

**NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**The North Carolina Medical Care Commission  
701 Barbour Drive  
Raleigh, North Carolina**

**MINUTES**

**CALLED MEETING OF THE EXECUTIVE COMMITTEE  
CONFERENCE TELEPHONE MEETING ORIGINATING  
FROM THE COMMISSION'S OFFICE  
APRIL 22, 2010  
2:00 P.M.**

**Members of the Executive Committee Present:**

Lucy Hancock Bode, Chairman  
Joseph D. Crocker, Vice-Chairman  
George H.V. Cecil  
Gerald P Cox  
Charles T. Frock  
Mary L. Piepenbring  
Dr. Robert E. Schaaf

**Members of the Executive Committee Absent:**

None

**Members of Staff Present:**

Christopher B. Taylor, CPA, Assistant Secretary  
Alice S. Creech, Bond Program Assistant

**Others Present:**

Thomas W. Bradshaw, Jr., Morgan Stanley Smith Barney  
David Cyganowski, Citigroup Global Markets  
Allen K. Robertson, Robinson Bradshaw & Hinson, P.A.  
Amy Yang, Citigroup Global Markets

1. **Purpose of Meeting**

To authorize the sale of bonds, the proceeds of which are to be loaned to Duke University Health System, Inc. and to discuss a request from CaroMont Health to use a law firm that does not have a North Carolina law practice for bond counsel.

2. **Resolution of the North Carolina Medical Care Commission Authorizing the Issuance of \$120,000,000 North Carolina Medical Care Commission Health Care Facilities Revenue Bonds (Duke University Health System) Series 2010A (the “Bonds”)-** Remarks were made by Amy Yang, Tom Bradshaw , David Cyganowski & Allen Robertson.

**Executive Committee Action:** A motion was made by Mr. Joe Crocker, seconded by Mr. Charles Frock and unanimously approved with Dr. Robert Schaaf abstaining from the vote.

WHEREAS, the North Carolina Medical Care Commission (the “Commission”) is a commission of the Department of Health and Human Services of the State of North Carolina and is authorized under Chapter 131A of the General Statutes of North Carolina, as amended (the “Act”), to borrow money and to issue in evidence thereof bonds and notes for the purpose of providing funds to pay all or any part of the cost of financing or refinancing health care facilities; and

WHEREAS, Duke University Health System, Inc. (the “Corporation”) is a nonprofit corporation duly incorporated and validly existing under and by virtue of the laws of the State of North Carolina and is a “non-profit agency” within the meaning of the Act; and

WHEREAS, the Corporation has made application to the Commission for a loan for the purpose of providing funds, together with other available funds, to (a) acquire, construct, improve, renovate, expand and equip the health care facilities of the Corporation on the campus of Duke University Hospital, which is located on the main campus of Duke University at Erwin Road, Durham, North Carolina, including the acquisition, construction, installation and equipping of Duke Medicine Pavilion (“DMP”), including (1) a new 582,000 square-foot tertiary-care addition that will include four 24-bed intensive-care units, two 32-bed intermediate/step-down units, 16 additional operating rooms, expanded imaging facilities, and patient- and family-oriented amenities; (2) a new two-story 9,000 square-foot South Concourse connector corridor between the existing Cancer Center and Duke Clinics and the DMP; (3) a new two-story 46,000 square-foot North Concourse connector corridor between the DMP and existing Duke Hospital North; (4) the renovation of approximately 29,000 square feet of space in the existing Duke Hospital North to accommodate the connection to the DMP; and (5) road-improvement and vehicle-parking projects required to complete and operate the DMP (collectively, the “Project”); and (b) pay certain expenses incurred in connection with the issuance of the Bonds (as defined below) by the Commission; and

WHEREAS, the Commission has determined that the public will best be served by the proposed financing and, by a resolution adopted by the Commission on February 12, 2010, has approved the issuance of the Bonds, subject to compliance by the Corporation with the conditions set forth in such resolution, and the Corporation has complied with such conditions to the satisfaction of the Commission; and

WHEREAS, there have been presented at this meeting draft copies of the following documents relating to the issuance of the Bonds:

