

ORANGE COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY

BACKGROUND, GUIDELINES AND PROCEDURES FOR THE ISSUANCE OF INDUSTRIAL DEVELOPMENT REVENUE BONDS (January 2008 Revision)

INTRODUCTION

This document has been prepared to assist members of the Orange County Industrial Development Authority (the “Authority”) in considering and acting upon applications for the issuance of the Authority’s industrial development revenue bonds and to assist applicants in preparing and submitting applications for the issuance of the Authority’s industrial development revenue bonds.

I. Background: Creation and Purposes of the Authority.

The Authority is an Industrial Development Authority created as a public body corporate and politic for the purpose of financing and refinancing capital projects as defined in, for the public purposes described in, and in the manner and with the powers provided by, Florida Statutes, Chapter 159, Part II Florida Industrial Development Financing Act, and Part III Industrial Development Authorities, collectively subsections 159.25-159.53 (the “Act”). The Authority was authorized to transact business and exercise the powers upon the adoption by the county commission of Orange County (the “County”) of a resolution declaring a need for the Authority to function in the County. Among the powers granted to the Authority under the Act is the power to issue industrial development revenue bonds. The issuance of each issue of industrial development revenue bonds by the Authority is subject to the approval or disapproval of the county commission of the County (the “County Commission”).

II. Industrial Development Revenue Bonds.

Under the Act, the Authority is authorized to issue industrial development revenue bonds for the purpose of financing the costs of projects which are consistent with the criteria and requirements set forth in the Act.

- (a) Definition of “project” for purposes of the Act. The power of the Authority to issue industrial development bonds is limited to the issuance of industrial development bonds for the purpose of financing the cost of “projects,” as defined in the Act. The term “project” as defined in the act may include an industrial or manufacturing plant, a research and development park, an agricultural processing or storage facility, a warehousing or distribution facility, a headquarters facility, a tourism facility, an educational facility, a commercial project in an enterprise zone, a health care facility, or any one of a number of other types of facilities which are listed in the Act. While the federal Internal Revenue Code (the “Code”) does not permit the financing of many of these types of projects with

“tax exempt” bonds, the Authority is also permitted by the Taxable Bond Act of 1987, Florida Statutes, Chapter 159, Part VII, subsections 159.821-159.8291, to issue taxable bonds.

- (b) Definition of “cost” for purposes of the Act. The proceeds from the sale of industrial development bonds issued by the Authority may only be used to finance the “cost” of a project. As defined in the Act, the term “cost,” as applied to any project, generally includes the cost of construction, the cost of acquisition of property, both real and personal, the cost of demolishing, removing, or relocating any buildings or structures on acquired lands, the cost of machinery and equipment, certain financing charges, consultants’ and legal fees, and certain other costs.

In connection with the approval by the Authority of an issue of industrial development revenue bonds, the Authority is required to draw certain conclusions and make certain findings of fact with respect to its determination that the bonds are being issued to finance “costs” of a “project,” within the meaning of the Act. Because the terms “project” and “cost” for purposes of the Act and the determination of tax treatment under the Code are subject to substantial legal and factual complexities, members of the Authority are permitted to, and necessarily must, place considerable reliance upon the interpretation of those terms by the bond counsel who is to issue the legal opinions to be delivered in connection with the issuance of subject bonds.

- (c) Criteria and Requirements. In connection with the financing any project with industrial development revenue bonds by the Authority, the Act requires that the Authority shall be guided by and shall observe the certain criteria and requirements; provided, however, that the determination of the Authority as to compliance with such criteria and requirements shall be final and conclusive. Consistent with such criteria and requirements, with respect to any financing approved by the Authority, the Authority must determine to its satisfaction that:
 - (1) The project is appropriate to the needs and circumstances of, and shall make a significant contribution to the economic growth of the County; shall provide or preserve gainful employment; shall protect the environment; or shall serve a public purpose by advancing the economic prosperity, the public health, or the general welfare of the State of Florida and its people as set forth in the Act (which generally includes economic development and promotion, improving education, health care and economic opportunity, while providing for protection of the environment, etc.);
 - (2) The financing agreement for the project is to be entered into with a party that is financially responsible and fully capable and willing to fulfill its obligations under the financing agreement, including the obligations to make payments in the amounts and at the times required; to operate, repair, and maintain at its own expense the project; and to serve the purposes of the Act and such other responsibilities as may be imposed

under the financing agreement. In determining the financial responsibility of such party, consideration shall be given to the party's ratio of current assets to current liabilities; net worth; earning trends; coverage of all fixed charges; the nature of the industry or activity involved; its inherent stability; any guarantee of the obligations by some other financially responsible corporation, firm, or other person; and other factors determinative of the capability of the party, financially and otherwise, to fulfill its obligations consistently with the purposes of the Act;

