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SECURITIES AND EXCHANGE COMMISSION  
RECEIVED

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DIVISION OF MARKET REGULATION

September 30, 2005

Ms. Martha Mahan Haines  
Chief  
Office of Municipal Securities  
Securities and Exchange Commission  
100 F Street, NE  
Washington, D.C. 20549

Re: *Exemption Request Under Rule 15c2-12(e) Filed on Behalf of The State of Oregon*

Dear Ms. Haines:

This letter is submitted on behalf of the State of Oregon ("Oregon" or the "State"), which has established a program (the "School Bond Guaranty Program" or the "Program") to provide its full faith and credit and taxing power to guaranty payment of principal of and interest on general obligation school bonds issued by eligible Oregon school districts, community colleges and education service districts (collectively, the "School Districts"). The State's guaranty is authorized by Article XI-K of the Oregon Constitution and by statute to assist School Districts in raising funds needed for capital construction and improvements to Oregon schools. Oregon enjoys a strong credit rating, and the State's guaranty of School District indebtedness can provide significant interest cost savings to School Districts in Oregon.

Pursuant to Securities Exchange Act of 1934 Rule 15c2-12(e) (the "Rule") and the delegation of authority to the Division of Market Regulation by 17 CFR 200.30-3(a)(48) to grant exemptive relief for a transaction or class of transactions, Oregon is requesting relief with respect to the "small issuer exemption" contained in paragraph (d)(2) of the Rule. Specifically, Oregon is requesting that its outstanding obligations as an issuer and its undertaken obligations as a guarantor of municipal securities issued by School Districts which, with respect to Offerings (as defined in paragraph (a) of the Rule) of such municipal securities would result in Oregon being an Obligated Person (as defined in paragraph (f)(10) of the Rule), not be considered by Participating Underwriters (as defined in paragraph (a) of the Rule) of Offerings on behalf of School Districts participating in the Program in determining whether any such Participating Underwriter may rely on the "small issuer exemption" provided by paragraph (d)(2) of the Rule. The School Bond Guaranty Program began accepting applications on January 4, 1999. Many of the undertakings made by School Districts since the commencement of the Program have provided that the undertaking was conditionally made and would be terminable if an exemption regarding the application of the "small issuer exemption" to municipal securities guarantied by the State is obtained from the Commission, in which case the School District would comply with the Rule, but to the extent required by the "small issuer exemption" provided by paragraph (d)(2) thereof.



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The State of Oregon notes that exemptive relief substantially similar to that requested herein, including relief to pre-exemption letter Offerings, has been granted to the Texas Education Agency (Exemptive Letter available February 9, 1996) and to the Utah School Boards (Exemptive Letter available October 22, 1997). While some details of the Texas and Utah programs differ from the Oregon Program, the material concepts and legal and policy issues are the same.

## **I. The School Bond Guaranty Program**

### **A. The School Bond Guaranty Program**

Oregon has established a program under which a School District can obtain a full faith and credit guaranty of its bonded indebtedness by the State. The Program took effect on January 4, 1999. The Oregon School Bond Guaranty Act (Chapter 614, Oregon Laws 1997) (the "Guaranty Act"), a copy of which is attached to this letter as Appendix A, provides a self-executing guaranty of any and all School District bonds found to be eligible by the Oregon State Treasurer. The guaranty provided by the Guaranty Act is obtained by the School District referencing the Guaranty Act on the face of each guaranteed bond. Eligibility for the guaranty is applied for in writing by a School District, and the State Treasurer issues a certificate of qualification upon finding that the School District meets the requirements of the Guaranty Act and Oregon Administrative Rules 170-063-0000 (the "Rules") created for the Program. A copy of the Rules, the form of application by a School District and the form of certificate of qualification for the Program are attached to this letter as Appendices B, C and D, respectively. The State Treasurer's certificate of qualification constitutes the State's agreement that the School District is eligible for participation in the Program under the Guaranty Act, and the certificate of qualification is valid for one year. When the School District is ready to issue bonds under the Guaranty Act, the State provides a letter of confirmation stating that the State's guaranty shall apply to the bond issue, subject to certain procedural requirements. A form of the letter of confirmation is attached to this letter as Appendix E.

