

## HEALTH CARE FACILITY OFFERINGS

*Adopted April 5, 1985*

**[INTRODUCTION.]** The Statement of Policy which follows has been prepared to aid non-profit Health Care Facilities which wish to offer and sell Non-Profit Health Care Facility Bonds, hereafter referred to as "Bonds". By their nature, guidelines cannot cover every conceivable situation that may arise, and, therefore, if there are questions regarding the applicability of any of the following provisions or questions about matters not addressed, you should contact the Administrators of the States in which you intend to offer or sell the Bonds.

REGULATION OF SECURITIES. Section 3(a)(4) of the Federal Securities Act of 1933, as amended, exempts from registration "Any security issued by a person organized and operated exclusively for religious, educational, benevolent, fraternal, charitable or reformatory purposes and not for pecuniary profit, and no part of the net earnings of which inures to the benefit of any person, private stockholder, or individual." Non-Profit Health Care Facility Bonds are securities, but no registration of such securities by Issuers which meet the above exemption need be made with, or approved by, the Securities and Exchange Commission which is the Federal agency responsible for regulating the offer and sale of securities in the United States.

In addition to the Federal law, individual states have adopted their own securities laws to govern the offer and sale of securities within their respective jurisdictions and Non-Profit Health Care Facility Bonds are also securities under state law. Thus, there is dual jurisdiction in the United States over the regulation of securities such as Health Care Facility Bonds, i.e., both the Federal government and the individual states regulate their offer and sale and the laws of each must be complied with. Most of the states however, have now adopted laws based upon the Uniform Securities Act, as drafted and approved by the National Conference of Commissioners on Uniform State Laws ("Act") and this Act contains an exemption for Non-Profit Health Care [Facility] Bonds similar to the exemption contained in Federal Law.

In order to determine whether a particular state statute contains provisions similar to the citations from the Act, which follow, you should consult your attorney or the Administrators of the states in which you intend to offer and sell the Bonds. You should also be aware that there are certain states which do not exempt Non-Profit Health Care Facility Bonds from registration, therefore, before offering or selling Bonds in any state you must carefully check the laws of that state to be sure that you do so in compliance with its laws. However, be advised that some states may require a pre-filing to perfect the exemption.

Section 301 of the Act provides that:

"It is unlawful for any person to offer or sell any security in this state unless (1) it is registered under this act or (2) the security or the transaction is exempt under Section 402."

Section 402(a)(9) of the Act then provides that the following securities are exempted from Section[s] 301 and 403 (requiring the filing of sales literature) thereof:

"(9) any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic or reformatory purposes..."

This section means that registration under Section 301 of the Act is not required for securities of Issuers meeting the above exemption but it does not mean that an Issuer of such securities has no other responsibilities under the Act.

The Statement of Policy which follow[s] has been promulgated in an attempt to insure that an Issuer utilizes a suitable disclosure document and meets the requisite financial tests necessary to evidence an ability to repay any Bonds offered.

The Act requires that any person who wishes to offer or sell securities must either be a registered representative of a licensed securities Broker-Dealer, or alternately must file for registration as an agent with the Administrator of the state in which he intends to sell securities pursuant to Section 201 of the Act. This is true even if the Bonds themselves are exempt from registration under Section 402(a)(9) of the Act. Any person who sells securities without compliance with the agent registration provision of the Act could also be liable under both the civil and criminal sections of the Act.

## **REQUIREMENTS FOR NON-PROFIT HEALTH CARE FACILITY OFFERINGS**

This Non-Profit Health Care Facility Statement of Policy is to be used for the review of offerings of debt securities by Non-Profit Health Care Issuers. The Statement of Policy provides general parameters against which an individual Issuer can be measured.

**APPLICATION.** This Policy is applicable to the offering of debt securities in the form of notes, bonds and similar instruments (Bonds) issued by a Health Care Facility (Issuer) the proceeds of which are to be utilized to finance the purchase, construction or improvement of buildings or related facilities and equipment (including the underlying property) of the Issuer.

It is not intended that this Policy Statement be applied to any security exempted from registration by Section 402(a)(1) of the Uniform Securities Act [or any security issued by any nationally recognized religious organization for the benefit of a Health Care Facility operated by a member thereof], the proceeds of the issuance of which are lent or otherwise advanced to a Non-Profit Health Care Facility for the purpose of financing the purchase, construction or improvement of buildings or related facilities or equipment, owned or operated by or for the benefit of such Non-Profit Health Care Facility or used to pay or retire indebtedness previously incurred for such purposes.