- (3) The County will be able to cope satisfactorily with the impact of the project and will be able to provide, or cause to be provided when needed, the public facilities, including utilities and public services, that will be necessary for the construction, operation, repair, and maintenance of the project at the expense of the party for whom the project is financed and for the payment of the principal of and interest on the bonds; and
- (4) The costs to be paid from the proceeds of the bonds shall be costs within the meaning of the Act, except for payments included in the purposes for which revenue bonds may be issued under the Act.

In reaching its determination with respect to the findings set forth above, members of the Authority are required to consider relevant information and exercise prudent business judgment. In their determination Authority members are entitled to rely on information in the application and the presentation by the representatives of the applicant, input from the public at any public hearing concerning the application, input from bond counsel and legal counsel to the Authority, the results of the review of the application by the staff of the Metro Orlando Economic Development Commission (the "EDC") under the EDC's Management Agreement with the Authority, and any other information which the members, in good faith, believe to be relevant and reliable.

- (d) Required Approval by the County Commission. Pursuant to the provisions of the Act and Florida Statutes, Chapter 125, subsection 125.01(1)(z), any issue of industrial development revenue bonds by the Authority is subject to the prior approval or disapproval of the County Commission. The foregoing approval is required whether the bonds to be issued are taxable or tax-exempt and whether or not the subject bond issue is subject to a required allocation under the Florida Private Activity Bond Allocation Act, Florida Statutes, Chapter 159, Part VI, subsections 159.801-159.816 (the "Allocation Act").
- (e) Private Activity Bonds Requiring an Allocation. The issuance by the Authority of any issue of industrial development bonds which requires an allocation under Section 146 of the Code shall be subject to the obtaining of such allocation under the Allocation Act.
- (f) Bond Counsel. The guidance of bond counsel is extremely important in the determination of "projects" and "costs" which are eligible for financing with

industrial development bonds issued by the Authority whether such bonds are to be taxable or tax exempt. In addition, bond counsel is to be principally responsible for the drafting of the relevant financing agreements and other documentation with respect to the bond issue. For these reasons, among others, it is most important that an applicant for bond financing retain experienced and qualified bond counsel to participate in the preparation of the application for financing and that such counsel be present at the time the Authority meeting at which the application is to be considered.

GUIDELINES

I. Bond Proceeds to Finance Cost of Capital Projects

In accordance with the statutes of the State of Florida pertaining to the authorization, issuance and sale of industrial development revenues bonds, the proceeds from the sale of such bonds shall be utilized to finance only the cost of capital projects including, but not limited to, the following:

- (a) The cost of construction;
- (b) The cost of acquisition of property including rights in land and other property, both real and personal, improved and unimproved;
- (c) The cost of demolishing, removing or relocating any building or structures on lands so acquired;
- (d) The cost of all machinery and equipment, financing charges, interest prior to and during construction, the cost of engineering and architectural surveys, plans and specifications; and
- (e) The cost of consultant and legal services, other expenses necessary or incident to determining the feasibility or practicality of constructing the project, administrative and other expenses necessary or incident to the construction of the project, and the cost of securing the financing for the project.

In general, the costs as defined above which can be financed with the proceeds of industrial development revenue bonds include land and depreciable capital expenses incurred after the effective date of the inducement resolution only. No working capital financing or non-depreciable expenditures (other than land) can be included.

II. Encouragement and Consideration of Projects

The Authority will study the advantages, facilities, resources, projects, attractions and conditions of and in the County with relation to the encouragement of industry and business to locate in the County, and shall use such means and media as the Authority deems advisable, including the issuance of their industrial development revenue bonds, to encourage desirable industry to locate in the County. In carrying out these purposes, the Authority shall cooperate and work with industrial development agencies, chambers of commerce and other local, state and federal agencies, as well as private companies, financial institutions, attorneys and investment bankers having responsibilities in the field of industrial development and financing.