The Program is a method of extending Oregon's excellent credit rating to School Districts that do not enjoy such a favorable credit rating, but are in need of bond financing to construct and improve school facilities in their districts. By offering the full faith and credit guaranty of the State to School Districts, significant financing cost savings can be achieved.

The legality of the Guaranty Act was dependent upon passage of certain amendments to the Oregon Constitution that would allow the State to guaranty School District bonded indebtedness (the "Amendments"). Oregon voters approved the Amendments in the general election on November 3, 1998, and the Amendments took effect on January 1, 1999. The principal feature of the Program is the pledge of the full faith and credit of the State to guaranty the timely payment of principal of and interest on School District bonds. A copy of a description



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of the operation and purpose of the Program from a recent official statement is attached to this letter as Appendix F.

**B. Oregon School District Bonding Powers**

Under Oregon law, School Districts are political subdivisions of the State with general taxing powers. School Districts may issue voter-approved general obligation bonds to finance capital construction and improvements of school facilities. School District bonds are secured by a pledge of the School District's unlimited ad valorem taxing powers.

The Guaranty Act includes a statutorily established "intercept" procedure for collecting moneys otherwise due from the State to a School District to repay the State for any guaranty payments made on that School District's bonds. In addition, the State is authorized under certain circumstances to seek judicial enforcement of a School District's obligation to levy and provide property tax revenues to pay debt service on School District bonds when due and meet its repayment obligations to the State.

**II. Discussion of Issues**

Oregon is requesting that its outstanding guaranty obligations not be considered by School Districts in determining whether the School Districts may rely on the "small issuer exemption" provided by paragraph (d)(2) of the Rule for their Offerings.

Release No. 34-34961, through which the Rule was announced, states that "[i]f any one obligated person in an Offering exceeds the threshold, then the entire Offering, including all obligated persons, will be subject to the rule." The Program already exceeds the \$10 million threshold as a consequence of the dollar amount of School District bonds that has been and will be guaranteed by the State. Currently, there are 236 districts (20 education service districts, 17 community colleges and 199 school districts) in Oregon. Of these, 101 districts have less than \$10 million of outstanding municipal securities as of June 30, 2005. A list of bonds guaranteed under the Program as of September 1, 2005 is attached to this letter as Appendix G. Also as of June 30, 2005, the State of Oregon has approximately \$17.4 billion in principal amount of municipal securities outstanding (\$4.5 billion in general obligation debt, \$7.57 billion in revenue debt, \$4.5 billion in full faith and credit obligations and \$136 million in certificates of participation). The level of State indebtedness alone would prevent a School District participating in the Program from making use of the "small issuer exemption" of the Rule. Unless the exemptive relief is granted, School Districts, which would otherwise be entitled to the "small issuer exemption," will be subject to the full scope of undertakings specified in paragraph (b)(5) of the Rule.



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Given the loss of the “small issuer exemption” that will result if exemptive relief is not granted pursuant to paragraph (e) of the Rule, and considering that the market will receive financial information about the State on a timely basis, as described below, we are of the view that the exemptive relief requested hereby is “consistent with the public interest and the protection of investors” as required by paragraph (e) of the Rule.

A. The State of Oregon Master Continuing Disclosure Certificate

The State Treasurer has executed on behalf of the State of Oregon a Master Continuing Disclosure Certificate (the “Master Certificate”) by which the State will agree with the registered and beneficial owners, from time to time, of guaranteed bonds to comply with the provisions of paragraph (b)(5) of the Rule to the same extent as if the Offerings of bonds guaranteed under the Program were fully subject to the provisions of paragraph (b)(5) of the Rule, as regards the State’s guaranty. A copy of the Master Certificate is attached to this letter as Appendix H. All other continuing disclosure obligations are the responsibility of the issuing School Districts and Participating Underwriters of guaranteed bonds.

Specifically, the Master Certificate includes the commitment of the State to provide annually to each nationally recognized municipal securities information repository (“NRMSIR”) and the Oregon information depository (the “Oregon SID”), if one is created, a copy of the State’s Comprehensive Annual Financial Report (the “CAFR”). Oregon’s Master Certificate undertaking to provide the annual CAFR is precisely the same approach followed by Utah in its form of Master Continuing Disclosure Agreement, which approach has previously been granted exemptive relief.

