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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

OFFICE OF THE
GENERAL COUNSEL

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CHAIRMAN'S OFFICE
MAILED
FEB 19 1987

Signed by:

Honorable Morris K. Udall, Chairman
Committee on Interior and Insular Affairs
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Udall:

Chairman Shad has asked me to respond to your letter requesting a report by the Commission on the applicability of the federal securities laws to a $300 million housing bond issue in Guam. We understand that your inquiry arises from concerns over recently-alleged political bribes made in order to encourage Guam's legislators to approve the bond issue. This response is based on the facts in your letter and recent press reports indicating that a federal grand jury has charged Guam's former governor, Ricardo J. Bordallo, with conspiracy, bribery, extortion, wire fraud and witness tampering for, among other things, receiving $70,000 in campaign contributions in return for his support of this bond issue. Prosecutors appear to be naming Matthews and Wright, a New York-based investment banking firm which underwrote the bond issue, as the source of the $70,000 bribe. See The Associated Press, January 11, 1987; The Bond Buyer, December 30, 1986.

I understand that the Guam Economic Development Authority issued the bonds (which were sold in October 1985) pursuant to the Organic Act of Guam. 48 U.S.C. §1425b. Such bonds are exempt from the registration provisions of the Securities Act of 1933 (the "Securities Act") pursuant to Section 3(a)(2). Section 3(a)(2), in pertinent part, exempts "[a]ny security issued or guaranteed by the United States or any territory thereof, . . . or by any political subdivision of a State or Territory, . . . or by any public instrumentality of one or more States or Territories. . ." Accordingly, there are no specific disclosure or Commission filing requirements applicable to the issuance of these bonds. These bonds are also "exempted securities" under Section 3(a)(12) of the Securities Exchange Act of 1934 (the "Exchange Act") because they fall within the definition of "municipal securities" under Section 3(a)(29) of the Exchange Act. Therefore, these bonds are exempt from the registration and reporting requirements of the Exchange Act.

Notwithstanding any exemption from the registration and reporting provisions, the antifraud provisions of the federal securities laws, Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act, and the rules thereunder, still apply. In general, these provisions prohibit fraud and materially false and misleading statements made in connection with the offer, purchase or sale of a security. The omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading is also prohibited.

A determination of the materiality of an omitted or misrepresented fact involves the significance of that fact to a reasonable investor and is a mixed question of law and fact that must ultimately be decided by the courts. The Supreme Court has indicated, in the context of an omitted fact, that the standard of materiality requires a showing of a substantial likelihood that the omitted fact would have been viewed by a reasonable investor as having significantly altered the "total mix" of information made available. TSC Industries, Inc. v. Northway, Inc., 426 U.S. 438, 449 (1976). In this case, if it can be established that material mistatements or omissions were made in the bond offering documents, investors in these bonds may have a private right of action under the federal securities laws.

I hope that this response addresses your concerns regarding the potential applicability of the federal securities laws to the situation in Guam. If you or your staff have further questions please contact me or Heidi Mandanis, an attorney on my staff, at 272-2432.

Sincerely,

Daniel L. Goelzer

Daniel L. Goelzer
General Counsel