

**BEFORE THE SECURITIES COMMISSIONER
STATE OF COLORADO**

Order No. 06-IN-001

INTERPRETATIVE ORDER

**IN THE MATTER OF THE COLORADO MUNICIPAL BOND SUPERVISION
ACT**

WHEREAS, the Securities Commissioner (the "Commissioner") is charged with the administration of the Colorado Municipal Bond Supervision Act (the "Act");

WHEREAS, the Act, at § 11-59-103(2), C.R.S., defines the term "bond" as "...any bond, debenture, or other obligation authorized to be issued by any special district ...";

WHEREAS, the Act, at § 11-59-106, C.R.S., requires any issuance or distribution of bonds to be first registered with the Commissioner unless such issuance of bonds is exempted under § 11-59-110, C.R.S. § 11-59-110(1) identifies which issue of bonds by a district are exempted from the registration provisions of § 11-59-106, C.R.S.;

WHEREAS, § 11-59-110(1.5)(a) of the Act provides, in pertinent part, that the securities commissioner may make such rules, forms, and orders as are necessary to implement the provisions of subsection (1) of this section and to define any terms contained therein insofar as the definitions are not inconsistent with the purposes or provisions of this article;

WHEREAS, the definition of bond in § 11-59-103(2) includes the phrase "other obligation." This phrase has created uncertainty and has prompted some districts to file notices of claim of exemption pursuant to § 11-59-110, C.R.S., for a variety of transactions that impose a payment obligation on a district, but otherwise do not have any indicia of an issuance of municipal bonds. The Commissioner desires to identify certain contractual obligations incurred by districts that are not included in the definition of "bond" within the meaning of the Act, and which therefore do not require either registration or filing of a notice of exemption;

WHEREAS, § 11-59-104(3) and § 11-59-110(1.5)(b) of the Act further provides, in pertinent part, that the Commissioner may make, amend and rescind such order if he finds that such action “[i]s necessary or appropriate in the public interest or the protection of investors and is consistent with the purposes and provisions of this article....”; and

WHEREAS, the Commissioner finds that issuance of this Interpretative Order is necessary and appropriate in the public interest and is consistent with the purposes and provisions of the Act.

NOW, THEREFORE, IT IS HEREBY ORDERED as follows, that Commencing on the date of this Order, neither a registration application nor notice of claim of exemption is required for the following:

1. A district’s contractual obligation to pay or pledge funds to another political subdivision or nonprofit corporation, so long as such contractual obligation is not specifically pledged as security or collateral for an issuance of securities.
2. A district’s contractual obligation to pay or pledge funds to another political subdivision or nonprofit corporation where such contractual obligation is specifically pledged as security or collateral for an issuance of securities, so long as such securities issuance is subject to the registration or exemption requirements of the Act. Because such security or collateral arrangements will be disclosed in the relevant documents and the securities being issued will be subject to the Act, the public disclosure objectives of the Act are satisfied when the registration application or notice of claim of exemption is filed for such securities. Additionally, the filing of an application or notice for such collateral agreement or arrangement results in duplicative reporting of district indebtedness because of such multiple filings for the same amount of issued debt.
3. A district’s contractual obligation to repay a developer for monies advanced to the district by the developer when such obligation is not transferable and repayment is contingent upon the district’s receipt of funds or some other occurrence and, absent bad faith or fraud by the district, imposes no penalty on the district if the contingent event does not occur. As used in the paragraph, the term “developer” shall include any person or entity which the district reasonably believes is engaged, either alone or with others, in the business of developing or improving property within the district or its service area for use, sale, lease, or other transfer to others. The contingent nature of the district’s promise to pay and the fact that such obligations are not offered, sold, or transferable to third parties distinguishes such obligations from traditional bonds.

4. A district's obligation to pay a depository institution (as such term is defined in the Act) pursuant to a letter of credit agreement, line of credit, or other credit enhancement arrangement in connection with securities the issuance of which is subject to the registration or exemption requirements of the Act. Because such credit enhancement arrangements will be disclosed in the relevant documents and the securities being issued will be subject to the Act, the public disclosure and protection objectives of the Act are satisfied when the registration application or notice of claim of exemption is filed for such securities. Additionally, the filing of an application or notice for such credit enhancement arrangement results in duplicative reporting of district indebtedness because of such multiple filings for the same amount of issued debt. Lastly, depository institutions are in the business of lending money, are skilled in making credit evaluations, and are regulated by state and federal banking laws. Among the purposes of the state and federal banking laws is protection of investors and creditors of depository institutions, who for that reason do not require the protection of the Act.
5. This Order shall remain in effect unless and until amended or rescinded by subsequent order, or superseded by subsequent rule or statute.

Entered this 27th day of March, 2006 at Denver, Colorado.

(SEAL)


Fred J. Joseph
Securities Commissioner