The Authority will be guided by and will observe the following criteria and requirements in approving any project, the cost of which is to be financed by bonds issued by the Authority:

- (a) The project, in the determination of the Authority, will make a significant contribution to the economic growth of the County, will provide gainful employment, and will serve the public purpose of advancing the economic prosperity and general welfare of the County, the State of Florida and its people;
- (b) No project will be financed for any company or individual who is not financially responsible and fully capable and willing to fulfill its obligations to pay the lease, installment sales or other payments in the amounts and at the times required and fulfill its obligation to operate, repair and maintain the project at its own expense, including such other responsibilities as may be imposed under the required agreements; in determining financial responsibility of the applicant, consideration will be given to the applicant's ratio of current assets to current liabilities, net worth, earning trends, coverage of all fixed charges, the nature of the industry or business involved, its inherent stability, and guaranty of the obligations by some other financially responsible corporation, firm or person, and other factors relating to the capability of the applicant, financially and otherwise, to fulfill its obligations consistently with the provisions of Florida law;
- (c) The ability of the County to cope satisfactorily with the impact of the project and its ability to provide, or cause to be provided when needed, the public facilities, including utilities and public services that will be necessary for the construction, operation, repair and maintenance of the project or due to an increase in population or other circumstances resulting from the project; and
- (d) Any other matter which in the opinion of the Authority relates to the viability of the project, the financing, the applicant or the security of the bonds, including the method of sale of the bonds and the purchaser or purchasers of the bonds.

III. Financing

The following financing agreement requirements shall be applicable to the issuance of bonds approved by the Authority:

- (a) The agreements required in financing projects shall include such types of financing agreements as the Authority may approve with such security instruments or trust agreements as it shall deem adequate;
- (b) The applicant will pay all expenses, including reasonable Authority expenses and fees, incurred or incident to the processing of the application and issuance of the bonds if not otherwise paid from the proceeds of the sale of the bonds. Currently the Authority fees include (1) a non-refundable \$1,500 application fee due and payable with the application for the issuance of the Authority's industrial development revenue bonds, and (2) a financing fee of one-half (1/2) of one (1%) percent of the first \$4,000,000 and one-fourth (1/4) of one (1%) percent of the remainder of the face amount of the bond issue (subject to the limitation that the financing fee shall never exceed \$75,000 for any issue of industrial development revenue bonds), due and payable from the bond proceeds on the date of the bond issue closing; the applicant will pay all fees, costs, and expenses of the Authority's counsel associated with the bond issue; should the amount of the Authority fees be insufficient to cover all expenses of the Authority, the Authority will require an additional payment prior to proceeding further with the application (applicant will provide a check in the amount of \$250, payable to the State of Florida, Department of General Services, Division of Bond Finance, if the inducement resolution is passed); and
- (c) The Authority will not approve or participate in a "best efforts" underwriting for the sale of the industrial development revenue bonds.
- (d) Effective February 15, 2005, the Authority will issue industrial development revenue bonds only in compliance with the Debt Issuance Policy mandated by the Orange County Commission and attached hereto as Exhibit A.

PROCEDURES

I. Application

Application for the issuance of industrial development revenue bonds will be prepared in nine (9) copies. Each copy will be bound so that there are no loose materials (single metal clips are not acceptable). These applications will be forwarded to the following address:

Metro Orlando Economic Development Commission
301 East Pine Street, Suite 900
Orlando, FL 32801-8957.

Applications must be received three (3) weeks prior to the scheduled meeting date to insure time for proper processing. Late arrivals will be scheduled for the following month. Each application will be on company letterhead and will include and demonstrate the following information and facts:

- (a) Company name, including business address and telephone number, parent company name, names of principal operating officers, company counsel, underwriter's name (if used) and bond counsel;
- (b) A short history of the company and its state and date of incorporation, including a description of its products, markets, major customers and suppliers, and its competition;
- (c) Specific amount of U.S. dollars being requested to be financed by the issuance of industrial development revenue bonds and name of the guarantor;
- (d) A specific statement of the uses to which the bond proceeds will be put in terms of number of acres of land anticipated, number of square feet of building constructed, equipment, etc. A legal description of the property or specific geographical location (i.e., corner of 1st Street and "B" Avenue);
- (e) Statements demonstrating that the proposed project will make a significant contribution to the economic growth of the County, will provide gainful employment and will serve a public purpose by advancing the economic prosperity and the general welfare of the State of Florida and its people. List number of new jobs;
- (f) The applicant will furnish sufficient information to allow the Authority to determine if local government will be able to cope satisfactorily with the impact of the project and will be able to provide, or cause to be provided when needed, the public facilities, including utilities and public services, that will be necessary for the construction, operation, repair and maintenance of the project or due to any increases in population or other circumstances resulting from the project. The applicant must also show that the project meets all applicable codes and zoning regulations of the County;
- (g) A description, if any, of process discharges to air or water or solid waste disposal requirements of the proposed facility;
- (h) Evidence indicating that the proposed project will be used by an entity which is financially responsible and fully capable and willing to fulfill its obligation to pay lease, installment or other payments in the amounts and at the time required; the obligation to operate, repair and maintain the project at its own expense, the obligation to serve the purposes of the Act, and such other responsibilities as may be imposed under the agreement executed in connection with the issuance of the bonds;
- (i) Certified statements of the applicant's financial condition and company performance for the preceding five (5) years, including a copy of the applicant's latest interim statements;

