

<p style="text-align: center;"><b>Notice for Recipients of This Proposed FASB Staff Position</b></p>
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This proposed FASB Staff Position clarifies the definition of a public entity in certain FASB standards to include an entity that is an obligor in a conduit municipal bond in which the debt securities are traded in a public market, including over-the-counter markets. This proposed FSP amends APB Opinion No. 28, *Interim Financial Reporting*, FASB Statements No. 69, *Disclosures about Oil and Gas Producing Activities*, No. 109, *Accounting for Income Taxes*, No. 126, *Exemption from Certain Required Disclosures about Financial Instruments for Certain Nonpublic Entities*, No. 131, *Disclosures about Segments of an Enterprise and Related Information*, and No. 141, *Business Combinations*.

The Board invites individuals and organizations to send written comments on all matters in this proposed FSP. Comments are requested from those who agree with the provisions of this proposed FSP as well as from those who do not. Comments are most helpful if they identify the issues or specific paragraph or group of paragraphs to which they relate and clearly explain the issue or question. Those who disagree with provisions of this proposed FSP are asked to describe their suggested alternatives, supported by specific reasoning.

The FASB Exposure Draft, *Employers' Accounting for Defined Benefit Pension and Other Postretirement Plans*, has separate transition and disclosure requirements for public and nonpublic entities. The Board's pending Exposure Draft on mergers and acquisitions by a not-for-profit organization, which is expected to be exposed for public comment in the third quarter 2006, has additional disclosure requirements for public entities. The definition of a public entity in the Board's final standards for the employers' accounting for defined benefit pension and other postretirement plans project and the mergers and acquisitions by a not-for-profit organization project will be conformed to the definition of a public entity that is included in any final guidance issued as a result of this proposed FSP.

**PROPOSED FASB STAFF POSITION**

**No. FAS 126-a**

**Title:** Revision to the Definition of a Public Entity to Include an Obligor for Conduit Debt Securities

**Comment Deadline:** July 31, 2006

**Introduction**

1. This FASB Staff Position (FSP) clarifies the definition of a *public entity* to include an entity that is an obligor for a conduit municipal bond. This FSP amends APB Opinion No. 28, *Interim Financial Reporting*, FASB Statements No. 69, *Disclosures about Oil and Gas Producing Activities*, No. 109, *Accounting for Income Taxes*, No. 126, *Exemption from Certain Required Disclosures about Financial Instruments for Certain Nonpublic Entities*, No. 131, *Disclosures about Segments of an Enterprise and Related Information*, and No. 141, *Business Combinations*.

**Background**

2. A state or unit of local government or an agency or instrumentality of a state or local government (governmental entity) can raise funds in the capital markets by issuing municipal bonds. The Internal Revenue Code also permits a governmental entity to issue a conduit municipal bond. A conduit municipal bond is an offering by a governmental entity that is not for its own use, but for the use of a private party (conduit bond obligor). The types of private entities that can be involved in a conduit municipal bond are limited by the federal tax code to certain not-for-profit entities (for example, hospitals, museums, and libraries) and to for-profit entities for whom the debt is issued in the form of an industrial revenue or development bond that is issued for a specific purpose allowable by the Internal Revenue Code. In some instances, these conduit municipal bonds are traded in a public market (a domestic or foreign stock exchange or on an over-the-counter market, including local and regional markets).

3. In a conduit municipal bond, the governmental entity typically does not have any subsequent liability or continuing involvement. In the initial bond offering, the

governmental entity is listed as the issuer and the conduit bond obligor is listed as the obligor. The governmental entity does not include any of its own financial operating results in the initial offering or future filings. The conduit bond obligor is required to make all interest and principal payments as they become due, and any future financial reporting requirements are the responsibility of the conduit bond obligor.

4. Questions have arisen as to whether a conduit bond obligor for conduit debt securities that are traded in a domestic or foreign stock exchange or an over-the-counter market, including local or regional markets, should be considered a public entity for the purposes of applying certain existing authoritative accounting literature.

