IDAHO
DEPARTMENT OF FINANCE

JAMES E. RISCH
Governor

GAVIN M. GEE
Director

August 24, 2006

[redacted]

Re: Meaning of the terms "political subdivision" and "instrumentality," as used in the Idaho Uniform Securities Act municipal bond exemption from registration

Dear Mr. [redacted]

We have reviewed your correspondence of July 14, 2006 in which you requested the Department agree to interpret the terms "political subdivision" and "instrumentality," as used in the Idaho Uniform Securities Act municipal bond exemption from registration, in the same manner as the Securities and Exchange Commission (the "SEC") interprets those terms under the analogous municipal bond exemption from registration pursuant to Section 3(a)(2) of the Securities Act of 1933, as amended (the "1933 Act").

Based on the facts represented, the Department will recommend to the Director that the aforementioned terms be construed in accordance with the SEC's current interpretations. However, should an existing SEC interpretation change or a new interpretation be adopted, the Department's position will not necessarily follow the SEC interpretation.

Please be advised that our position is based solely on your representation of the facts, and different facts may require a different conclusion.

If you have questions or comments regarding this matter, please contact me at (208)332-8078.

Sincerely,

Nancy C. Ax

Nancy C. Ax
Securities Analyst

SECURITIES BUREAU
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ATTORNEYS AT LAW

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JUL 17 2006
DEPT. OF FINANCE
STATE OF IDAHO

July 14, 2006

Ms. Marilyn T. Chastain
Securities Bureau Chief
Department of Finance, Securities Bureau
P.O. Box 83720
Boise, Idaho 83720-0031

Re: Meaning of the terms "political subdivision" and "instrumentality," as used in the Idaho Uniform Securities Act municipal bond exemption from registration

Dear Ms. Chastain:

I am writing you to request your concurrence that the Securities Bureau of the Idaho Department of Finance will interpret the terms "political subdivision" and "instrumentality," as used in the Idaho Uniform Securities Act municipal bond exemption from registration, in the same manner as the Securities and Exchange Commission (the "SEC") interprets those terms under the analogous municipal bond exemption from registration pursuant to Section 3(a)(2) of the Securities Act of 1933, as amended (the "1933 Act").

As discussed more fully below, I am making this request because of two fundamental problems relating to the municipal bond exemption from registration: namely, (1) the lack of definitions of these terms and (2) the apparently inadvertent narrowing by the Idaho Uniform Securities Act of the scope of the exemption from registration for securities issued by instrumentalities.

Pursuant to the National Securities Markets Improvement Act of 1996 ("NSMIA"), Congress enacted a program of unifying federal and state procedures relating to securities registration to eliminate duplicative requirements and excess costs. In enacting the Idaho Uniform Securities Act, the State of Idaho appears to adopted these principles, including mirroring the exemption terminology of the 1933 Act. The Prefatory Note to the Uniform Securities Act of 2002 (the "2002 Act"), on which Idaho Uniform Securities Act is based, states:

> A second overarching theme of the [2002] Act is achieving consistency with the National Securities Markets Improvement Act of 1996 ("NSMIA"). New definitions were added to define in Section 102(6), federal covered investment adviser, and in 102(7), federal covered security. NSMIA also had implications for several securities registration exemptions (see Sections 201(3), 201(4), 201(6), 202(4), 202(6), 202(13), 202(14), 202(15) and 202(16);

securities registration (Sections 301(1) and 302); and the broker-dealer, agent, investment adviser, and investment adviser representative provisions (see especially Sections 402(b)(1) and (5), 403(b)(1)(A) and (2), 405 and 411.[1]

In view of the above, it would be very helpful to practitioners to have uniform interpretations of similar terms.

Because the 1933 Act has been in effect for a much longer period of time than the Idaho Uniform Securities Act, a large body of interpretation has developed, lending clarity to a number of provisions of the 1933 Act. Some of these provisions (namely, the use of the terms "political subdivision" and "instrumentality") have been incorporated into the Idaho Uniform Securities Act municipal bond exemption from registration and I suggest, in the limited examples set forth in this letter, that practitioners be permitted to rely upon long-standing SEC interpretations of these two terms.

