

# **THE BOARD OF REGENTS OF THE UNIVERSITY OF HOUSTON SYSTEM**

## **MASTER SWAP POLICY**

### **1. The System**

Texas Education Code chapter 55 and Texas Government Code chapter 1371 authorize the System to enter into interest rate swap transactions (“Swaps”) and related agreements (“Swap Agreements”) with one or more counterparties (the “Counterparty”). By resolution (a “Swap Resolution”), the Board of Regents (the “Board”) of the University of Houston System (the “System”), upon receipt of a favorable recommendation of its Administration and Strategic Planning Committee (the “Committee”), may authorize on a case by case basis one or more Swaps and Swap Agreements on behalf of the System.

Each Swap Resolution must authorize the Swap and Swap Agreement and their major provisions in substantially final form, including the notional amount of the Swap, security for and terms of payment of the Swap, and qualified Swap counterparties. Each Swap Resolution must specify the appropriate System official or officials (the “System Authorized Representative”) authorized to modify and complete the Swap Agreement, and specify the parameters for modification and final acceptance of the Swap and Swap Agreement. If the Swap Resolution and the Master Swap Policy conflict, then terms and conditions of the Swap Resolution control.

### **2. Purpose**

A Swap may be an integral part of the System’s asset/liability and debt management strategy. By utilizing Swaps, the System can expeditiously take advantage of market opportunities to reduce costs of existing or planned Consolidated Revenue Financing Program (CRFP) debt, or can hedge the interest rate of existing or planned CRFP debt. Swaps allow the System to actively manage asset and liability interest rate risk, balance financial risk, and achieve debt management goals and objectives through synthetic fixed rate and variable rate financing structures. The System will not enter into Swaps for speculative purposes.

### **3. General Guidelines for Interest Rate Swap Agreements**

The following non-exclusive list provides guidelines the System will follow in the evaluation and recommendation of Swap transactions:

#### **3.1. Legality**

Each Swap and Swap Agreement must comply with Texas and federal law, and must not conflict with the material provisions and covenants of existing System resolutions, indentures or contracts. Each Swap Agreement governing a Swap transaction must be 1) approved by

the Board by a Swap Resolution; 2) approved by the Texas Attorney General in accordance with Texas Government Code chapter 1371, 3) approved by the Texas Bond Review Board, and 4) be accompanied upon delivery by an opinion acceptable to a System Authorized Representative from nationally recognized bond counsel to the effect that the Swap Agreement governing the Swap is a legal, valid, and binding obligation entered into by the System in accordance with applicable State and federal laws.

### 3.2. Goals

The Swap Resolution should clearly state the goals to be achieved through any swap contract and the execution parameters should be consistent with the System's stated goals.

### 3.3. Rating Agencies

Execution of a Swap Agreement may not adversely impact any existing System credit rating without express consent of the Board. A contemplated Swap Agreement must conform to and may not conflict with the System's outstanding commitments or agreements with bond insurers, credit enhancers, surety providers and the System's liquidity requirements related to outstanding debt.

### 3.4. Term

The System will determine on a case-by-case basis the appropriate term for a Swap Agreement. However, the term of a Swap Agreement entered into for liability management purposes may not extend beyond the final maturity date of the underlying debt.

### 3.5. Impact on Variable Rate Capacity

The impact of a Swap Agreement on the System's variable rate debt exposure and the impact on the System's continued issuance of traditional variable rate products should be assessed before execution of any Swap Agreement. The Treasurer, with input from the System's financial advisor, will estimate the amount of basis risk and optional termination risk associated with a Swap Agreement (taking into account such risk from existing Swaps) and include the estimate in the calculation of the System's total variable rate exposure.

### 3.6. Enhancements

If authorized by Texas law, the System may utilize other swap enhancement products, including but not limited to forward starting swaps, swap options, basis swaps, caps, floors, collars, and cancellation options, provided that such products are approved in accordance with Section 7 – Form of Swap Agreements and Other Documentation. The costs, benefits, and other matters regarding the swap enhancement should be considered during the approval process. Execution of swap option agreements in which the System receives up-front cash are prohibited.

### 3.7. Accounting Compliance

The impact of compliance with prevailing accounting principles must be disclosed in the System's annual financial reports.

### 3.8. Exit Strategy

The mechanics for determining termination values at various times and upon various occurrences must be explicit in each Swap Agreement. The potential termination costs should be considered by the Committee before recommending to the Board approval of a Swap Resolution.

