

DEPARTMENT OF REGULATORY AGENCIES

Division of Securities

REGULATIONS FOR THE MUNICIPAL BOND SUPERVISION ACT

3 CCR 704-2

[Editor's Notes follow the text of the rules at the end of this CCR Document.]

59-4.1 Regarding sections 11-59-104 and 106

The requirements of sections 11-59-104 and 106 shall not apply to bonds exempt from registration under section 11-59-110(1), including without limitation bonds issued by any district prior to July 1, 1994.

CHAPTER 8 REGISTRATION OF BONDS

The provisions of this Chapter 8 relate to the registration of bonds by a district under section 108 of article 59 of title 11 of the Colorado Revised Statutes.

59-8.1 The following terms as used in this chapter, unless the context otherwise requires, are defined:

- A. "County Local Improvement District" shall have the same meaning as "district" in section 30-20-602 (2), C. R. S.;
- B. "County Public Improvement District" shall have the same meaning as "improvement district" in section 30-20-503 (3), C. R. S.;
- C. "District" means a Special District, a Municipal General Improvement District, a Municipal Special Improvement District, a County Local Improvement District or a County Public Improvement District;
- D. "Established District" means a district with at least five years of continuous operations and existence with annual revenues or expenditures in excess of \$125,000;
- E. "General Obligation Bond" or "Other Obligation" means a bond constituting a debt or an indebtedness of a district issued by such district to finance a public works project payable in whole or in part from the proceeds of an *ad valorem* tax;
- F. "Municipal General Improvement District" shall have the same meaning as "district" in section 31-25-602 (1), C. R. S.;
- G. "Person" means an individual, corporation, a partnership, an association, an estate, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, a governmental subdivision or agency, or any other legal entity.
- H. "Related party" shall have the same meaning as is commonly used in the practice of accounting.
- I. "Municipal Special Improvement District" shall have the same meaning as "district" in section 31-25-501 (1.5), C.R.S.;

- J. "Revenue Bond" means a bond issued by a special district to finance a public works project and supported by the revenues of the project;
- K. "Securities Commissioner" means the commissioner of securities appointed pursuant to section 11-51-701, C. R. S.;
- L. "Service Plan" means a plan created and approved in accordance with part 2 of article 1 of title 32, C. R. S.; and
- M. "Special District" shall have the same meaning as provided in section 32-1-103 (20), C. R. S.;

59-8.2 Documents and information to be submitted with the registration statement

An application for registration of an issuance or distribution of bonds under section 11-59-108, C.R.S., shall contain full and fair disclosure of all material facts respecting the bonds. The registration statement filed with the Securities Commissioner shall be submitted on Form MB. The following documents and information shall be submitted at the same time:

- A. The five most recent annual district audit reports, or if the district is not an established district, all annual audit reports;
- B. Engineering and architectural reports in which are described the costs and locations of improvements in the district, if any;
- C. Copies of any intergovernmental agreements, construction contracts, and competitive bids in which are disclosed the material elements of any proposed project to be financed by the proceeds of the issuance or distribution;
- D. Copies of any signed agreements with persons building or developing improvements in the district that are to be owned, managed, leased, or sold by such persons;
- E. Copies of any agreements with the owners of major parcels of vacant or undeveloped land in the district in which are disclosed any development fees or other payments to be made in support of the proposed bonds while the district is being developed;
- F. Copies of the most recent audited financial statements of persons building or developing public improvements in the district for contracts in excess of fifty thousand dollars;
- G. In a special district, a copy of the Service Plan and any amendments thereto and copies of all reports required by law to be filed with the county or counties wherein the special district is located, and where appropriate, evidence of compliance with any other requirement of law imposed on special districts issuing bonds;
- H. For full and fair disclosure with respect to the bonds being issued or distributed, the following additional information regarding the district or related parties:
 - 1. A copy of any feasibility study in which the probable financial success of the project is demonstrated;
 - 2. A copy of the draft preliminary official statement;
 - 3. A discussion of any material prior instances of default, or of noncompliance with any federal or state law regarding the offer or sale of securities;

4. Evidence of compliance with other governmental regulatory bodies and a discussion of all litigation and regulatory actions, if any;
 5. A copy of the district's capital improvement plan and most recent budget;
 6. A copy of any contract or agreement for underwriting and the use of proceeds including disclosure of underwriter compensation from all sources;
 7. A copy of any written appraisal report; and
- I. Such other information required for full and fair disclosure given the specific circumstances of the proposed issuance or distribution of the bonds.