It is not envisioned that an individual Health Care Facility be permitted to utilize unsecured financing except in unusual circumstances.

[Drafting Comment] The intent was primarily to provide broad standards to establish whether a Health Care Facility issuing bonds or other securities was capable of repaying them and whether the documents describing the offering

provided full and adequate disclosure. Where good cause can be shown or an alternative safeguard provided, the Administrators may waive or modify portions of the requirements.

**DEFINITIONS.** *Act:* The Uniform Securities Act, as drafted and approved by the National Conference of Commissioners on Uniform State Laws.

*Administrator:* The official or agency administering the securities laws of a State.

*Audited Financials:* Financial statements examined in accordance with generally accepted auditing standards and reported on by an independent certified public accountant or qualified public accountant.

*Best Efforts:* An offering of newly issued securities in which the Broker-Dealer acts merely as an agent of the Hospital, promising only his "best efforts" in offering and selling the Bonds but not guaranteeing the Facility its money for any unsold portions of the Bonds.

*Broker-Dealer:* Also called an Underwriter. An entity engaged in the business of effecting transactions in securities.

*Feasibility Study:* An analysis of a proposed investment or course of action by a hospital or other Health Care Facility. A feasibility study is generally reviewed by an independent public accountant, or prepared by or reviewed by another independent qualified person and usually involves the preparation of a financial forecast. Such prospective financial statements must be prepared and/or reviewed in accordance with the appropriate guidelines promulgated by the American Institute of Certified Public Accountants, at a minimum. The feasibility study should present evidence of future earnings capability as justifications of the ability to service and repay the Bonds.

*Health Care Facility Bonds:* Certificates in the form of notes, bonds or similar instruments issued by a Health Care Facility which represent an obligation to repay a specific principal amount at a stated rate of interest.

*Investor:* A person who is offered or purchases a Bond.

*Issuer:* A Health Care Facility, which includes hospitals, nursing homes, retirement centers and similar institutions which issue or sell the Non-Profit Health Care Facility Bonds.

*Prospectus:* The disclosure document prepared by the Issuer or its Underwriter to permit an Investor to make an informed investment decision with respect to purchase of a Health Care Facility Bond.

*Trustee:* A corporation, individual or other entity (independent of the Issuer) granted trust powers by a governmental authority, which holds title to the pledged properties securing the Facility Bonds and administers the Trust Indenture.

*Trust Indenture and/or Trust Agreement:* The instrument under which the Trustee is given certain powers and controls over the assets or property of the Issuer to secure an issuance of Non-Profit Health Care Facility Bonds.

*Underwriter:* A person or entity, in the securities business, who buys the Bonds from the Issuer and resells them to the public or who endeavors to sell the Bonds on a best-efforts basis.

*Underwriting Agreement:* The contract between the Underwriter and the Issuer detailing the terms whereby the Broker-Dealer or Underwriter will distribute the Hospital Bonds for the Issuer.

**FINANCIAL STATEMENT OF POLICY.** An Issuer shall offer no more Health Care Facility Bonds than it can reasonably expect to repay. Although each situation must be viewed in context of the individual facts, the following are among the principal standards which an Administrator will consider in reviewing the proposed issue. The Issuer has the burden of proving substantial compliance with the following principal standards:

1. The offer or sale of Non-Profit Health Care Facility Securities may be deemed unfair and inequitable to purchasers unless during the most current fiscal year prior to the offering the excess of revenues over expenses of the Issuer, before extraordinary items and increased by the average of non-cash expenses (such as depreciation and amortization), during the three (3) fiscal years prior to the offering, is sufficient to cover the debt service requirements for all the debt securities outstanding plus the securities proposed to be offered (excluding the debt securities to be redeemed with the proceeds of the offering). The Administrator may waive the foregoing requirement upon evidence of sufficient future earning capability.
2. A Feasibility Study will always be required for a new Health Care Facility.
3. Health Care Facility Bonds must be issued under an Indenture. Normally such bonds will be secured by a first mortgage lien on land, buildings, equipment and furnishings with a value of at least 1.34 times the total secured debt. In certain circumstances, unsecured or less than first mortgage bonds may be issued. In these instances an extra burden should be placed on the Issuer to show reason for the issuance of such securities and the fairness of the offering.
4. As a minimum the Trust Indenture must provide for a Trustee, provide for timely payment of the Bonds, provide for regular payments to the Trustee sufficient to service the payments on the Bonds, afford the usual contractual prohibitions including limitations on future offerings of securities (if they would impair the Issuer's ability to repay the Bonds), provide insurance coverage, include a provision for maintenance of the properties and contain prohibitions against further encumbrances of the property unless provisions are provided to protect the rights of the Investors. In addition, the Trust Indenture must provide the following:
  - (a) The Trustee must notify the investor within thirty days of a default.
  - (b) The Trustee must be required to furnish a list of all bondholders to any investor who makes such a request in writing.
  - (c) The Trustee must be required to obtain approval of the majority of bondholders before expending any material amount of funds for legal and accounting fees, market research, etc. relating to a default.
5. The Issuer should obtain a fixed price contract, and a completion bond or other acceptable form of assurance of performance.
6. The Issuer should provide Investors with financial statements for the last three fiscal years. The financial statement for the most recent fiscal year shall be audited. If the offering commences more than 120 days after the end of such last