## 4. Basis of Award

### 4.1. Competitive Bid

Competitively bid Swaps are deemed "quasi-competitive" and must include bona fide solicitations for bids from no fewer than three firms. Solicitations for bids must be made only to potential Counterparties who are qualified under the terms of this policy. If in the best interest of the System, and if authorized in the Swap Resolution, the System Authorized Representative may allow a firm or firms not submitting the bid that produces the lowest cost to match the lowest cost bid and be awarded up to 40% of the notional amount of the Swap.

### 4.2. Negotiated Transactions

In the case of a purely negotiated transaction, the System should obtain a "fair value opinion" from a swap advisor selected by the System that is regulated by the Securities and Exchange Commission and the Municipal Securities Rulemaking Board, which may be the System's financial advisor (the "Swap Advisor"). The Counterparty must disclose payments to third parties regarding the execution of any derivative contract.

A System Authorized Representative may procure a Swap by negotiation in the following situations, in each instance as authorized in the Swap Resolution:

4.2.1. The System Authorized Representative determines that due to the complexity of a particular transaction, a negotiated bid will result in the most favorable pricing.

4.2.2. A System Authorized Representative determines that, in light of the facts and circumstances, a negotiated transaction will promote the System's interests by encouraging and rewarding innovation.

## 5. Management of Swap Transaction Risk

Swap Agreements with numerous Counterparties create risks for the System. To manage the associated risks, the following risks and related guidelines and parameters must be considered for each Swap:

## 5.1. Counterparty Risk

Limiting the exposure caused by a concentration of Swap Agreements between the System and any single Swap Counterparty reduces losses which may result from a swap Counterparty default. In addition, the System may require under the terms of a Swap Agreement the posting of mark-to-market collateral by any Counterparty, as requested by the System, in accordance with the guidelines described in Section 6.3 – Collateral Requirements.

## 5.2. Termination Risk

### 5.2.1. *Optional Termination:*

The System will retain the right to terminate a Swap Agreement at any time during the term of the Swap Agreement at the then-prevailing market value of the Swap. In general, exercising the right to optionally terminate a Swap Agreement should produce a benefit to the System, either through receipt of a payment from a termination, or if a termination payment is made by the System, through conversion to a more beneficial debt position. Termination value must be readily determinable by one or more independent swap Counterparties, who may assume the System's obligations under the Swap. A Counterparty shall not have the option to terminate the Swap Agreement .

### 5.2.2. *Mandatory Termination:*

A termination payment may be required if a Swap Agreement is terminated for any reason. It is the intent of the System to review all available options prior to effecting a termination or making any termination payment. At a minimum, prior to making any termination payment, the System must have sufficient time to determine whether it is financially advantageous to obtain a replacement Counterparty.

## 5.3. Amortization Risk (Term)

The slope of the swap curve, the marginal change in swap rates from year to year along the swap curve, termination value, and the impact that the term of the swap has on the overall risk exposure of the System should be considered in determining the appropriate term of any swap agreement. Any swap designated as a hedge should reflect the amortization of the debt that it is hedging.

## 5.4. Liquidity Risk

The System should consider if the swap market is sufficiently liquid (i.e., if enough potential qualified Counterparties participate actively in the market to assure fair pricing) for the type of Swap or other product being considered and the potential ramifications of an illiquid market for such types of swaps. There may not be another appropriate party available to act as an offsetting Counterparty.

### 5.5. Basis (Index) Risk (including Tax Risk)

Any index chosen as part of a Swap Agreement must be a recognized market index, including but not limited to The Securities Industries and Financial Markets Association Municipal Swap Index (SIFMA) or London Interbank Offering Rate (LIBOR).

The System will not enter into Swap Agreements that do not have a direct (one to one) correlation with the movement of an index without analyzing the risk associated with the enhancement.

The tax risk and impact to the System of each Swap should be detailed through the Counterparty disclosure requirements outlined in Section 7 – Form of Swap Agreements and Other Documentation.

### 5.6. Bankruptcy Risk

Bond or swap counsel will be specifically engaged to review for the System the legal issues arising from the bankruptcy of a Counterparty under a Swap or other product. Specifically, such bond or swap counsel will be engaged to review for the System the bankruptcy issues associated with the method of holding any collateral required to be posted.

