NYC HDC

NEW YORK CITY
HOUSING DEVELOPMENT
CORPORATION

MEMORANDUM

To: The Chairperson and Members

From: Gary Rodney
President

Date: April 2, 2014

Re: Guidelines for Uses of Certain Financial Hedges

The Members are asked to approve the adoption of Guidelines for Uses of Certain Financial Hedges to govern the use by the Corporation of financial derivative products such as swaps, caps, floors, collars, and other similar agreements commonly referred to as "Hedges" (the "Hedge Policy") attached hereto. Each Hedge will be presented to the Members for approval before the Corporation enters into any such agreements.

Background

The federal Dodd-Frank Wall Street Reform and Consumer Protection Act led to changes in the regulatory environment that impact how dealers of Hedges and issuers such as the Corporation will interact. To engage in any discussion relating to a Hedge, dealers now require issuers such as the Corporation to enter into the ISDA August 2012 and March 2013 DF Protocols (the "DF Protocol"), published by the International Swaps and Derivatives Association, Inc. (the "ISDA"). The DF Protocol requires all issuers such as the Corporation to engage the advice of a designated qualified independent representative (a "Designated QIR") and adopt written policies and procedures. The Corporation believes that adopting the proposed Hedge Policy will not only satisfy the requirement for written policies and procedures but is also the best practice to manage interest rate risk decisions going forward.

Hedge Policy

The proposed Hedge Policy will govern the Corporation's procedures for evaluating, selecting and monitoring Hedge transactions. The Hedge Policy establishes that the Corporation may only enter into such transactions to manage risk and only after obtaining the Members' approval. For conditions under which a Hedge can be used, factors that must be considered and counterparty standards refer to paragraphs II, III and VII of the attached proposed Hedge Policy. For annual reporting requirements refer to paragraph X of the attached proposed Hedge Policy.

On April 16, 2012, the Members approved Mohanty Gargiulo LLC ("Mohanty") as Interest Rate Hedge Advisor to the Corporation. We have recently revised the terms of their engagement so that Mohanty can represent the Corporation as its Designated QIR. As part of the DF Protocol, the Corporation would represent to counterparty dealers that the Corporation will not rely on the recommendations (if any) provided by the dealer, will rely on the advice of a Designated QIR and will exercise independent judgment in consultation with a Designated QIR in evaluating any derivative transaction it executes. The proposed Hedge Policy outlines the requirements for a Designated QIR to ensure compliance with the Dodd-Frank Act and other regulatory considerations. The provisions regarding the Designated QIR are enumerated in paragraph V of the attached proposed Hedge Policy.

In connection with the proposed authorization of the Corporation's Multifamily Housing Revenue Bonds, 2014 Series B (which is expected to be presented at the same Board Meeting as this Hedge Policy), the Corporation will seek the Members' approval of an interest rate cap pursuant to the terms of the proposed Hedge Policy.

Interest Rate Swap

In the event the Corporation intends to enter into a floating-to-fixed interest rate swap agreement relating to bonds in the Corporation's Open Resolution on a future date, the Members will also be asked to amend the Multi-Family Housing Revenue Bonds Bond Resolution, adopted July 27, 1993, as amended, at that time. As mentioned above, any floating-to-fixed interest rate swap agreement to be entered into in the future would require authorization by the Members at such time.

Action by the Members

The Members are requested to approve the Guidelines for Uses of Certain Financial Hedges attached hereto.

Attachment

NEW YORK CITY HOUSING DEVELOPMENT CORPORATION
GUIDELINES FOR USES OF CERTAIN FINANCIAL HEDGES

ADOPTED ____________, 2014

I. Purpose of Guidelines

The purpose of these guidelines ("Guidelines") is to set forth policies, procedures, reporting requirements, and control requirements for the New York City Housing Development Corporation (the "Corporation") for the use of certain interest rate hedging and debt management transactions ("Hedges").

II. Conditions Under Which Hedges Can Be Used

The conditions under which the Corporation may enter into a Hedge are:

(a) The Hedge transaction, including the Corporation's analysis of whether or not to enter into such Hedge, must meet the terms of these Guidelines.

(b) The Hedge must be entered into in connection with a Corporation debt obligation issue, either contemporaneously with a debt obligation issuance, or in connection with previously issued debt obligations, or on a forward basis in connection with debt obligations that the Corporation expects to issue in the future. A forward Hedge can provide that the Corporation can terminate such Hedge if the Corporation determines to not issue the related debt obligations or may be entered into as a Hedge to be settled by cash payments at a predetermined time or times.