The Master Certificate provides that the CAFR will be filed with each NRMSIR and the Oregon SID, if one is created, within 270 days after the end of each fiscal year of the State. The State Treasurer will notify the Oregon SID, if one is created, and each NRMSIR and the Municipal Securities Rulemaking Board (the “MSRB”), in a timely manner, of the occurrence of any of the events specified in paragraph (b)(5)(i)(C) of the Rule, if material, with respect to the State’s guaranty on guaranteed bonds, as well as concerning any failure by the State to timely file its CAFR. The Master Certificate further provides that the State will be obligated to observe and perform the covenants specified in the Master Certificate for so long as the State remains an obligated person with respect to bonds guaranteed under the Program. The Master Certificate specifically provides that it is for the benefit of registered and beneficial owners of the bonds guaranteed by the State under the Program.

The Master Certificate will be referenced in the official statement relating to any School District bonds that are guaranteed by the State. School District official statements will most likely incorporate by reference financial and operating data for the State from the State’s most recent CAFR on file at each NRMSIR, and at the Oregon SID, if one is created.



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B. State of Oregon Comprehensive Annual Financial Report

The State's CAFR contains complete financial and other information about the State as well as a description of the bonds that have been guaranteed and other descriptive information concerning the operations of the State and the Program. School Districts may also decide, under the circumstances at the time, to incorporate by reference the State's most recent official statement with respect to debt issued by the State since the date of the most recent CAFR.

The CAFR includes an audited financial report prepared by the State Department of Administrative Services, State Controller's Division according to generally accepted accounting principles as promulgated to apply to governmental entities from time to time by the Governmental Accounting Standards Board. The State's CAFR is audited by the Oregon Audits Division of the Office of the Secretary of State in accordance with auditing standards generally accepted in the United States of America and the Standards applicable to financing audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. The State's CAFR satisfies the State's obligation as an obligated person under the Rule to file annual information as that term is defined in paragraph (f)(9) of the Rule by providing financial information or operating data with respect to the Program and with respect to the State, on an annual basis, that is of the type included in a final official statement with respect to the State when the State is an issuer or obligated person as that term is defined in paragraph (f)(10) of the Rule.

The State will continue to file such audited financial information as part of the annual CAFR filing in compliance with the Rule. The State will also continue to comply with the Master Certificate in accordance with the terms thereof for so long as any bonds guaranteed under the Guaranty Act are outstanding or until the Master Certificate is otherwise terminated in accordance with its terms.

C. Filing of Annual Financial Information by School Districts

As requested, we have inquired into whether School Districts have failed to file annual financial information in compliance with the Rule. Based on the limited information available, nominal instances of failure on the part of some School Districts to file annual financial information under the Rule have likely occurred. The State is not requesting relief for any instances of failure on the part of any School Districts to file information required to be filed before the effective date of the exemptive relief requested hereby.



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D. Notice Filing

If the exemptive relief requested hereby is provided, the State, on behalf of the School Districts qualifying as "small issuers," will file a notice with each NRMSIR and the Oregon SID, if one is created, indicating that such relief has been granted, with the result of such relief being that certain "small issuer" School Districts (which will be named in the notice) will cease providing annual financial information in reliance upon the exemptive relief, although such "small issuer" School Districts will comply with the Rule to the extent required by the "small issuer exemption" provided by paragraph (d)(2) thereof. Such notice will also provide that the State, pursuant to the Master Certificate, will make annual financial information filings with each NRMSIR and the Oregon SID, if one is created, and will timely file material event notices with each NRMSIR or the MSRB and the Oregon SID, if one is created, in each case with respect to the Program and the State.

Paragraph (b)(5)(i) of the Rule provides that an undertaking be made by the issuer of municipal securities or each obligated person, either "individually or in combination with other issuers of such municipal securities or obligated persons." Consequently, while the State has made certain undertakings through the Master Certificate, its undertaking will be confined to information regarding the State. The undertakings by each "small issuer" School District will relate to the issuer and to its securities being issued and offered by Participating Underwriters.

Very truly yours,

ORRICK, HERRINGTON & SUTCLIFFE LLP

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Attachments:

- Appendix A Guaranty Act
- Appendix B Oregon Administrative Rules 170-063-0000
- Appendix C School District Application
- Appendix D Certificate of Qualification
- Appendix E Letter of Confirmation
- Appendix F Official Statement
- Appendix G List of Guaranteed Bonds
- Appendix H Master Certificate