## 6. Counterparty Approval Guidelines

### 6.1. Eligibility

The System may enter into Swaps only with eligible Counterparties. To qualify as a Counterparty under this policy, when a Swap is delivered by the System, a proposed Counterparty (i) must be rated at least AA-/Aa3/AA- by at least two of the three nationally recognized credit rating agencies (Standard & Poor's, Moody's, and Fitch Ratings, respectively) and must have a minimum capitalization of \$50 million, or (ii) must be rated at least BBB-/Baa3/BBB- by two of the three nationally recognized credit rating agencies and provide a credit support annex ("CSA") to the schedule to the ISDA master agreement that requires such party to deliver to a third party under an escrow, collateral or similar agreement collateral for the benefit and security of the System (a) that is of a kind and in such amounts as are specified therein and which relate to various rating threshold levels of the Counterparty or its guarantor, from AA-/Aa3/AA- through BBB-/Baa3/BBB-, (b) that, in the judgment of the System, is reasonable and customary for similar transactions, taking into account all aspects of such transaction including without limitation the economic terms of such transaction and the creditworthiness of the Counterparty or, if applicable, its guarantor; and (c) complies with any security requirements applicable to the System under Texas law, or (iii) must obtain credit enhancement from a provider with respect to its obligations under the transaction that satisfies the requirements of clause (i) of this paragraph, given the undertaking involved with the particular transaction.

Before delivery of the Swap Agreement by the System, the Counterparty must make available audited financial statements and rating and credit reports of the Counterparty (and

any guarantor), and must identify to the best of its ability the amount and type of its derivative exposure and the net aggregate amount of its exposure to all parties (the System and others). The Counterparty must agree in the Swap Agreement (and any guarantor must agree) that it will provide such financial statements and rating and credit reports to the System at least annually thereafter.

## 6.2. Swap Counterparty Exposure Limits and Transfer

In order to limit and diversify the System’s Counterparty risk and to monitor credit exposure to each Counterparty, the System will not enter into an interest rate swap agreement with a qualified swap Counterparty if the following exposure limits are reached per Counterparty:

- 6.2.1. As a percent of total outstanding debt, the maximum notional amount of Swaps between a particular Counterparty (and its unconditional guarantor, if applicable) and the System must not exceed 25% immediately after a proposed Swap would be delivered by the System. The net exposure total of all notional amounts between each Counterparty and the System must include the total amount of System debt outstanding and authorized. As such, notional amounts for fixed to floating swaps may be used to “offset” the notional amounts for floating to fixed swaps, or vice-versa. Exposure limit calculations are net of insured termination payments.

Additionally, the System must not enter into a Swap with an otherwise qualified Counterparty unless the cumulative mark-to-market termination value owed by the Counterparty (and its unconditional guarantor, if applicable) to the System at the time of calculation is less than or equal to \$30 million. The \$30 million limitation is the sum of all mark-to-market values between the qualified Counterparty and the System regardless of the type of Swap or other similar product, net of collateral posted by the counterparty. Specific limits by any Counterparty are based on the cumulative mark-to-market value of the Swap(s) or other similar products and the credit rating of the Counterparty. The limits are as follows:

Counterparty Long-Term Debt Rating (lowest prevailing rating from Standard & Poor’s / Moody’s)	Maximum Cumulative Mark-to-Market Value of Swaps Owed to System by Counterparty (net of collateral posted)
AAA / Aaa	\$30 million
AA+ / Aa1	\$25 million
AA / Aa2	\$20 million
AA- / Aa3	\$15 million
A+ / A1	\$10 million
A / A2	\$5 million

If a Counterparty’s credit rating is downgraded such that the cumulative mark-to-market value of all Swaps or other similar products between the Counterparty and the System exceeds the maximum permitted by this policy, the Counterparty must either terminate a portion of the Swap or similar product, post collateral securing the deficit as provided in

the Swap Agreement, or provide other credit enhancement that is satisfactory to the System and ensures compliance with this policy.

Before delivery of a Swap Agreement by the System, a Swap Advisor must provide a memorandum setting forth the exposure limit calculation, which will become a part of the official transcript for the transaction. Exposure limits will be reviewed by the Committee at least annually.

6.2.2. Limitations on transfers of swaps by a particular Counterparty should be carefully analyzed. If the Swap Agreement unilaterally restricts transfer or assignment, then the System must have the right to terminate the swap without penalty if the Counterparty transfers or assigns the swap or the Counterparty merges with another entity that changes the credit profile of the Counterparty, unless the System gives its prior written consent to the transfer, assignment, or merger.