fiscal year, the financials shall be updated with unaudited financials bringing them to within 120 days of the offering date. An issuer which does not provide three years of financial statements, and audited financials for the last fiscal year may, at the discretion of the Administrator, be permitted to sell the Health Care Facility Bonds; however, this shall be deemed a significant factor in determining whether to permit the offering to proceed and shall weigh heavily in granting waivers from any provision of the Statement of Policy.

**PROSPECTUS.** The following information should be included in a Prospectus in order to insure that Investors receive adequate information on which to make an informed investment decision:

I. COVER PAGE

- (a) Name of the Issuer, city and state
- (b) Title of the Bonds offered
- (c) Total offering, estimated expenses and net proceeds of the offering to the Issuer
- (d) Brief description of the Bonds, including interest rate, payment dates, denominations available, offering price, possible early redemption and maturity dates
- (e) Name, address and telephone number of the Trustee
- (f) Name, address and telephone number of the Underwriter or Broker-Dealer offering Bonds and statements as to any market-making intentions of the Underwriter
- (g) Date of Prospectus
- (h) Legends—(Choose suitable legend below)

THESE SECURITIES HAVE NOT BEEN REGISTERED WITH THE SECURITIES DIVISION OF THE STATE OF \_\_\_\_\_ BEING EXEMPT UNDER SECTION \_\_\_\_\_ OF THE CODE OF LAWS OF \_\_\_\_\_. THE EXEMPTION OF THESE SECURITIES DOES NOT SIGNIFY THAT THE SECURITIES DIVISION OF THE STATE OF \_\_\_\_\_ HAS APPROVED OR RECOMMENDED THESE SECURITIES NOR PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

THE REGISTRATION OF THESE SECURITIES BY THE \_\_\_\_\_ COMMISSIONER OF SECURITIES DOES NOT SIGNIFY THAT THE COMMISSIONER HAS APPROVED OR RECOMMENDED THESE SECURITIES, NOR HAS THE COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THE PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

THESE SECURITIES ARE ISSUED PURSUANT TO A CLAIM OF EXEMPTION FROM REGISTRATION UNDER APPLICABLE STATE LAW AND SECTION 3(a)(4) OF THE FEDERAL SECURITIES ACT OF 1933. A REGISTRATION STATEMENT RELATING TO THESE SECURITIES HAS (HAS NOT) BEEN FILED WITH THE STATE SECURITIES COMMISSION OR THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION.

NEITHER THE STATE SECURITIES COMMISSION NOR THE UNITED STATE[S] SECURITIES AND EXCHANGE COMMISSION HAS PASSED UPON THE VALUE OF THESE SECURITIES, MADE ANY RECOMMENDATIONS AS TO THEIR PURCHASE, APPROVED OR DISAPPROVED THE OFFERING, OR PASSED UPON THE ADEQUACY OR ACCURACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS UNLAWFUL.

NO PERSON HAS BEEN AUTHORIZED TO GIVE ANY INFORMATION OR TO MAKE REPRESENTATIONS IN CONNECTION WITH THIS OFFERING OTHER THAN THOSE CONTAINED IN THIS PROSPECTUS, AND IF GIVEN OR MADE, SUCH INFORMATION OR REPRESENTATIONS MUST NOT BE RELIED UPON AS HAVING BEEN MADE BY THE ISSUER.

## II. TABLE OF CONTENTS OF THE PROSPECTUS

The Prospectus should include the following sections, and there should be set out under each section in narrative or descriptive form all of the relevant information pertaining to the Issuer and the Bonds. The Issuer should also include any other information not specified which is material to an understanding of the entire transaction.