Problem Number One: What do the terms "political subdivision" and "instrumentality" mean under the Idaho Uniform Securities Act?

To state the obvious, one needs to know the meaning of these terms in order to interpret the scope of the fundamental, jurisdictional basis for the exemption from registration, *i.e.*, whether the issuer of the securities in question qualifies for the exemption. However, my research indicates that neither the Idaho Uniform Securities Act, the prior Idaho securities act nor the regulations under either of these acts contains definitions of these terms.

This lack of definitions is not surprising. My research also indicates that none of the currently effective blue sky laws and related jurisdictions of any of the other states contain such definitions, nor do any of the various uniform securities acts promulgated since 1956 by the National Conference of Commissioners on Uniform State Laws ("NCCUSL") (*i.e.*, the Uniform Securities Act of 1956, the Uniform Securities Act of 1985 (with 1988 amendments) and the 2002 Act.

Problem Number Two: Was there an intentional narrowing of the scope of the municipal bond exemption from registration to instrumentalities of states?

Prior to the enactment of the Idaho Uniform Securities Act, the Idaho blue sky law provided an exemption from registration for instrumentalities of *both states and political subdivisions*. Specifically, Section 30-1434(1)(a)., Idaho Code, as amended, provided an exemption from registration for:

> Any security, including a revenue obligation, issued or guaranteed by...*any state, any political subdivision of a state*, or any agency or corporate or other *instrumentality of one or more of the foregoing*... [emphasis added]

However, since the enactment of the Idaho Uniform Securities Act, the Idaho blue sky law now provides an exemption from registration only for *instrumentalities of states*. Specifically, Section 30-14-201.(1), Idaho Code, as amended, now provides an exemption from registration for:

> A security, including a revenue obligation or a separate security as defined in rule 131 (17 C.F.R. 230.131) adopted under the securities act of 1933, issued, insured or guaranteed...by a state; by a political subdivision of a state; by a public authority, agency, or *instrumentality of one (1) or more states*; by a political subdivision of one (1) or more states...[emphasis added]

The above municipal bond exemption from registration contained in Section 30-14-201.(1), Idaho Code, as amended, is based upon the municipal bond exemption from registration and notice filings contained in Section 201(1) of the Uniform Securities Act of 2002 (the "2002 Act"), which provides an exemption from registration *only for instrumentalities of states*.

Specifically, Section 201(1) of the 2002 Act provides an exemption from registration and notice filings for:

> a security, including a revenue obligation or a separate security as defined in Rule 131 (17 C.F.R. 230.131) adopted under the Securities Act of 1933, issued, insured, or guaranteed by...a State; by a political subdivision of a State; by a public authority, agency, or *instrumentality of one or more States*; by a political subdivision of one or more States...[emphasis added]

The NCCUSL Official Comment to Section 201(1) of the 2002 Act[2] contains no guidance as to why instrumentalities of political subdivisions were excluded from the municipal bond exemption from registration and notice filings, or whether a limitation of this exemption was, in fact, intended.

The end result of the lack of definitions of the terms instrumentality and political subdivision and the lack of NCCUSL Official Comment guidance creates an ambiguity under the Idaho blue sky law as to whether the current municipal bond exemption from registration under the Idaho Uniform Securities Act is narrower than the municipal bond exemption from registration under the prior Idaho blue sky law which, as indicated above, provided an exemption from registration for securities issued by instrumentalities of both states and political subdivisions.

This exclusion of obligations of instrumentalities of political subdivisions from the exemption from registration is no mere theoretical concern. Throughout the country one finds examples of public bodies created with limited geographic jurisdictions carrying out public purposes for the benefit of one or more specified cities, towns, villages, etc., many of which public bodies were brought into existence upon the adoption of an enabling ordinance or resolution by the

benefitted municipal entity or are governed by boards whose members are approved by the benefitted municipal entities. Examples of such public bodies include local urban renewal authorities, utility districts, port authorities, solid waste authorities and industrial development boards.