- (j) A statement from potential bond purchaser, if applicable;
- (k) Securities and Exchange Commission Form 10-K, if applicable;
- (l) The applicant, in concert with bond counsel and counsel for the Authority, will furnish to the counsel for the Authority a proposed form of inducement agreement and resolution. Bond counsel will be a recognized authority in bond matters who is acceptable to the Authority; and
- (m) The application shall be accompanied by an application fee in the amount of \$1,500, no part of which shall be refundable.

The application for industrial revenue bonds will be received and reviewed by the Secretary of the Authority. The Secretary shall conduct, or cause to be conducted, an analysis of the application and will prepare, or cause to be prepared, a report to the Authority commenting specifically upon the following items:

- (a) Accuracy of application;
- (b) A brief assessment of the soundness of both the applicant's proposed project and the applicant's financial condition; and
- (c) Legal conformance of the project with applicable federal, state or local statutes, policies and guidelines.

When complete, the report and the application will be presented to the Authority for consideration. The Authority will call a public hearing on the application. Notice of the public hearing shall be published not less than fourteen (14) days before the scheduled date of the hearing and shall identify the applicant, describe the proposed issuance of the bonds, the amount of the proposed bond issue and the location and nature of the proposed facility to be financed thereby. The Board of County Commissioners of Orange County requires the published notice of the public hearing to include a map showing the location of the proposed facility to be financed by the proposed bonds.

II. Public Hearing

At the public meeting held at the time and place of the public hearing, the Authority will give preliminary consideration to the application. If the Authority votes not to give further consideration to the application, the public hearing will not be held. If the Authority votes to give further consideration to the application, the Authority shall conduct a public hearing on that application. The hearing shall be conducted by the Chairman or Vice Chairman of the Authority providing a reasonable opportunity for persons with differing views on both issuance of the bonds and the location and nature of the proposed facility to be heard.

Following the public hearing, the Authority shall determine, after considering the application, the purposes of the Authority, the Act, the Code, the public input at the hearing and such other information as the Authority deems relevant:

- (a) if the proposed project is consistent with the purposes of the Authority and the applicable statutes, including the criteria for industrial development bonds set forth therein; and
- (b) if the public hearing has provided the affected public an opportunity to comment on the use of tax-exempt financing for the project and if, based upon the public input, if any, and such other information as is available to the Authority, there will be a substantial public benefit from issuance of the bonds.

If the Authority makes an affirmative determination with respect to all of the matters set forth in clauses (a) and (b) of the preceding sentence of this paragraph, the Authority shall take official action adopting an appropriate form of resolution of inducement approving the application and providing for the issuance of the bonds subject, however, to approval by the County Commission. Following approval of the application, the Authority shall submit a request to the County Commission for the approval of the Authority's resolution in accordance with the provisions of Section III of these Procedures.

In the event the Authority, prior to the public hearing, votes not to give further consideration to the application, the Authority shall so advise the applicant. In the event the Authority proceeds with the public hearing, but is unable to make the affirmative determinations required for approval of the application, it shall so advise the applicant and in so doing shall advise the applicant with respect to whether the action by the Authority is final or whether additional consideration of the application shall be undertaken by the Authority, including the circumstances of such additional consideration, if any.

III. Approval by the County Commission

Following the adoption of the inducement resolution by the Authority providing conditional approval for the issuance of bonds, the Authority shall submit a request for approval by the County Commission of the Authority's resolution. The request for approval shall include a report of the Authority's action, a summary of the proceedings of the public hearing, and such other information as the County Commission deems necessary. Based upon the foregoing, the County Commission shall determine whether to adopt a resolution approving the Authority's resolution. The Clerk of the County Commission shall advise the Authority of the action taken by the County Commission.