59-8.3 Disclosure requirements

As a condition of registration of the issuance or distribution of bonds under section 11-59-108, C.R.S., districts issuing bonds and other persons making distributions of bonds shall, absent a showing that the following provisions are not necessary or appropriate in the public interest:

- A. Comply with all of the primary and secondary market disclosure requirements of SEC rule 15c2-12, notwithstanding that an exemption from such disclosure requirements may be available under such rule, and
- B. Provide a quarterly update of the material financial and operating information that is contained in the disclosure document relating to such bonds to the beneficial owners of such bonds and the Securities Commissioner. Prior to the effectiveness of the registration, the district shall specify to the Securities Commissioner what information in the disclosure document will be updated on a quarterly basis.

59-8.4 Registration guidelines

If an issuance or distribution of bonds is to be registered under section 11-59-108, C.R.S., the terms of the offering should be substantially consistent with the standards, guidelines and criteria below:

- A. Capitalized interest for payments on such bonds should not exceed one year, unless the district issuing the bonds or any other person making a distribution of the bonds demonstrates a compelling economic reason to the contrary;
- B. The written appraisal report referred to in Rule 59-8.2.H.7. should be prepared in conformity with prevailing appraisal industry standards by a qualified, independent appraiser and should be dated no earlier than 90 days prior to the date of issuance or distribution of the bonds, whichever is later;
- C. Indentures of trust should be provided that contain standard and customary provisions and should contain provisions satisfactory to the Securities Commissioner for the protection of the bondholders in which are delineated the circumstances under which a trustee must take action to protect their interests;
- D. With regard to the issuance or distribution of additional bonds on a parity with bonds already outstanding, the following tests may be applied:
 1. With regard to the issuance or distribution of any bonds payable in whole or in part from the proceeds of an *ad valorem* tax, upon issuance, such bonds should be in parity with the highest priority of any other outstanding bonds of the district, unless the district issuing such bonds demonstrates a compelling economic reason for classifying the bonds being

issued or distributed as having a higher or lower priority than such outstanding bonds;
and

2. With regard to the issuance or distribution of revenue bonds, the ratio of net operating revenue to average annual debt service should be no less than 1.25 on at least one year's historical basis;
- E. The official statement should comply substantially with all of the standard and customary disclosure requirements;
- F. Absent a showing of reasonable cause why such proposals should not be secured, all contracts and any other arrangements material to the underwriting, issuance or distribution of the bonds should be entered into only after proposals have been solicited in a manner designed to reach a commercially reasonable number of those parties engaged in the business from which bids are sought;
- G. The district proposing to issue such bonds or any other person proposing to distribute such bonds certifies in writing to the Securities Commissioner and discloses in the offering statement that:
1. All material contracts or similar arrangements with regard to the issuance of the bonds were entered into in accordance with the procedure set forth in Subsection 59-8.4F.;
 2. All compensation to be paid or given under such contracts or arrangements is disclosed in the offering statement;
 3. All potential material conflicts of interest between and among those who are parties to the contracts and/or arrangements and the district are disclosed in the offering statement; and
 4. There are no potential conflicts of interest between and among those who are parties to the contracts and/or arrangements and the district which would operate to the detriment of the bondholders in a material way; and
- H. Underwriter compensation to be paid from the proceeds of the issuance or distribution, or otherwise, should be calculated at a commercially reasonable rate for the services provided for parties engaged in comparable transactions and should be determined after the solicitation of proposals as described in Subsection 59-8.4 F., and examples of compensation paid in comparable transactions should be provided, if available.

59-8.5 Additional security

Upon review of an application for such registration, if, in the opinion of the Securities Commissioner, the success of the project is dependent upon third parties building or developing improvements in the district, such third party builder or developer may be required to furnish security in the form of:

- A. One or more unconditional, irrevocable letters of credit or guarantees from depository institutions or such other persons, companies or institutions in a stated amount at least equal to the principal amount of the bonds plus six months interest thereon; or
- B. Escrow deposits of cash in an amount at least equal to the principal amount of the bonds plus six months interest thereon held by a third-party custodian. Appropriate action shall be taken to create a perfected security interest in the cash, and the cash must be held in such a manner that it will not be subject to an avoidable preference under the United States Bankruptcy Code in the event of a bankruptcy of the builder or developer; or

- C. Escrow deposits of direct and general obligations of the United States of America the payment of which the full faith and credit of the United States of America is irrevocably and unconditionally pledged, in an amount at least equal to 105% of the principal amount of the bonds plus six months interest thereon held by a third-party custodian. Appropriate action shall be taken to create a perfected security interest in the securities and the securities must be held in such a manner that they will not be subject to an avoidable preference under the United States Bankruptcy Code in the event of a bankruptcy of the builder or developer; or
- D. First lien mortgages, equal to at least 300% of the principal amount of the bonds plus six months interest thereon, on land owned by the developers or builders together with an appraisal of the land dated no earlier than 30 days prior to the issue date for the bonds indicating the land has a value in excess of mortgage; or
- E. Other comparable security satisfactory under the circumstances to the Securities Commissioner.