Legislative History of the 1933 Act and the Role of SEC No-Action Letters

SEC no-action letters[3] provide answers to Problems One and Two described above.

Section 3(a)(2) of the 1933 Act contains the following exemption from registration for municipal bonds:

> Any security issued or guaranteed by the United States or any territory thereof, or by the District of Columbia, or by any State of the United States, or by any political subdivision of a State or territory, or by any public instrumentality of one or more States or territories...[hereinafter the "General Exemption"]

Like the municipal bond exemption from registration under Section 30-14-201.(1), Idaho Code, as amended, Section 3(a)(2) of the 1933 Act provides an exemption from registration for securities issued by political subdivisions and instrumentalities of states, but not instrumentalities of political subdivisions. Similarly, neither the 1933 Act nor the Regulations thereunder provide definitions of the terms political subdivision and instrumentality.

How has the SEC interpreted these terms in the context of the Section 3(a)(2) exemption from registration?

As part of the legislative history of the 1933 Act, the House Committee Report for the Securities Act of 1933, H.R. Rep. 85, 73rd Cong., 1st Sess 14 (1933), explained that Section 3(a)(2):

> exempts United States, Territorial, and State obligations, or obligations of any political subdivision of these governmental units. The term "political subdivision" carries with it the exemption of such securities as county, town, or municipal obligations, as well as school district, drainage district, and levee district, and similar bonds. The line drawn by the expression "political subdivision" corresponds generally with the line drawn by the courts as to what obligations of States, their units and instrumentalities created by them are exempted from Federal taxation. By delineation, any constitutional difficulties that might arise with reference to the inclusion of State and municipal obligations are avoided...*A committee amendment makes it clear that there are also exempt securities issued by a public instrumentality of one or more States or Territories exercising an essential governmental function.* (hereinafter the "1933 legislative history") [emphasis added]

In 1934, the Section 3(a)(2) of the 1933 Act was amended to delete the qualifying language ("exercising an essential governmental function") in order "to extend the scope of the public instrumentality exemption to expanding activities in which governments are engaging." H.R. Rep. No. 1838, 73rd Cong., 2nd Sess. (1934) 40 (hereinafter the "1934 legislative history").

The 1933 legislative history and the 1934 legislative history have been cited frequently in SEC no-action letter requests: the 1933 legislative history as the basis for treating a particular issuer as a political subdivision or a public instrumentality and, since the mid-1980's, the 1934 legislative history for the proposition that taxability of interest of a particular bond issue is irrelevant for purposes of the applicability of the General Exemption.

Admittedly, there are uncertainties associated with relying upon SEC no-action letters, namely:

1. It can be difficult to determine exactly why a particular issue qualifies for an exemption from registration because the no-action letter relies upon the opinion of counsel that the exemption is available, without stating the reasoning of the SEC staff member who wrote the no-action letter, and also because counsel's no-action request may not clearly state exactly why the exemption is available.

2. When the availability of the exemption from registration depends upon the characterization of the issuer as a political subdivision or a public instrumentality, this question is usually dealt with summarily, because some *other* question is usually the real focus of the no-action request (typically, whether the transaction is burdened with a separate security under SEC Rule 131).

3. Most fundamentally, SEC no-action letters do not constitute an official expression of the Commission's views and *are not binding* on the SEC, although they do represent the views of persons who are continuously working with the provisions of the statute involved.[4]

Nonetheless, the SEC no-action letters are useful because of the large number and variety of issuers covered by these letters and because they construe terms of a federal statute (*i.e.*, a statute whose scope is national). They have become a commonly accepted body of interpretation.

What types of entities have qualified under Section 3(a)(2) of the 1933 as a political subdivision or an instrumentalities?