6.2.3. If the maximum notional limit for a particular Counterparty is exceeded solely by reason of merger or acquisition involving two or more Counterparties, the System will expeditiously analyze the exposure, but is not be required to “unwind” existing Swaps unless the System determines that such action is in its best interest, given all the facts and circumstances.

6.2.4. If any exposure limit is breached by a Counterparty, then the System will:

6.2.4.1. Conduct a review of the exposure limit calculation of the Counterparty;

6.2.4.2. Determine if collateral may be posted to satisfy the exposure limits;  
and

6.2.4.3. Subject to the terms of this policy, enter into an offsetting Swap, if appropriate.

6.2.5. The System will not enter into contracts with derivative product companies (“DPCs”) that are classified as “terminating” or “Sub-T” DPC’s by the rating agencies.

### 6.3. Collateral Requirements

Collateral posting requirements between the System and each Counterparty may not be unilateral in favor of the Counterparty. As part of the Swap Agreement, the System or the Counterparty may require collateralization to secure any or all swap payment obligations. Collateral requirements will be subject to the following guidelines:

6.3.1. A Swap Agreement may not impose Collateral requirements on the System if the requirements would impair the System’s existing operational flow of funds.

6.3.2. Each Counterparty must provide a form of a Credit Support Annex in accordance with Section 6.

- 6.3.3. A list of acceptable securities that may be posted as collateral and the method of valuation of such collateral will be determined and mutually agreed upon with each Counterparty during negotiation of the Swap Agreement.
- 6.3.4. The market value of the collateral must be determined as provided in the Swap Agreement on either a daily, weekly, or monthly basis by an independent third party.
- 6.3.5. Failure to meet collateral requirements will be a default under the Swap Agreement.
- 6.3.6. The Swap Agreement may provide for the right of assignment by one of the parties in the event of certain credit rating events affecting the other party. The System (or the Counterparty) should first request that the Counterparty (or the System) post credit support or provide a credit support facility. If the Counterparty (or the System) does not provide the required credit support, then the System (or the Counterparty) should have the right to assign the agreement to a third party acceptable to both parties and based on terms mutually acceptable to both parties. The credit rating thresholds to trigger an assignment should be included in the supporting documents.

## **7. Form of Swap Agreements and Other Documentation**

Each Swap Agreement must contain terms and conditions as set forth in the International Swap & Derivatives Association, Inc. (“ISDA”) Master Agreement and such other terms and conditions included in any schedules, confirmations, and credit support annexes as approved in accordance with the Swap Resolution authorizing that transaction. The Swap Advisor must provide a disclosure memorandum that includes an analysis by the Swap Advisor of the risks and benefits of the transactions, with amounts quantified. This analysis will include, among other things, a matrix of maximum termination values over the life of the swap. The disclosure memorandum will become a part of the official transcript for the transaction. The Swap Advisor must also affirm receipt and understanding of the System’s statement of swap policies and must further affirm that the contemplated transactions fit within the swap policies as described herein.

### **7.1. Modification of Swaps**

Each Swap Resolution must provide specific approval guidelines for the Swaps to which it pertains. These guidelines will provide for modifications to any approved Swaps, provided such modifications, unless considered and recommended by the Board, do not extend the average life of the Swap, increase the overall risk to the System, or increase the notional amount of the Swap. The Swap Resolution must further designate which System officers are authorized to cause such modifications.

### **7.2. Aggregation of Swaps**

Unless the Swap Resolution states otherwise, the approval requirements set forth in each Swap Resolution are applicable for the total notional amount of transactions executed over a

consecutive three-month period for a given security or credit. Therefore, the notional amount of Swaps including the average life of the swap agreements over a consecutive three-month period are considered in total (net of the notional amount of a Swap reversal) to determine what approval is required pursuant to a particular Swap Resolution.

## **8. Reporting Requirements**

The Vice Chancellor for Administration and Finance will provide an annual written report to the Board which addresses at least the following items:

- 8.1. The terms of any outstanding Swaps;
- 8.2. State the fair value of each Swap;
- 8.3. State the value of any collateral posted to or by the System under any Swaps with each Counterparty at the end of the fiscal year and the cash flows of any Swap;
- 8.4. Identify the Counterparties to any Swap, any guarantor of any Counterparties, and the credit ratings of any Counterparty and guarantor; and
- 8.5. Determine whether the continuation of any Swaps under the agreement would comply with the System's interest rate management agreement policy

Approved: November 15, 2007