(a) a Contract of Purchase, dated April 22, 2010 (the "Purchase Agreement"), between the Local Government Commission of North Carolina and Citigroup Global Markets Inc. and the other underwriters named therein (collectively, the "Underwriters"), and approved by the Commission and the Corporation, pursuant to which the Underwriters have agreed to purchase the Bonds on the terms and conditions set forth therein and in the Trust Agreement (as defined below);

(b) a Trust Agreement, dated as of April 1, 2010 (the "Trust Agreement"), between the Commission and The Bank of New York Mellon Trust Company, N.A., as bond trustee (the "Bond Trustee"), the provisions of which relate to the issuance of and security for the Bonds and includes the form of the Bonds;

(c) a Loan Agreement, dated as of April 1, 2010 (the "Loan Agreement"), between the Commission and the Corporation, pursuant to which the Commission will lend the proceeds of the Bonds to the Corporation;

(d) a Supplemental Indenture for Obligation No. 28 dated as of April 1, 2010 ("Supplement No. 28"), between the Corporation and The Bank of New York Mellon Trust Company, N.A., as Master Trustee (the "Master Trustee") under the Master Trust Indenture, dated as of April 13, 1999 (as supplemented, the "Master Indenture"), by and among the Corporation, Durham Therapies, Incorporated and The Bank of New York, succeeded by The Bank of New York Mellon Trust Company, N.A.;

(e) Obligation No. 28, to be dated as of the date of delivery of the Bonds ("Obligation No. 28"), to be issued by the Corporation to the Commission; and

(f) a Preliminary Official Statement of the Commission dated April 6, 2010 relating to the Bonds (the "Preliminary Official Statement"); and

WHEREAS, the Commission has determined that the Corporation is financially responsible and capable of fulfilling its obligations under the Loan Agreement, the Master Indenture, Supplement No. 28 and Obligation No. 28; and

WHEREAS, the Commission has determined that adequate provision has been made for the payment of the principal of, redemption premium, if any, and interest on the Bonds;

NOW, THEREFORE, THE NORTH CAROLINA MEDICAL CARE COMMISSION DOES HEREBY RESOLVE, as follows:

Section 1. Capitalized words and terms used in this Series Resolution and not defined herein shall have the same meanings in this Series Resolution as such words and terms are given in the Master Indenture, the Trust Agreement and the Loan Agreement.

Section 2. Pursuant to the authority granted to it by the Act, the Commission hereby authorizes the issuance of North Carolina Medical Care Commission Health Care Facilities Revenue Bonds (Duke University Health System) Series 2010A (the "Bonds") in the aggregate principal amount of \$120,000,000. The Bonds shall mature in such amounts and at such times, be subject to Sinking Fund Requirements and bear interest at such rates as are set forth in Schedule 1 attached hereto.

The Bonds shall be issued as fully registered bonds in the denominations of \$5,000 or any whole multiple thereof. The Bonds shall be issuable in book-entry form as provided in the Trust Agreement. Interest on the Bonds shall be paid on each June 1 and December 1, beginning December 1, 2010, to and including June 1, 2042. Payments of principal of and interest on the Bonds shall be forwarded by the Bond Trustee to the registered owners of the Bonds in such manner as is set forth in the Trust Agreement.

Section 3. The Bonds shall be subject to optional, extraordinary and mandatory redemption, all at the times, upon the terms and conditions, and at the prices set forth in the Trust Agreement.

Section 4. The proceeds of the Bonds shall be applied as provided in Section 2.08 of the Trust Agreement. The Commission hereby finds that the use of the proceeds of the Bonds to finance a portion of the cost of the Project and to pay costs of issuing the Bonds will accomplish the public purposes set forth in the Act.

Section 5. The forms, terms and provisions of the Trust Agreement and the Loan Agreement are hereby approved in all respects, and the Chairman or Vice Chairman (or any other member of the Commission designated by the Chairman) and the Secretary or any Assistant Secretary of the Commission are hereby authorized and directed to execute and deliver the Trust Agreement and the Loan Agreement in substantially the forms presented at this meeting, together with such changes, modifications and deletions as they, with the advice of counsel, may deem necessary and appropriate, and such execution and delivery shall be conclusive evidence of the approval and authorization thereof by the Commission.