The following are examples of the types of entities that have qualified as a political subdivision or instrumentality pursuant to SEC no-action letters. No-action letters summarized in paragraphs 7. and 8. make it clear that local entities which are created pursuant to state law to carry out a public purpose nonetheless qualify as either a political subdivision of a state or *an instrumentality of a state* under Section 3(a)(2) of the 1933 Act.

The following no-action letters are available online through www.LexisNexis.com. The date listed for each no-action letter is the date it was made publicly available. No-action letters listed in italics involve the issuance of taxable bonds or notes.

1. Counties: *Finney County, Kansas, October 26, 1983*; County of Jefferson, Kentucky, March 15, 1984; *Cache County, Davis County, Salt Lake County, Utah County & Weber County, January 16, 1987.*

2. Cities: City of Springfield, Illinois, May 20, 1981; City of Burnsville, Minn., January 14, 1982; City of Albuquerque, New Mexico, December 9, 1983; A.G. Becker Paribas Inc. (City of Riverside, California), February 2, 1984; *City of Des Plaines, Illinois, January 30, 1987.*

3. Village: *Village of Lansing, Illinois, July 8, 1986.*

4. Town: Town of Vail, Colorado, February 21, 1980.

5. Certificates of participation relating to obligations of a state, municipalities, counties and school districts: First Municipal Leasing Corporation, July 6, 1976; Smith, Barney, Harris, Upham & Co., Inc., January 7, 1977; Central Utah Rural Impact Capital Corporation, August 29, 1980; Garfield County School District No. 16, October 14, 1981; State of New Jersey, May 21, 1984; Kelling & Co., Inc., October 22, 1984; Kelling, Northcross & Nobriba, Inc., February 25, 1987; Piper, Jaffray & Hopwood, Inc., May 5, 1987; Peoples National Bank of Washington, February 26, 1988.

6. State agencies issuing conduit bonds: Kentucky Housing Corporation, December 3, 1973; West Virginia Housing Development Fund, February 11, 1974; Rhode Island Housing and Mortgage Finance Corporation, May 7, 1974; New Jersey Health Facilities Financing Authority, September 12, 1974; Louisiana Hospital Authority, July 21, 1975; Missouri Housing Development Commission, January 2, 1979; *Alaska Housing Finance Corporation, April 27, 1981; Alaska Industrial Development Authority, June 4, 1982*; Texas Housing Agency Residential Development Bonds, Series 1983A (Guarantee Program), May 19, 1983; *Michigan Strategic Fund, June 8, 1987*; *Arkansas Development Finance Authority, November 25, 1987.*

7. Local authorities and special purpose districts: East Sevier County Utility District, February 15, 1974; The Coosa River Water, Sewer and Fire Protection Authority, December 6, 1974; *Smith, Barney, Harris, Upham & Co., Incorporated (Public Utility District No. 1 of Chelan County, Washington), July 15, 1985 and August 7, 1985*; Bar Lake Village Metropolitan District, November 18, 1985; *Arvada Urban Renewal Authority, July 1, 1986; Port Authority of the City of St. Paul, November 24, 1986, City of Lansing Building Authority, January 30, 1987*; *Port of Corpus Christi Authority of Nueces County, Texas, February 2, 1987*; *The Redevelopment Authority of the City of Harrisburg, November 25, 1987; Capital Area Regional Solid Waste Authority, Harrisburg,*

Pennsylvania, November 25, 1987; Helena-West Helena-Phillips County Port Authority, November 25, 1987; *Lancaster Area Sewer Authority, March 30, 1990.*

8. Local boards or agencies issuing conduit bonds (*i.e.*, multi-family and 501(c)(3) bonds): City of Birmingham South Highlands Alabama - Medical Clinic Board, November 1, 1973; Redevelopment Agency of the City of Colton, June 4, 1979; Bucks County Industrial Development Authority (Pennsylvania), June 7, 1979; Urban Residential Finance Authority of the City of Atlanta (Georgia), October 5, 1981; Industrial Development Authority of the County of Clay, Missouri, December 16, 1981; Harris County Housing Finance Corporation, April 25, 1983.