(c) The Corporation may enter into a Hedge only in connection with its debt management policy and only if it reasonably expects such Hedge to achieve one or more of the following:

(1) eliminate or mitigate the Corporation's exposure to changes in interest rates;

(2) result in a lower net cost of borrowing with respect to Corporation debt obligations for all or a portion of the term of the debt obligation issue;

(3) lock in fixed interest rates in current markets for use at a later date; or

(4) manage or change its debt exposure.

(d) The Hedge must not be for the purpose, in whole or in part, of speculation.

(e) Under a Hedge, the Corporation may be either the floating rate or fixed rate payor. The Hedge may provide for the establishment of maximum or minimum interest rates (or both) payable thereunder and contain any other protections designed to limit exposure to changes in interest rates.

(f) With respect to each Hedge, the Members of the Corporation shall have authorized the execution and delivery of such Hedge.

(g) The Corporation has obtained a finding from the Corporation's Hedge advisor described in Article V of these Guidelines that the terms and conditions of the Hedge reflect a fair market value as of the date on which the Corporation commits to enter into such Hedge.

(h) Scheduled payments under a Hedge may be made on a parity basis with, or on a subordinate basis to, payment of debt service on the related Corporation debt obligations. Termination, or similar, payments can only be payable on a subordinate basis to payments due from pledged assets with respect to Corporation debt obligations. Any obligation of the Corporation to provide collateral for its obligations under a Hedge may only be satisfied from assets not pledged to secure Corporation debt obligations or from assets then currently so pledged but only when they no longer secure Corporation debt obligations.

(i) The term of any Hedge, when entered into, may not exceed the final maturity date (or an immaterial period not to exceed three months past such final maturity date) of the Corporation debt obligations related to such Hedge and must also bear a logical relationship to the Corporation financing related to the Hedge.

III. Factors That Must Be Considered

In addition to considering the risks associated with the form of debt obligations related to a Hedge (such as, the risks of variable rate debt obligations, including rollover risk (risk that a new liquidity facility will not be available, or available for a reasonable fee, upon the expiration of the initial liquidity facility), and the risk that the relationship between long term and short term interest rates has changed since the related debt obligations were issued), the Corporation must consider the following factors related to the Hedge:

(a) In entering into any Hedge, the Corporation must consider the risks of the Hedge transaction, including the Corporation's exposure to:

(1) counterparty risk;

(2) termination risk;

(3) basis risk, if any;

(4) tax-event or tax-basis risk; and

(5) mismatched amortization risk, if any.

(b) Before entering into a Hedge, the Corporation must consider the long-term implications of entering into such Hedge, including but not limited to:

(1) costs of borrowings,

(2) historical trends, especially in evaluating basis risk, termination risk, and mismatched amortization risk;

(3) possible limitations on the use of variable rate debt obligations, including capacity limitations;

(4) any potential impact on the future ability to issue, redeem or refund related Corporation debt obligations;

(5) excessive credit exposure to a single counterparty; and

(6) effect on existing outstanding Corporation debt obligations.

(c) The Corporation may take into account the existence and the terms of any credit enhancement for the related Corporation debt obligations or the Hedge when considering the matters set forth in (a) and (b) above.

(d) The Corporation shall not enter into any Hedge without evaluating associated risks and determining that the expected benefit such Hedge offers more than offsets the associated risks.

IV. Hedge Procurement

The Corporation may procure Hedges either through a competitive bidding process or through negotiation with one or more potential counterparties. A competitive bidding process may be structured as appropriate in order to best meet the Corporation's objectives and, among other things, may allow one or more counterparties to match the winning bid up to a predetermined level of notional amount.

V. Dodd-Frank Act Provisions and Other Regulatory Considerations

(a) In connection with all communications with Hedge dealers related to new or existing Hedges intended to lead to general or specific recommendations or advice from Hedge dealers, and in all transactions with Hedge dealers (including executions, novations, amendments, and negotiated terminations of swaps), the Corporation shall employ a Hedge advisor (the "Corporation's Hedge advisor") that meets the standards, established under the federal Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act") by the Commodity Futures Trading Commission ("CFTC") and contained at present in CFTC Regulation 23.450(b), subject to any amendments or interpretations by the CFTC and any comparable requirements set forth by other regulators, including, without limitation, the SEC or MSRB (collectively, the "QIR Requirements"), for a qualified independent representative (a "QIR"). Confirmation of the required qualifications of the QIR under the applicable Dodd-Frank Act regulations shall be obtained in accordance with the provisions of such regulations, including that (1) the Corporation's Hedge advisor shall provide its representation to the Corporation to the effect that, in an existing legally binding obligation, it is required to meet the qualification and performance requirements of the Dodd-

Frank Act, and (2) the Corporation shall have on file the evidence of such legally binding obligation. Obtaining the evidence described in clauses (1) and (2) of the foregoing sentence is intended to evidence that the Corporation in good faith has undertaken actions reasonably designed to ensure that the Corporation's Hedge advisor satisfies all QIR Requirements. In addition, the Corporation will use its best efforts to monitor the performance of the Corporation's Hedge advisor on an ongoing basis consistent with such regulatory provisions.