IV. Final Action by the Authority

Following the adoption of a resolution by the County Commission approving the Authority's resolution, in accordance with the provisions of Section III of these Procedures, the Authority will consider and act on a final bond resolution providing for the issuance and sale of the bonds. The final form of bond resolution shall be prepared and reviewed by bond counsel, counsel for the applicant, and counsel for the Authority, and shall include the necessary findings required by the Act, approval of the bond documents, and such other matters as shall be deemed advisable by the Authority or its counsel. Following adoption of the bond resolution, the Authority shall proceed with the issuance and sale of the bonds without any requirement of further approval by any governmental unit or agency unless expressly provided for in the bond resolution.

In the event the County Commission shall not have approved the Authority's resolution, the Authority shall notify the applicant of the Board's action and of such further actions, if any, as are required of the Authority and/or the applicant. If the action of the County Commission in denying the Authority's resolution is final, members of the Authority and the applicant shall be so advised and no further action by the Authority with respect to the application shall be required.

V. Bond Validation

If deemed desirable or necessary by the Authority, the Authority's counsel or other parties to the bond issue, the bonds may be validated in the manner prescribed by appropriate Florida Statutes. Validation proceedings, if instituted, shall be instituted at such time after approval by the Authority of the inducement resolution as the Authority, its counsel and bond counsel shall deem appropriate.

VI. Waiver

The Authority reserves the right to waive, modify or add to any of the above Guidelines and Procedures upon good cause shown by Authority personnel or by any applicant for any proposed bond issue; provided, however, that such waiver, modification or addition shall be consistent with the provisions of Florida law and, if applicable, the provisions of the Code relating to the issuance of industrial development revenue bonds.

VII. Database Information Sheet

At the closing upon the issuance and sale of an issue of bonds, the borrower of the bond proceeds shall provide, or cause to be provided, to the Authority a database information sheet in the form prescribed by the Authority ("IDA Database Information Sheet"). The IDA Database Information Sheet shall include a reference number which shall be the same as the Resolution Number assigned by the Authority to the final bond resolution authorizing the issuance and sale of the bonds. The IDA Database Information Sheet shall be mailed immediately upon the closing of the bond issue to the following address:

Amy Mulford, Secretary
Orange County Industrial Development Authority
c/o Metro Orlando Economic Development Commission
301 East Pine Street, 9th Floor
Orlando, Florida 32801-8957

For each year following the issuance and sale of bonds during which any of such bonds is outstanding the borrower shall provide or cause to be provided, an annual IDA Database Information Sheet providing updated information for the Authority's use in reporting to federal and state regulatory authorities. The annual updated IDA Database Information Sheet must be forwarded by not later than August 15th of the subject year to the following address:

Amy Mulford, Secretary
Orange County Industrial Development Authority
c/o Metro Orlando Economic Development Commission
301 East Pine Street, 9th Floor
Orlando, Florida 32801-8957

Exhibit A

DEBT ISSUANCE POLICY

- (1) **Definitions.** All terms in capitalized form that are defined in this Section shall have the same meanings as are ascribed to those terms herein, unless a different or additional meaning is given to those terms specifically. Unless the context shall otherwise indicate, words importing singular number shall include the plural number in each case and vice versa, and words importing persons shall include corporations and associates, including public bodies, as well as natural persons. The following terms shall have the meaning indicated below unless the context clearly requires otherwise:
- (a) “*Authority*” means the Orange County Industrial Development Authority.
 - (b) “*Credit Enhanced*” means a bond issue with a third party repayment guarantee such as a bank letter of credit, Federal program or insurance policy from a credit enhancer such as a bank or insurance company with credit ratings in the three highest categories, meaning at least A3 from Moodys, or A- from either FitchRatings or Standard and Poors, which repayment guarantee structure is binding for at least 36 months and results in the bonds being issued with the credit ratings of the credit enhancer.
 - (c) “*Credit Rating*” means a professional assessment of creditworthiness from either FitchRatings, Moodys, or Standard and Poors as nationally recognized credit rating agencies, or such other firm as may reasonably attain a similar role in the future.
 - (d) “*Financial Advisor*” or “FA” means a properly licensed firm retained by either the Issuer or Guarantor Applicant with a fiduciary responsibility to their client under the rules and procedures of the National Association of Securities Dealers, the Municipal Securities Rulemaking Board, Securities and Exchange Commission, and the Florida Statutes. The FA is expected to advise their client on structuring the debt, marketing the debt, and the investment or disposition of debt proceeds. Any FA retained by the Guarantor Applicant shall be acceptable to the Issuer.
 - (e) “*Guarantor Applicant*” means the entity which makes application to the Authority for the debt, sponsors the project, and provides the repayment funds. Notwithstanding the use of a conduit issuer and any credit enhancement, the Guarantor Applicant is the entity whose credit is reviewed by the investors or credit enhancers as the underlying source of repayment funds.
 - (f) “*Investment Grade Credit Rating*” means a Credit Rating of BBB- or higher from FitchRatings, Baa3 or higher from Moodys, and BBB- or higher from Standard and Poors, and such other similar minimum rating level from another similar nationally recognized Credit Rating firm as may reasonably attain a similar role in the future.