Section 6. The form, terms and provisions of the Purchase Agreement are hereby approved in all respects, and the Chairman, Vice Chairman (or any other member of the Commission designated by the Chairman), Secretary or any Assistant Secretary of the Commission are hereby authorized and directed to execute and deliver the Purchase Agreement in substantially the form presented at this meeting, together with such changes, modifications, insertions and deletions as they, with the advice of counsel, may deem necessary and appropriate, and such execution and delivery shall be conclusive evidence of the approval and authorization thereof by the Commission.

Section 7. The form of the Bonds set forth in the Trust Agreement is hereby approved in all respects, and the Chairman or Vice Chairman (or any other member of the Commission designated by the Chairman) and the Secretary or any Assistant Secretary of the Commission are hereby authorized and directed to execute, by manual or facsimile signature as provided in such form of the Bonds, and to deliver to the Bond Trustee for authentication on behalf of the Commission, the Bonds in definitive form, which shall be in substantially the form presented at this meeting, together with such changes, modifications and deletions as they, with the advice of counsel, may deem necessary, appropriate and consistent with the Trust Agreement, and such execution and delivery shall be conclusive evidence of the approval and authorization thereof by the Commission.

Section 8. The forms, terms and provisions of Supplement No. 28 and Obligation No. 28 are hereby approved in substantially the forms presented to this meeting, together with such changes, modifications, insertions and deletions as the Chairman, Vice Chairman (or any other member of the Commission designated by the Chairman), Secretary or any Assistant Secretary of the Commission, with the advice of counsel, may deem necessary and appropriate, and the execution and delivery of the Trust Agreement by the Commission shall be conclusive evidence of the approval of the documents listed in this Section by the Commission.

Section 9. The Commission hereby approves the action of the Local Government Commission in awarding the Bonds to the Underwriters at the purchase price of \$119,726,075 (representing the principal amount of the Bonds plus net original issue premium of \$836,075 and less underwriters' discount of \$1,110,000).

Section 10. Upon their execution in the form and manner set forth in the Trust Agreement, the Bonds shall be deposited with the Bond Trustee for authentication, and the Bond Trustee is hereby authorized and directed to authenticate the Bonds and, upon the satisfaction of the conditions set forth in Section 2.08 of the Trust Agreement, the Bond Trustee shall deliver the Bonds to the Underwriters against payment therefor.

Section 11. The Commission hereby approves and ratifies the use and distribution of the Preliminary Official Statement and approves the use and distribution of a final Official Statement (the "Official Statement"), both in connection with the offer and sale of the Bonds. The Chairman, Vice Chairman (or any other member of the Commission designated by the Chairman), Secretary and any Assistant Secretary are hereby authorized to execute, on behalf of the Commission, the Official Statement in substantially the form of the Preliminary Official Statement, together with such changes, modifications and deletions as they, with the advice of counsel, may deem appropriate. Such execution shall be conclusive evidence of the approval thereof by the Commission. The Commission hereby approves and authorizes the distribution and use of copies of the Official Statement, the Trust Agreement, the Loan Agreement, the Master Indenture, Supplement No. 28 and Obligation No. 28 by the Underwriters in connection with such offer and sale.

Section 12. The Bank of New York Mellon Trust Company, N.A. is hereby appointed as the initial Bond Trustee for the Bonds.

Section 13. The Depository Trust Company, New York, New York is hereby appointed as the initial Securities Depository for the Bonds, with Cede & Co., a nominee thereof, being the initial Securities Depository Nominee and initial registered owner of the Bonds.

Section 14. The Secretary of the Commission, Christopher B. Taylor, C.P.A., Assistant Secretary of the Commission, Steven C. Lewis, Chief of the Construction Section of the Division of Health Service Regulation, and Kathy C. Larrison, Auditor of the Commission, are each hereby appointed a Commission Representative as that term is defined in the Loan Agreement, with full power to carry out the duties set forth therein.