(b) The Corporation may execute written agreements with Hedge dealers or enter into ISDA protocols which are intended to satisfy "safe harbor" provisions benefitting Hedge dealers under external business conduct standards imposed on Hedge dealers by regulation of the CFTC or otherwise intended to satisfy Dodd-Frank Act requirements for Hedge dealer diligence of its counterparties, other legislation relating to Hedges, related rules and regulations and market practices in response to the foregoing.

(c) The Corporation will comply with all recordkeeping and reporting rules imposed on it with respect to Hedges under the Dodd-Frank Act and other legislation relating to Hedges, related rules and regulations and market practices in response to the foregoing.

VI. <u>Form of Hedges</u>

(a) For each Hedge, the Corporation shall enter into a written Hedge agreement, which may be based on the ISDA Master Agreement and ISDA Schedule to the Master Agreement, with a related Confirmation and Credit Support Annex, if applicable, setting forth the terms of the particular Hedge.

(b) The Corporation may include such provisions in a Hedge, including termination provisions, that it believes best suit its purpose for such Hedge.

VII. <u>Counterparty Standards</u>

The Corporation shall select entities eligible to be counterparties to Hedges through an evaluation of qualifications. Such evaluation shall include consideration of the following criteria:

(a) Unless the counterparty collateralizes its obligations under the applicable Hedge in a manner acceptable to the Corporation, a counterparty shall have a long-term credit rating from any nationally recognized rating agency that is within its three highest investment grade categories, or the obligations of the counterparty shall be unconditionally guaranteed by one or more entities with such respective credit ratings.

(b) A counterparty should have substantial and significant experience in the derivatives market.

(c) The provisions of (a) and (b) above shall not apply to any counterparty that is a governmental entity, including but not limited to a public benefit corporation, within or without the State of New York.

VIII. Collateralization and Termination

The Corporation may require a counterparty to collateralize its obligations under a Hedge if the long-term credit rating of the counterparty, or an entity unconditionally guaranteeing any of such counterparty's obligations under the Hedge, is reduced below levels stated in the Hedge. The Hedge may include standards for eligible collateral. Subject to the requirements of these Guidelines (in particular, Part II (h) above), the Corporation may include a provision in a Hedge in which the Corporation agrees to collateralize its obligations under the Hedge in the event of a rating downgrade. Each Hedge may include a provision that allows the Corporation to exercise a right to terminate the Hedge prior to its scheduled termination date if the counterparty's, or the counterparty's guarantor's, rating or ratings are lowered to or below a level specified in the Hedge.

IX. Risk Management

The Corporation will manage the risks of its Hedge exposure at two levels: that of each issue of debt obligations which has a related Hedge, and that of the general resolutions under which debt obligations with related Hedges have been issued.

X. Reporting

The Corporation will track and report at least annually to the Corporation's Members on the financial status of existing Hedges. Among the elements the Corporation will track are:

(a) a description of each Hedge, including a summary of the notional amount, terms, conditions, rates, maturity, counterparty, counterparty's rating and method of procurement;

(b) mark-to-markets, sensitivities to swap rates, index ratios including SIFMA/LIBOR ratios and volatility (per transaction and per counterparty);

(c) cash flow exposures such as basis risk, contingent floating rate and yield curve;

(d) monitoring of underlying debt rollover risk and exposure;

(e) credit terms within Hedge documentation, such as ratings-based triggers for termination events and collateral posting terms and requirements;

(f) ratings of the Corporation, dealer-counterparties and insurers; and

(g) any monitoring and reporting required by rating agencies that, at the Corporation's request, rate Corporation debt obligations that have related Hedges.

XI. Corporation Financial Statements

Any Hedges shall be reflected in the Corporation's annual financial statements pursuant to and in accordance with the accounting standards governing the financial statements.

XII. Arbitrage

The Corporation will seek to manage its Hedge strategy in a manner consistent with federal rules and regulations regarding non-arbitrage. The Corporation will evaluate each Hedge transaction as to whether full, partial or no integration treatment for federal tax purposes is best from the perspectives of risk-return analysis and compliance with relevant federal arbitrage regulations.

XIII. No Recourse

No provision in these Guidelines shall be the basis of any claim against any Member of the Corporation or any officer or employee of the Corporation in his or her individual or official capacity or against the Corporation itself.