**FASB Staff Position**

5. An entity that is a conduit bond obligor for conduit debt securities that are traded in a public market (a domestic or foreign stock exchange or an over-the-counter market, including local or regional markets) meets the definition of a public entity or enterprise. The following accounting literature is being updated to include conduit bond obligors in the definition of a public entity or enterprise. The definition of a conduit bond obligor includes all individual conduit bond obligors that participate in a pooled conduit municipal bond.

**Effective Date and Transition**

6. The provisions in this FSP are effective for financial statements with annual periods beginning after the date the FSP is posted to the FASB website. Entities shall recognize the effects of applying this FSP as a change in accounting principle through retrospective application to all prior periods unless it is impracticable to do so. If an entity determines it is impracticable to retrospectively apply the guidance in this FSP, the entity shall disclose why it is impracticable and apply the guidance in this FSP prospectively.

**Appendix A**

**PROPOSED AMENDMENTS TO EXISTING PRONOUNCEMENTS**

A1. APB Opinion No. 28, *Interim Financial Reporting*, is amended as follows: [Added text is underlined, and deleted text is ~~struck out~~.]

- a. Footnote 1 to paragraph 6:

A publicly traded company for purposes of this Opinion includes any company whose securities trade in a public market on either (1) a stock exchange (domestic or foreign) or (2) in the over-the-counter market (including securities quoted only locally or regionally) or that is a conduit bond obligor for conduit debt securities that are traded in a public market (a domestic or foreign stock exchange or an over-the-counter market, including local or regional markets). When a company makes a filing with a regulatory agency in preparation for sale of its securities in a public market it is considered a publicly traded company for this purpose.

Conduit debt securities refers to certain limited-obligation revenue bonds, certificates of participation, or similar debt instruments issued by a state or local governmental entity for the express purpose of providing financing for a specific third party that is not a part of the state or local government's financial reporting entity. Although conduit debt securities bear the name of the governmental issuer, the governmental issuer has no obligation for such debt beyond the resources provided by a lease or loan with the third party on whose behalf they are issued.

A2. FASB Statement No. 69, *Disclosures about Oil and Gas Producing Activities*, is amended as follows:

- a. Footnote 2 to paragraph 1:

For purposes of this Statement, a publicly traded enterprise is a business enterprise (a) whose securities are traded in a public market on a domestic stock exchange or in the domestic over-the-counter market (including securities quoted only locally or regionally), (b) that is a conduit bond obligor for conduit debt securities that are traded in a public market (a domestic or foreign stock exchange or an over-the-counter market, including local or regional markets), or ~~(bc)~~ whose financial statements are filed with a regulatory agency in preparation for the sale of any class of securities in a domestic market.

Conduit debt securities refers to certain limited-obligation revenue bonds, certificates of participation, or similar debt instruments issued by a state or

local governmental entity for the express purpose of providing financing for a specific third party that is not a part of the state or local government's financial reporting entity. Although conduit debt securities bear the name of the governmental issuer, the governmental issuer has no obligation for such debt beyond the resources provided by a lease or loan with the third party on whose behalf they are issued.

A3. FASB Statement No. 109, *Accounting for Income Taxes*, is amended as follows:

a. Paragraph 289 (Glossary):

**Nonpublic enterprise**

An enterprise other than one (a) whose debt or equity securities are traded in a public market, including those traded on a stock exchange or in the over-the-counter market (including securities quoted only locally or regionally), (b) that is a conduit bond obligor for conduit debt securities that are traded in a public market (a domestic or foreign stock exchange or an over-the-counter market, including local or regional markets), or ~~(b)~~ whose financial statements are filed with a regulatory agency in preparation for the sale of any class of securities.

Conduit debt securities refers to certain limited-obligation revenue bonds, certificates of participation, or similar debt instruments issued by a state or local governmental entity for the express purpose of providing financing for a specific third party that is not a part of the state or local government's financial reporting entity. Although conduit debt securities bear the name of the governmental issuer, the governmental issuer has no obligation for such debt beyond the resources provided by a lease or loan with the third party on whose behalf they are issued.

**Public enterprise**

An enterprise (a) whose debt or equity securities are traded in a public market, including those traded on a stock exchange or in the over-the-counter market (including securities quoted only locally or regionally), (b) that is a conduit bond obligor for conduit debt securities that are traded in a public market (a domestic or foreign stock exchange or an over-the-counter market, including local or regional markets), or ~~(b)~~ whose financial statements are filed with a regulatory agency in preparation for the sale of any class of securities.