- [a] The Corporation
- [b] Risk Factors
- [c] Use of Proceeds
- [d] Approval or Certificate of Need
- [e] Capitalization
- [f] Summary Statements of Revenue and Expenses
  - 1. Ratio of net revenues to fixed charges including Pro Forma. including a description of how calculated
  - 2. Management discussion and analysis of statement
- [g] History and Operation, including Appropriate Statistics
- [h] Reimbursement and Regulation
- [i] Description of Property
- [j] Valuation of Property
- [k] Management
- [l] Description of Bonds
- [m] Litigation
- [n] Experts
- [o] Legal Opinions
- [p] Underwriting or Plan of Distribution
- [q] Exhibits
- [r] Feasibility Study
- [s] Accountants' Report
- [t] Financial Statements

## III. PRIOR BORROWING EXPERIENCE

This should include a description of any defaults in payments of principal or interest on previously issued debt, and whether any proceeds from refinancing or additional offerings were necessary to repay any prior indebtedness. An explanation should be included if any proceeds from the proposed offering are being used to repay any prior indebtedness.

#### IV. RISK FACTORS

The Issuer must describe to the Investors the risk of investing in the Bonds. Particular care must be taken with risks associated with the financial condition of the Issuer. Each risk factor should include a page reference to an appropriate disclosure section. It is important that the Issuer fully describe all of the relevant risks which should include, if applicable, the following:

- (a) If revenues from third party payors will constitute the primary source of payment of interest and principal on the Bonds extensive disclosures should be made.
- (b) If additional financing may be required to repay Investors, or if the Issuer intends to repay the Investors with the proceeds of future bond offerings a statement should be included that there can be no assurance that such additional financing will be available.
- (c) If no public market will develop for the repurchase and resale of the Bonds, that fact should be stated clearly.
- (d) A statement should be included as to any material pending litigation or contingent liabilities affecting the Issuer, including whether there are provisions for the indemnification of the Issuer or Broker-Dealer for losses sustained as a result of claims based upon violations of applicable securities laws.
- (e) If the Trust Indenture permits the Issuer to further encumber the properties securing the Bonds through the issuance and sale of additional obligations at some future date, the maximum debt-to-property ratio should be described.
- (f) A statement should be included that in the event of default, the Health Care Facility property may not sell for its appraised value, since the appraised value of the property is based on its value as a special purpose property.
- (g) If the Issuer is newly formed and the Prospectus does not contain financial statements for the Issuer's past three fiscal years and audited financials for the latest fiscal year, this fact should be prominently disclosed.
- (h) If construction of a proposed building is not pursuant to a fixed price contract, or the contractor does not post a completion bond, a statement should be included as to the risk of non-completion.
- (i) If there is a prohibition against early redemption, a statement should be included that the Investor should purchase only if he intends to hold the Bonds for their full term.

The above risk factors are only indicative of the types of risk factors which may generally be associated with offerings of this type. However, the Issuer should also include any special risk associated with the specific offering and must take care to be sure that all problems of which it is aware are described. Any adverse material changes during the course of the offering will be prominently disclosed in a sticker to the Prospectus.

#### V. USE OF PROCEEDS

Include a tabular schedule of the anticipated use of the proceeds from the offering. A more detailed explanation of the proposed use of the proceeds should also be included.

If additional funds may be needed to accomplish the purpose of the offering, this should be stated, along with a description of how such funds will be obtained.

## VI. FINANCIALS

Include financial statements, prepared in accordance with generally accepted accounting principles.

- (a) Balance sheet as of the most recent year.
- (b) Statement of revenues and expenses for 3 years.
- (c) Statement of changes in fund balance for 3 years.
- (d) Statement of changes in financial position for 3 years.
- (e) Notes to Financial Statements.

Statements for the most recent year must be audited.

The statements of revenue and expenses and of changes in fund balances may be set forth separately or a combined statement of revenues and expenses and changes in unrestricted funds may be presented. If a combined statement is presented, separate statements of changes in the restricted fund balance should also be included.

The most recent financial statements should be as of a date not more than 120 days prior to the date of the proposed offering. If the Issuer's last fiscal year ended more than 120 days prior to the date of the proposed offering, unaudited stub period financials, including comparative statements of revenues and expenses, changes in fund balance and changes in financial position from the end of the Issuer's last fiscal year to a date not more than 120 days prior to the date of the proposed offering, should be included.

A copy of the auditor's report shall be included with the financial statements.