9. Nonprofit corporations structured in accordance with the requirements of Internal Revenue Service Revenue Ruling 63-20[5], no-action request prepared by Orrick, Herrington & Sutcliffe: Contra Costa County Juvenile Facilities Corporation, April 1, 1971; Santa Clara County Public Building Corporation, February 4, 1972; Morgan Hill Unified District School Building Corporation, July 25, 1973; Analy Union High School District School Building Corporation, May 2, 1975; City of South San Francisco Public Facilities Corporation, May 8, 1975; Shoreline Unified School District Building Corporation, May 28, 1975; San Diego Unified School District Public School Building Corp., May 28, 1975; City of Concord, July 25, 1975; Desert Sands Unified School District Building Corporation, August 15, 1975; Gilroy Unified School District Building Corporation, December 26, 1975; San Ramon Unified Sch. Dist. Ed. Fac. Corp., February 13, 1976; Carlsbad Unified School District Educational Facilities Corporation, February 16, 1976; San Francisco Unified School District Building Corporation, September 30, 1976; Los Medanos Community Hospital District Hospital Building Corporation, October 7, 1976; County of Merced Hospital Facilities Corp., August 10, 1979; County of Shasta Public Facilities Corp., October 27, 1980; Riverside County Board of Education Service Center Building Corp., April 20, 1981; City of Pinole Public Facilities Corporation; October 29, 1981.

10. Nonprofit corporations structured in accordance with the requirements of Internal Revenue Service Revenue Ruling 63-20, no-action request prepared by law firms other than Orrick, Herrington & Sutcliffe: Kansas City Missouri Public Building Authority, August 31, 1973; Olivette Recreational Facilities, Inc., November 23, 1973; Belvidere-Boone County Building Corporation, May 28, 1975; Humble Medical Facilities Board, Inc., October 30, 1975; Adams County Bldg. Authority, November 24, 1975; Clear Creek County Bldg. Authority, November 24, 1975; Madera Community Hospital, May 12, 1976; Littleton Colorado Municipal Building Authority, May 20, 1976; Aurora Colorado Municipal Bldg. Corp., December 1, 1976; Summit County, Improvement Corporation, April 24, 1977; Richmond County Health Corp., May 16, 1977; Manhattan Health Authority, Inc, June 27, 1977; Texarkana Medical Facilities Corp., September 6, 1977; Douglas County Colorado Building Authority, April 24, 1978; El Centro Community Hospital, September 25, 1978; Muir California Health, Recreation and Retirement Facilities, Inc., June 21, 1979; Town of Tarboro, N.C. (Eastern North Carolina Retirement Center, Inc.), August 3, 1981.

11. Nonprofit corporations structured in accordance with the requirements of Section 150(d)(2) of the Internal Revenue Code issuing qualified scholarship funding bonds:[6] Abilene Higher Education Authority, Inc., November 29, 1976; South Texas Higher Education Authority, Inc., May 8, 1977; Central Texas Higher Education Authority, Inc., November 21, 1977; Nebraska Higher Education Loan Program; June 21, 1979; California Student Loan Finance Corporation, June 22, 1981; *Indiana Secondary Market for Education Loans, Inc., October 20 , 1986; Pennsylvania Higher Education Assistance Authority, December 12, 1988; Student Loan Fund of Idaho Marketing Association, January 6, 1993.*