- (g) “*Issuer*” means the Authority as conduit issuer of the debt.
- (h) “*Sophisticated Investor*” means a “qualified institutional buyer” as that term is defined under Rule 144A of the Securities and Exchange Commission or an “accredited investor” as that term is defined in Regulation D of the Securities and Exchange Commission.

(2) Bond Issuance and TEFRA approval.

- (a) Debt issues for more than \$10,000,000 undertaken for Guarantor Applicants with Credit Ratings below Investment Grade Credit Ratings must use the services of a Financial Advisor mutually acceptable to the Guarantor Applicant and the Authority.
- (b) The Authority will cause an Official Statement and related offering documents to be produced in connection with all public sales of debt.
- (c) To the extent possible, public hearings should be held in the Orange County Administration Center and televised on Orange TV to facilitate the most open process possible. In addition to customary TEFRA requirements, Orange County requires the published notice of the TEFRA hearing to contain a map showing the location of the proposed project.
- (d) Blanket (statewide) TEFRA hearings will not fulfill a local TEFRA hearing requirement. TEFRA approvals for projects involving multiple facilities over a period of time should be specific in identifying the names and locations of the multiple facilities and local TEFRA approvals should be obtained in all jurisdictions where appropriate.
- (e) Standards for County TEFRA approval request:
 - (i) The Authority will provide a detailed project description and a distribution list of the participants. The project description should include a description of the plan to obtain all necessary TEFRA approvals.
 - (ii) TEFRA requests will include any related financials feasibility studies, and required pro forma statements that were part of the Guarantor Applicant’s application to the Authority. For Credit Enhanced debt issues, the Guarantor Applicant’s financials do not need to accompany the TEFRA request.
 - (iii) The Authority will provide minutes of legally noticed hearings regarding the debt issue, along with copies of required legal notices (minutes should include the outcome of any votes that take place, hearing dates, and legal notice publication dates).
 - (iv) The Authority will provide a description of the sale method, the proposed debt structure, and the minimum debt denominations. When an FA

participates in the debt issue, the FA will provide the recommendation about sales method, debt structure, and minimum denominations.

- (v) The Authority will provide a credit discussion regarding such things as repayment sources, credit enhancements, ratings, insurance, and debt service reserve levels. When an FA participates in the debt issue, the FA will provide the credit description.
- (vi) The Authority will provide copies of resolutions, being certain those resolutions contain legal disclosure confirming that no County funds are pledged when that is the case.
- (vii) The Authority will provide notice of any waiver granted pursuant to Section 4(c).

(3) Pooled Finance. The Authority will avoid blind-pools justified by demand surveys where funds are issued and invested until used to fund projects. Instead, the Authority will focus on individual issues for individual projects or focus on draw-down structures that issue debt proceeds from investors only as projects require funding.

(4) Non-rated and non-enhanced debt.