Each Prospectus should contain in tabular form a schedule of outstanding and proposed debt.

## VII. DESCRIPTION OF THE PROPERTY

- (a) Include a statement describing the principal properties of the Issuer and any liens or encumbrances thereon.
- (b) Describe the proposed facilities to be constructed or purchased from the proceeds of the offering and their proposed use.

## VIII. FEASIBILITY STUDY

In all offerings of securities of Non-Profit Health Care Facilities where a feasibility study is required the Prospectus should include a copy of the feasibility study.

## IX. DESCRIPTION OF THE TERMS AND OF THE BONDS

- (a) Describe the type and amount of the Bonds and set forth the interest rate, payment date and Trustee. Describe also the date upon which interest will begin to accrue.
- (b) Describe the underlying collateral. A statement should be made concerning whether the sale of additional Bonds may be secured by the same underlying collateral.

- (c) Describe the terms of the Bonds, including the Issuer's rights to early redemption of principal, and the basis upon which such redemption may be made. The Issuer or Investor's right to extend the maturity date, if available, should also be described.
- (d) Describe whether any consideration for the purchase of the Bonds other than cash will be acceptable. Describe whether the Bonds will be negotiable or transferable.
- (e) Describe the Trust Indenture giving the duties of the Trustee, events of default, covenants, restrictions upon subsequent issues and rights of the Issuer and Trustee to modify the Trust Indenture.
- (f) If a Best-Efforts offering, describe the manner in which the funds will be held during the offering period. Funds should be held in an escrow account with a bank or federally regulated financial institution and not be disbursed for the building project until the minimum proceeds necessary to complete the project have been obtained. If the minimum proceeds are not obtained, describe the manner in which Investor's funds will be repaid and whether or not interest will be paid on such funds.
- (g) The bond certificate should contain a statement that current financial statements of the Issuer will be made available to bondholders upon written request.

#### X. VALUATION OF THE PROPERTY

State the method of determining the value of the property.

#### XI. UNDERWRITING OR PLAN OF DISTRIBUTION

- (a) Identify the Underwriter and his address.
- (b) Describe the compensation to be paid for performing the services in connection with the offering.
- (c) Describe any other fees to be paid for services or advice in connection with the offering.
- (d) Describe any underwriting or selling agreement between Broker and the Issuer, including whether such agreements are on a "best efforts" or "firm commitment" basis, whether such arrangements are "exclusive" or "non-exclusive" and whether there are provisions for the indemnification of the Issuer or Broker-Dealer for losses sustained as a result of claims based upon violations of applicable securities laws.
- (e) Disclose all past, present and future and anticipated future dealings with the Underwriter. It should also be disclosed whether any officer or director of the Issuer is in any way affiliated with the Underwriter or any executive personnel of such organization.

#### XII. LITIGATION

Describe any pending or threatened material litigation or proceedings known to be contemplated by governmental authorities, administrative bodies or other persons, to which the Issuer is or may be subject. Include the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceeding and the relief sought.

## XII. [XIII.] HEALTH CARE FACILITY MANAGEMENT

- (a) Describe the organizational structure of the Issuer, and how the members of the legal governing body are chosen and replaced.
- (b) List the officers of the organization, the Board of Directors, or equivalent, and their addresses and occupations. Describe the function they perform for the Issuer and the date their term of office expires.
- (c) Disclose if any member of the Board or governing office, has during the past 10 years, been convicted in any criminal proceeding (other than for traffic violations and other minor offenses), or is the subject of any pending criminal proceedings, or was the subject of any order, judgement or decree of any court enjoining such person from any activity associated with the offer or sale of securities.
- (d) State all the direct and indirect remuneration paid by the Issuer to its executive officers or members of the board for the preceding fiscal year in the aggregate, and individually if, in excess of \$50,000. Indirect remuneration includes pension or retirement plans, loans for relocation purposes, etc.
- (e) Describe any management contracts, or conflicts of interest with any person described in this section.

## XIII. [XIV.] LEGAL OPINIONS

The name of the attorney who renders the legal opinion concerning the authority of the Issuer to sell the Health Care Facility Bonds, and their validity, when issued, shall be included in the prospectus.

## XIV. [XV.] EXPERTS

1. The person or persons preparing any appraisals must be identified, and their qualifications for serving as such described, along with their method of appraisal.
2. All experts, whose names are used in the Prospectus shall file with the Administrator consents to utilize their names in the Prospectus.
3. All experts must be independent of the Issuer and the Underwriter.