12. Various issuers issuing tax-exempt industrial development bonds in reliance upon the industrial development bond exemption from registration contained in Section 3(a)(2) of the 1933 Act: Calhoun County Medical Facilities, Inc., December 3, 1973; Great Salt Lake Convalescent Hospital, February 17, 1975; Charlotte County, Florida, February 11, 1977; Industrial Development Authority of the City of Chesapeake, Va (Lone Star Cement, Inc.), August 7, 1978; Walton County Convalescent Center, Inc., March 27, 1979; McDonald's Corp., January 17, 1980 (for bonds issued by 13 Pennsylvania Industrial Development Authorities); Industrial Development Authority of the City of St. Louis, Missouri, February 27, 1981; The County Commission of Kanawha County, September 14, 1981; W.W. Grainger, Inc., November 5, 1981 (for separate series of bonds to be issued by the Suffolk County (New York) Industrial Development Agency, the Dade County (Florida) Industrial Development Authority, The Industrial Development Authority of the City of Roanoke, Virginia, The Industrial Development Authority of the County of Maricopa (Arizona), The Industrial Development Authority of the City of Kansas City, Missouri, the Village of Arlington Heights, Illinois, the Village of Alsip, Illinois, and Natrona County, Wyoming), November 5, 1981; Industrial Development Authority of St. Charles County, Missouri, March 15, 1982; Industrial Development Authority of Franklin County, Missouri, May 28, 1982.

13. Various entities not issuing bonds or notes: State entities offering qualified state tuition programs pursuant to Section 529 of the Internal Revenue Code of 1986, as amended, as public instrumentalities of a state (Virginia Higher Education Tuition Trust Fund, November 5, 1996; College SAVE, August 2, 2001; State of Hawaii College Savings Trust, October 22, 2001; Maryland College Investment Plan, December 7, 2001; Tuition Account Investment Program Fund, June 26, 2002); Tuition Investment Program Fund, June 26, 2002; trusts formed by school districts and townships to provide a method of combining cash reserves for temporary investment, as instrumentalities of a state (Illinois School District Liquid Asset Fund Plus, June 15, 1984 and Michigan School District Liquid Asset Fund Plus, May 26, 1987); trusts formed by municipalities and governmental units to provide a method of combining cash reserves for temporary investment, as instrumentalities of such municipalities or governmental units (Minnesota Municipal Money Market Fund, May 27, 1987, and Wisconsin Investment Trust, February 17, 1987); fund created by state legislation to enable plans of local governments that meet the definition of eligible deferred compensation plan under Section 457 of the Internal Revenue Code of 1986, as amended, to participate in a state deferred compensation plan, as a public instrumentality of a state (Public Employees' Retirement Board of the State of Oregon, March 3, 1998) .

Enclosed for general reference is a draft of an article which, beginning at page 6, summarizes the approaches used by the SEC in analyzing the character of the issuer as a political subdivision or instrumentality.

Conclusions

The Idaho municipal bond exemption from registration contained in Section 30-14-201.(1), Idaho Code, as amended, and the federal municipal bond exemption from registration contained in Section 3(a)(2) of the 1993 Act are strikingly similar in providing exemptions from registration for securities issued by political subdivisions and instrumentalities of states. Both of these acts (as well as all state blue sky laws across the country) suffer from a lack of definitions of the terms political subdivision and instrumentality.

In addition, while the prior version of the Idaho blue sky law provided an exemption from registration for instrumentalities of both states and political subdivisions, Section 30-14-201.(1), Idaho Code, as amended (as well as Section 201(1) of the 2002 Act, on which Section 30-14-201.(1), Idaho Code, as amended, is based and Section 3(a)(2) of the 1933 Act) limit the exemption from registration to securities issued by instrumentalities of states.

SEC no-action letters provide ample examples of how the terms political subdivision and instrumentality should be construed. In addition, the 1933 legislative history and the 1934 legislative history of the General Exemption under Section 3(a)(2) of the 1933 Act and SEC no-action letter requests make it clear that the term instrumentality should be read to include local entities created pursuant to state law to carry out a public purpose.