Conduit debt securities refers to certain limited-obligation revenue bonds, certificates of participation, or similar debt instruments issued by a state or local governmental entity for the express purpose of providing financing for a specific third party that is not a part of the state or local government's financial reporting entity. Although conduit debt securities bear the name of the governmental issuer, the governmental issuer has no obligation for such debt beyond the resources provided by a lease or loan with the third party on whose behalf they are issued.

A4. FASB Statement No. 126, *Exemption from Certain Required Disclosures about Financial Instruments for Certain Nonpublic Entities*, is amended as follows:

a. Paragraph 3:

For purposes of this Statement, a nonpublic entity is any entity other than one (a) whose debt or equity securities trade in a public market either on a stock exchange (domestic or foreign) or in the over-the-counter market, including securities quoted only locally or regionally, (b) that is a conduit bond obligor for conduit debt securities<sup>a</sup> that are traded in a public market (a domestic or foreign stock exchange or an over-the-counter market, including local or regional markets), or (c) that makes a filing with a regulatory agency in preparation for the sale of any class of debt or equity securities in a public market, or (ed) that is controlled by an entity covered by (a), (b), or (c).

<sup>a</sup>Conduit debt securities refers to certain limited-obligation revenue bonds, certificates of participation, or similar debt instruments issued by a state or local governmental entity for the express purpose of providing financing for a specific third party that is not a part of the state or local government's financial reporting entity. Although conduit debt securities bear the name of the governmental issuer, the governmental issuer has no obligation for such debt beyond the resources provided by a lease or loan with the third party on whose behalf they are issued.

A5. FASB Statement No. 131, *Disclosures about Segments of an Enterprise and Related Information*, is amended as follows:

a. Paragraph 9:

This Statement applies to public business enterprises. Public business enterprises are those business enterprises that have issued debt or equity securities or are conduit bond obligors for conduit debt securities<sup>a</sup> that are traded in a public market (a domestic or foreign stock exchange or an over-the-counter market, including local or regional markets), that are required to file financial statements with the Securities and Exchange Commission, or that provide financial statements for the purpose of issuing any class of securities in a public market. This Statement does not apply to parent enterprises, subsidiaries, joint ventures, or investees accounted for by the equity method if those enterprises' "separate company" statements also are consolidated or combined in a complete set of financial statements and both the separate company statements and the consolidated or combined statements are included in the same financial report. However, this Statement does apply to those enterprises if they are public enterprises and their financial statements are issued separately.

This Statement also does not apply to not-for-profit organizations or to nonpublic enterprises. Entities other than public business enterprises are encouraged to provide the disclosures described in this Statement.

<sup>a</sup>Conduit debt securities refers to certain limited-obligation revenue bonds, certificates of participation, or similar debt instruments issued by a state or local governmental entity for the express purpose of providing financing for a specific third party that is not a part of the state or local government's financial reporting entity. Although conduit debt securities bear the name of the governmental issuer, the governmental issuer has no obligation for such debt beyond the resources provided by a lease or loan with the third party on whose behalf they are issued.

A6. FASB Statement No. 141, *Business Combinations*, is amended as follows:

a. Paragraph F1 (Glossary):

**Public business enterprise**

An enterprise that has issued debt or equity securities or is a conduit bond obligor for conduit debt securities that are traded in a public market (a domestic or foreign stock exchange or an over-the-counter market, including local or regional markets), that is required to file financial statements with the Securities and Exchange Commission, or that provides financial statements for the purpose of issuing any class of securities in a public market.

Conduit debt securities refers to certain limited-obligation revenue bonds, certificates of participation, or similar debt instruments issued by a state or local governmental entity for the express purpose of providing financing for a specific third party that is not a part of the state or local government's financial reporting entity. Although conduit debt securities bear the name of the governmental issuer, the governmental issuer has no obligation for such debt beyond the resources provided by a lease or loan with the third party on whose behalf they are issued (FASB Statement No. 131, *Disclosure about Segments of an Enterprise and Related Information*, paragraph 9).