Section 15. The Chairman, Vice Chairman (or any other member of the Commission designated by the Chairman), Secretary and any Assistant Secretary of the Commission are each hereby authorized and directed (without limitation except as may be expressly set forth herein) to take such action and to execute and deliver any such documents, certificates, undertakings, agreements or other instruments as they, with the advice of counsel, may deem necessary or appropriate to effect the transactions contemplated by the Trust Agreement, the Loan Agreement, the Purchase Agreement and the Official Statement.

Section 16. All references in this Resolution to the Secretary of the Commission include any Acting Secretary of the Commission.

Section 17. This Series Resolution shall take effect immediately upon its passage.

Schedule 1

Maturity Schedule

\$12,510,000 4.50% Term Bonds due June 1, 2030

<u>Due June 1</u>	<u>Sinking Fund Requirement</u>
2029	\$6,095,000
2030	6,415,000

\$10,000,000 4.75% Term Bonds due June 1, 2035

<u>Due June 1</u>	<u>Sinking Fund Requirement</u>
2031	\$1,810,000
2032	1,900,000
2033	1,995,000
2034	2,095,000
2035	2,200,000

\$27,305,000 5.00% Term Bonds due June 1, 2035

Due June 1

Sinking Fund Requirement

2031	\$4,945,000
2032	5,185,000
2033	5,450,000
2034	5,720,000
2035	6,005,000

\$70,185,000 5.00% Term Bonds due June 1, 2042

Due June 1

Sinking Fund Requirement

2036	\$ 8,620,000
2037	9,045,000
2038	9,505,000
2039	9,975,000
2040	10,470,000
2041	10,995,000
2042	11,575,000

Professional Fees Comparison for  
DUHS 2010A Bonds

<u>Professional</u>	Fees Estimated In Preliminary Approval <u>Resolution</u>	<u>Actual Fees</u>
Underwriters' discount	\$2,160,000	\$1,110,000
Accountants	40,000	32,500
Corporation counsel	85,000	55,000
Bond counsel	82,500	75,000
Underwriters' counsel	55,000	55,000



3. **Request by CaroMont Health to use McKenna Long & Aldridge, LLP as bond Counsel please see Exhibits A & B listed below.**

**Exhibit A**



2525 Court Drive  
Post Office Box 1747  
Gastonia, NC 28053-1747  
704-834-2000

April 15, 2010

**VIA FACSIMILE & US MAIL**

Mr. Christopher B. Taylor  
Assistant Secretary  
North Carolina Medical Care Commission  
701 Barbour Drive  
Raleigh, North Carolina 27603

Re: North Carolina Medical Care Commission Hospital Revenue Bonds  
(CaroMont Health) Series 2008

Dear Mr. Taylor:

This letter is to inform the North Carolina Medical Care Commission (the "Commission") that CaroMont Health ("CaroMont") has selected the law firm of McKenna Long & Aldridge LLP ("McKenna Long") to serve as bond counsel, subject to the approval of the Commission, in connection with the proposed interest rate mode conversion and remarketing of all or a portion of the above-referenced bonds (the "Series 2008 Bonds"). For the reasons set forth in this letter, CaroMont respectfully requests that the Commission approve CaroMont's selection of McKenna Long to serve as bond counsel.

The law firm of Kilpatrick Stockton LLP ("Kilpatrick Stockton") served as bond counsel for the original issuance of the Series 2008 Bonds in January 2008. Ken Pollock, then a partner in Kilpatrick Stockton's Public Finance Group, had primary responsibility for the firm's engagement as bond counsel. In addition, John MacMaster, also then a partner in Kilpatrick Stockton's Public Finance Group and a recognized expert on tax law issues relating to public finance, provided tax advice in connection with the firm's engagement as bond counsel. Prior to this engagement as bond counsel, Ken had represented CaroMont as its counsel on all bond-related matters since 2003, including serving as borrower's counsel for the issuance of the Commission's Hospital Revenue Bonds (CaroMont Health) Series 2003 (the "Series 2003 Bonds") and the interest rate mode conversion and remarketing of the Series 2003 Bonds that closed in May 2006. In addition, subsequent to serving as bond counsel for the Series 2008 Bonds, Ken and John served as bond counsel for another interest rate mode conversion and remarketing of the Series 2003 Bonds that closed in June 2008.