The Securities Bureau of the Idaho Department of Finance should interpret the terms political subdivision and instrumentality, as used in the Idaho Uniform Securities Act, in the same manner as the SEC interprets those terms under Section 3(a)(2) for the following reasons:

First, such parallel interpretation of these terms will solve the above-described problems of the lack of definitions of the terms and the inadvertent statutory narrowing of the term instrumentality,

Second, parallel interpretation will provide for uniform definitions of the terms political subdivision and instrumentality under the Idaho blue sky law and the 1933 Act, thereby promoting the purposes of uniformity embodied in NSMIA and the Idaho Uniform Securities Act, as well as avoiding needless conflicts between the Idaho blue sky law and the 1933 Act with respect to these two terms.

I am concurrently sending letters similar to this one to the securities commissions of other states which have enacted the Uniform Securities Act of 2002, with the goal of promoting uniformity of state laws in this area.

Please call me at (773) 477-9506 or e-mail me at [redacted] if you have any questions.

Sincerely yours,

[redacted]

End Notes:

1. Prefatory Note to the Uniform Securities Act (2002), LEO V. ROINILA, J.D. AND JAY B. FISHMAN, LAW AND EXPLANATION: UNIFORM SECURITIES ACT OF 2002, page 157 (2003) [hereinafter ROINILA]

2. See ROINILA, note 1, *supra*, at page 182.

3. An SEC no-action letter "is one in which an authorized staff official indicates that the staff [of the SEC] will not recommend any enforcement action to the [Securities and Exchange] Commission if the proposed transaction described in the incoming correspondence is consummated. In some instances, the staff will state in response to a no-action request that it is unable to assure the writer that it will not recommend enforcement action to the Commission if the transaction occurs in the manner proposed by the writer." See Procedures Utilized by the Division of Corporation Finance for Rendering Informal Advice, Securities and Exchange Commission Release No. 33-6253 (November 3, 1980).

4. See 17 C.F.R. 202.1(d) and Louis Loss and Joel Seligman, SECURITIES REGULATION, THIRD EDITION, Chapter 2. Federal Regulation of the Distribution of Securities, Part C. The Registration Procedure: A Study in Administrative Technique, at note 29.

5. Internal Revenue Service Rev. Rul. 63-20 provides that nonprofit corporations formed under the general nonprofit law of a state may issue obligations "on behalf of" a political subdivision, provided that the following structural tests are met: (1) the corporation must engage in activities which are essentially public in nature; (2) the corporation must be one which is not organized for profit (except to the extent of retiring indebtedness); (3) the corporate income must not inure to any private person; (4) the state or a political subdivision thereof must have a beneficial interest in the corporation while the indebtedness remains outstanding and it must obtain full legal title to the property of the corporation with respect to which the indebtedness was incurred upon retirement of such indebtedness; and (5) the corporation must have been approved by the state or a political subdivision thereof, either of which must have approved the specific obligations issued by the corporation.

   This financing technique was used extensively in the 1970's to overcome state law limitations on the issuance of municipal bonds that precluded the "on behalf of" entity (for example, a county, city or school district) from issuing the bonds itself. Typical financing structures included (1) the leasing of the bond financed facility by the nonprofit corporation to the on behalf of entity and (2) the leasing of the real estate by the on behalf of entity to the nonprofit corporation coupled with a lease back of the real estate and the

bond financed facility from the nonprofit corporation to the on behalf of entity. Lease payments made by the on behalf of entity provided the revenues need to pay debt service on the bonds.

6. "Qualified scholarship funding bonds" are issued to provide funds to purchase (*i.e.*, provide a secondary market for) student loans originated by banks and other lenders.

   Pursuant to Section 150(d)(2) of the Internal Revenue Code of 1986 Code, as amended, and predecessor sections, a qualified scholarship funding bond is a bond which is issued by a corporation which (i) is a corporation not for profit established and operated exclusively for the purpose of acquiring student loan notes insured under the Higher Education Act of 1965, and (ii) is organized at the request of a state or one or more political subdivisions thereof or is requested to exercise such power by one or more political subdivisions and required by its charter and bylaws, or required by state law, to devote any income (after payment of expenses, debt service, and the creation of reserves) to purchase additional student loan notes or pay over any income to the United States.