59-10.1 Exemptions from Registration

- A. For the purposes of section 11-59-110(1)(b), C.R.S., “total obligation” means the gross amount received by the district from the sale of the general obligation bonds and other obligations sold in connection therewith, without reduction for discounts. Where capital appreciation bonds or “B” interest certificates or other forms of non-current interest bonds are a part of the issue and are sold in connection therewith, this definition takes such additional obligations into account. This definition shall be applied unless the Commissioner determines and informs the district prior to issuance that “total obligation” shall be defined otherwise.
- B. For the purposes of section 11-59-110 (1)(c), C.R.S., “nationally recognized organization” shall have the same meaning as “Nationally recognized statistical rating organization (“NRSRO”) as that term is applied under Rule 15c3-1 of the 1934 Act (“the Net Capital Rule”), found at 17 CFR 240.15c3-1.
- C. For purposes of section 11-59-110 (1)(e), C.R.S., the duration of the “letter of credit” may be shorter than the duration of the bonds only if, upon the expiration of the letter of credit, the bondholders will be paid from a drawing on the letter of credit or retired from remarketing proceeds. Any such remarketing upon the expiration of the letter of credit shall be construed as an issue or distribution under section 11-59-106, C.R.S.

59-10.3 Registration Exemption for Municipal Bonds Issued in Denominations of \$500,000 or More

Subject to the requirements of section 11-59-110(2) an issue of bonds by a district is exempt from all of the provisions of section 11-59-106 provided that the bonds are issued in denominations of not less than \$500,000 each, in integral multiples of not less than \$1,000, provided that in the event a bond is partially redeemed by the district and the unredeemed portion is less than \$500,000, such unredeemed portion of such bond may be issued in the largest possible denomination of less than \$500,000, in integral multiples of not less than \$1,000.

59-10.4 Exemption from Registration for Municipal Bonds Initially Issued under Rule 59-10.3 or Section 11-59-110(1)(g), C.R.S.

- A. Subject to the conditions set forth in Rule 59-10.4.C, Bonds for which the Issuer complied with the requirements of section 11-59-110(2) and were, at the time of initial issue, exempt from registration under Rule 59-10.3 or section 11-59-110(1)(g), C.R.S., and which later qualify for an exemption pursuant to sections 11-59-110(1)(c), (d), (e), (f), or (i), C.R.S., are exempt from all of the provisions of section 11-59-106.

- B. Subject to the conditions set forth in Rule 59-10.4.C, any issue of general obligation Bonds for which the Issuer complied with the requirements of section 11-59-110(2) and were, at the time of initial issue, exempt from registration under Rule 59-10.3 or section 11-59-110(1)(g), C.R.S., and subsequently, where the total obligation represented by the issue together with any other general obligations of the district does not exceed the greater of two million dollars or fifty percent of the valuation for assessment of the taxable property in the district as certified by the assessor, determined as of the effective date of the exemption provided by rule 59-10.4, are exempt from all of the provisions of section 11-59-106.
- C. As conditions to the applicability of the exemption provided under this Rule, 59-10.4.A and B, the Issuer must file or cause to be filed with the Securities Commissioner at least five days prior to the effective date of the new exemption:
- (1) A notice of claim of exemption under Rule 59-10.4.A noting the applicable qualification under sections 11-59-110(1)(c), (d), (e), (f), (i), C.R.S, or under Rule 59-10.4.B in the form and containing the information prescribed by the Securities Commissioner;
 - (2) A document from the Issuer verifying the applicability of the new exemption or a legal opinion of counsel to the Issuer addressed to the Securities Commissioner stating that the exemption being sought is applicable;
 - (3) An amendment to the document authorizing the issuance of the Bonds, if necessary in the opinion of counsel to the Issuer, reflecting the applicable changes to the terms of the Bonds; and
 - (4) An exemption fee, which shall be determined and collected pursuant to section 11-59-119, C.R.S.
- D. If a notice of claim of exemption under this Rule 59-10.4.A noting the applicable qualification under section 11-59-110(1)(c), or (f) is utilized due to secondary market insurance, notice to the Securities Commissioner must include the new CUSIP number(s) and total size of the bonds affected.

Editor's Notes

History