(a) *Bonds Without Credit Enhancement and Without a Rating in One of The Three Highest Rating Categories.* Unless held by the borrower or a credit enhancer, or an affiliate of either of them, bonds without Credit Enhancement and without a rating in one of the three highest rating categories from a nationally recognized rating service (currently at least A3 from Moodys or A- from FitchRatings or Standard and Poors) (i) shall not be held in a book-entry only system, (ii) shall be sold and subsequently transferred only to a Sophisticated Investor or Investors and (iii) shall comply with the conditions set forth in paragraph (i) or (ii), as determined prior to the issuance of the bonds:

- (i) (A) The bonds shall be sold in minimum denominations of \$100,000; and
- (B) The bonds shall be sold only to Sophisticated Investors who have executed and delivered an “investor’s letter,” in form and substance satisfactory to the Authority including, among other things, (A) stating that the purchase of the bonds will be solely for its own account, (B) stating that such Sophisticated Investor can bear the economic risk of its investment in the bonds, (C) stating that such Sophisticated Investor has such knowledge and experience in financial business matters in general and tax-exempt obligations in particular, that it is capable of evaluating the merits and risks of purchasing the bonds, (D) stating that such Sophisticated Investor has made the decision to purchase the bonds based on its own independent investigation regarding the bonds, the borrower and the project and if a disclosure document has been

prepared, it has reviewed such disclosure document, and has received the information it considers necessary to make an informed decision to investment in the bonds, and (E) acknowledging that the Authority, its counsel and its advisors bear no responsibility for the accuracy or completeness of information with respect to the borrower and the project contained in any disclosure document related to the Sophisticated Investor's purchase of the bonds; and

(C) The bonds shall bear a legend restricting subsequent transfers to other Sophisticated Investors who have executed and delivered an "investor's letter" complying with the preceding paragraph (B).

(ii) Or,

(A) The bonds shall be sold in minimum denominations of \$250,000; and

(B) The bonds shall be sold initially only to Sophisticated Investors who have executed and delivered an "investor's letter", in form and substance satisfactory to the Authority including, among other things, (A) stating that the purchase of the bonds will be solely for its own account, (B) such Sophisticated Investor can bear the economic risk of its investment in the bonds, (C) stating that such Sophisticated Investor has such knowledge and experience in financial business matters in general and tax-exempt obligations in particular, that it is capable of evaluating the merits and risks of purchasing the bonds, (D) stating that such Sophisticated Investor has made the decision to purchase the bonds based on its own independent investigation regarding the bonds, the borrower and the project and if a disclosure document has been prepared, it has reviewed such disclosure document, and has received the information it considers necessary to make an informed decision to invest in the bonds, and (E) acknowledging that the Authority, its counsel and its advisors bear no responsibility for the accuracy or completeness of information with respect to the borrower and the project contained in any disclosure document related to the Sophisticated Investor's purchase of the bonds; and

(C) The bonds shall bear a legend restricting subsequent transfers to investors who by their purchase of the bonds represent that they (A) are purchasing the bonds solely for their own account, (B) can bear the economic risk of their investment in the bonds, (C) have such knowledge and experience in financial business matters that they are capable of evaluating the merits and risks of purchasing the bonds, and (D) have made the decision to purchase the bonds based on their own independent investigation regarding the bonds

and have received the information they consider necessary to make an informed decision to invest in the bonds.

- (b) Each indenture related to bonds which are subject to the restrictions set forth above in Section 4 shall provide that the trustee and the paying agent shall not authenticate or register a bond unless the conditions of this policy have been satisfied.
 - (c) Guarantor Applicants can petition the Authority for a waiver to issue in smaller denominations than required within this Section 4. The Guarantor Applicant must demonstrate a compelling public purpose for smaller denominations. The demonstration of a compelling public purpose may require a formal presentation at the discretion of the Authority. Any waiver granted by the Authority may only be granted prior to submission of TEFRA materials to the County pursuant to Section 2(e).
- (5) **Investment of Proceeds.** The FA will recommend the investment structure for debt proceeds and bid the investment of proceeds. In the event an FA is not required for a debt amount under \$10,000,000 or for a Guarantor Applicant with Investment Grade Credit Ratings, a financial officer of the Guarantor Applicant should submit a signed plan for disposition, investment and safekeeping of the proceeds as a part of the application process which will then be included in the TEFRA request packet for the County. Prior to disbursement of proceeds of debt issued by the Authority, such proceeds shall be held by a trustee bank or financial institution approved by the Authority.
- (6) **Continuing Disclosure and Market Transparency.**
- (a) The Authority and the Guarantor Applicant will arrange to use a recognized agent as an information repository and dissemination agent for 15(c) 2-12 disclosure, to the extent applicable. Guarantor Applicants with Investment Grade Credit Ratings can choose to undertake any disclosure responsibilities under 15(c) 2-12 through a proprietary process.
 - (b) The Authority and the Guarantor Applicant will ensure that copies of all closing transcripts are forwarded to the Orange County Comptroller and the County Fiscal and Business Services Office.