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COMMITTEE ON ENERGY
AND COMMERCE
RANKING REPUBLICAN

COMMITTEE ON
MERCHANT MARINE AND
FISHERIES

SUBCOMMITTEE ON
MERCHANT MARINE

Congress of the United States
House of Representatives
Washington, DC 20515

December 21, 1988

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Honorable David Ruder
Chairman
Securities and Exchange Commission
450 5th Street, N.W.
Washington, D.C. 20549

Dear Mr. Chairman

We are writing in response to the Securities and Exchange Commission's request for comments on its proposed rule and legal interpretation concerning the obligation of underwriters of municipal securities to investigate the official disclosure statements made in connection with municipal securities offerings. We commend the Commission's efforts to clarify the underwriters' obligations. Such clarification enhances the protection of municipal securities investors from misrepresentations in issues' disclosure documents.

From our understanding of the Commission's proposal, underwriters would be required to have a reasonable basis for believing the accuracy and completeness of the key representations made in a municipal issuer's official statement. Underwriters would be required to review the issues' disclosure documents in a "professional manner for possible inaccuracies and omissions." In addition, the proposal sets forth a non-exclusive list of factors to be used in determining the reasonableness of an underwriter's belief.

The Commission's proposal, however, establishes different standards of review for bond sales in which the underwriter and the issuer negotiate the price of the bonds and bond sales in which the underwriter is selected through a competitive sealed-bid auction. In negotiated sales, underwriters would continue to be able to satisfy their obligation to investigate issuers' disclosure documents through meetings with officials, inspections of facilities, examinations of issuers' records, review of current economic trends and forecasts, and certification of the accuracy and completeness of the official statement in "10b-5" letters from underwriters' counsel. In competitive sales, however, the underwriter would be required only to review the issuers' official statements in a professional manner and obtain a credible explanation of any aspect that appears on its face to be inaccurate and incomplete.

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We are interested in the reasoning behind your decision to require a lesser degree of scrutiny in competitive sales. It would seem to us that the risks to the investing public are identical in negotiated and competitive sales. If that is the case, then why is the investor not entitled to the same level of information and protection regardless of whether the underwriter obtains the issue by negotiation or competitive bid?

As you complete your review of the public comment on this proposal, we would appreciate it if you would consider this point and provide us with your views. Thank you for your attention to this matter.

Sincerely,



NORMAN F. LENT
Member of Congress



MATTHEW J. RINALDO
Member of Congress