procedures reasonably designed to ensure compliance with the duties set forth in Section 15F(j) of the Exchange Act, including duties related to monitoring of trading, risk management systems, regulatory disclosures, internal data retention procedures, mitigation of conflicts of interest, and prevention of antitrust violations. We prefer this approach to the CFTC’s proposals for addressing these statutory duties because we believe that SBS Entities will benefit from greater flexibility in establishing compliance policies appropriate for its management and organizational structure, without certain detailed specified elements mandated for inclusion in the relevant policies and procedures.

* * *

We appreciate the opportunity to comment on the SEC Proposing Release and are available to discuss these comments with the Commission or its staff should that be helpful in their consideration of the SEC Proposing Release.

reduce the number of willing counterparties, the time required to complete a transaction, and the price at which transactions are negotiated or otherwise awarded.

EXHIBIT I

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