Mr. Christopher B. Taylor  
April 15, 2010  
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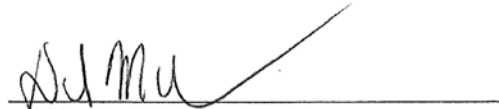
In 2009, the attorneys in Kilpatrick Stockton's Public Finance Group joined the Public Finance Group of McKenna Long in the firm's Atlanta office. McKenna Long is an international law firm comprised of more than 475 attorneys and public policy advisors with 10 offices worldwide. The attorneys comprising McKenna Long's public finance team have participated in hundreds of public finance transactions totaling more than \$84 billion in aggregate principal amount. The group serves local, state, regional, and national clients in a broad and diversified public finance practice, and members of the group have served as bond or underwriters' counsel in virtually every state in the country, including North Carolina. The firm is listed in The Bond Buyer's Municipal Marketplace, otherwise known as the "Red Book."

Subject to the Commission's approval of McKenna Long as bond counsel, Ken Pollock, now a partner with McKenna Long, will again be the attorney primarily responsible for providing the bond counsel services, and John MacMaster, now counsel with McKenna Long, will provide tax advice. CaroMont has selected McKenna Long because of these attorneys' deep institutional knowledge of CaroMont, which we believe will result in a more efficient and successful conversion and remarketing of the Series 2008 Bonds. As bond counsel for the original issuance of the Series 2008 Bonds, Ken was the primary draftsman of the related bond documents and, as a result, is the attorney most familiar with the operative documents relating to the proposed transaction. In addition, because Ken has advised us for many years regarding obligated group and master trust indenture issues, we regard his continued availability to us to be vital. Similarly, because the Series 2008 Bonds were hedged with an integrated swap, Ken and John's familiarity with the swap documentation will prove useful in advising us regarding swap-related issues, including tax implications.

Based on our established relationship with Ken and John and their previously demonstrated competence and experience on similar transactions, as well as McKenna Long's reputation in the area of public finance, we believe that our selection of McKenna Long is sound and appropriate. Accordingly, as mentioned above, CaroMont respectfully requests that the Commission approve CaroMont's selection of McKenna Long to serve as bond counsel for our proposed transaction.

If you have any questions regarding the foregoing, please call me. We look forward to working with you and the Commission on the proposed transaction.

Sincerely,



David M. O'Connor  
Vice President and Chief Financial Officer

## Exhibit B.

In response to your request for a fee proposal, we propose a fee of \$80,000 for the conversion to fixed rate and remarketing of the Series 2008 Bonds. Please note that, since the Commission has not yet approved CaroMont's selection of McKenna Long as bond counsel, we have thus far only had preliminary and limited discussions with CaroMont regarding the proposed transaction and have not yet had any discussion with CaroMont's legal counsel, financial advisor, or remarketing agent. Accordingly, it may make sense to revisit our quote (and revise it upward or downward) once we have a full understanding of the structure of the transaction and the scope of work involved. In addition, if this fee quote is in any way not satisfactory to the Commission, please let me know, as we are willing to negotiate a mutually acceptable fee.

I look forward to working with you on this transaction.

Best regards,

Ken

**Kenneth B. Pollock | Partner**

**McKenna Long & Aldridge LLP**

303 Peachtree Street | Suite 5300 Atlanta, Ga 30308

Tel: 404.527.4043 | Fax: 404.527.4198

[kbpollock@mckennalong.com](mailto:kbpollock@mckennalong.com)

**Executive Committee Action:** A motion was made by Mr. Gerald Cox, seconded by Mr. Joe Crocker to continue the Medical Care Commission's policy to only do business with law firms who practice in North Carolina. CaroMont has been instructed to solicit bids for bond counsel from firms which practice in North Carolina.

#### 4. Adjournment

There being no further business, the meeting was adjourned at 2:35 p.m.

Respectfully submitted,

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Christopher B. Taylor  
Assistant Secretary

