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**LEGISLATIVE PROPOSALS REGARDING
INDUSTRIAL DEVELOPMENT BONDS**

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* THE SECURITIES AND EXCHANGE COMMISSION, AS A MATTER OF POLICY, DISCLAIMS RESPONSIBILITY FOR SPEECHES BY ITS COMMISSIONERS. THE VIEWS EXPRESSED HEREIN ARE THOSE OF THE SPEAKER AND DO NOT NECESSARILY REFLECT THE VIEWS OF THE COMMISSION.

THE COMMISSION RECENTLY APPROVED IN PRINCIPLE A LEGISLATIVE RECOMMENDATION WHICH WOULD ELIMINATE THE EXEMPTION ENJOYED BY INDUSTRIAL DEVELOPMENT BONDS FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933. IN ADDITION, THE COMMISSION RECOMMENDED THAT THE EXEMPTION FOR QUALIFIED INDUSTRIAL DEVELOPMENT BONDS NOW CONTAINED IN THE TRUST INDENTURE ACT OF 1939 BE ELIMINATED. HOWEVER, THE EXEMPTIONS FOR INDUSTRIAL DEVELOPMENT BONDS CONTAINED IN THE SECURITIES EXCHANGE ACT OF 1934 WOULD, FOR THE MOST PART, BE UNAFFECTED BY THIS LEGISLATIVE PROPOSAL.

SINCE THE COMMISSION'S APPROVAL OF THIS LEGISLATIVE PROPOSAL WAS CONDITIONED ON FURTHER INQUIRY INTO SOME MATTERS, AND SINCE WE HAVE NOT YET APPROVED A FINAL LEGISLATIVE RECOMMENDATION, OUR RECOMMENDED BILL MAY DIFFER IN CERTAIN DETAILS FROM THE PROPOSAL ALREADY AUTHORIZED. MY PURPOSE IN SPEAKING TO YOU THIS AFTERNOON IS TO EXPLAIN THE HISTORY AND NATURE OF THE EXEMPTIONS FOR INDUSTRIAL DEVELOPMENT BONDS IN THE FEDERAL SECURITIES LAWS, TO INDICATE THE WAY IN WHICH THE COMMISSION PROPOSES TO DELETE CERTAIN OF THE STATUTORY EXEMPTIONS, AND TO DISCUSS THE POLICY REASONS UNDERLYING OUR LEGISLATIVE RECOMMENDATION.

THE SALE OF INDUSTRIAL DEVELOPMENT BONDS, OR INDUSTRIAL REVENUE BONDS AS THEY ARE OFTEN CALLED, BECAME A POPULAR MEANS FOR STATES TO STIMULATE INDUSTRIAL DEVELOPMENT AND ATTRACT NEW BUSINESS AFTER WORLD WAR II. THE SALE OF INDUSTRIAL DEVELOPMENT BONDS HAS CONTINUED TO BE AN IMPORTANT AND FAVORABLE FINANCING METHOD FOR COMPANIES FOR VARIOUS REASONS. INTEREST PAID ON THE BONDS IS TAX EXEMPT IF THE BONDS MEET QUALIFICATIONS SET FORTH IN THE INTERNAL REVENUE CODE. BECAUSE REGISTRATION UNDER THE SECURITIES ACT OF 1933 IS NOT REQUIRED, OFFERING EXPENSES ARE PRESUMABLY LOWER THAN ON SALES OF REGISTERED BONDS. ACCORDINGLY, INDUSTRIAL DEVELOPMENT BONDS CAN BE SOLD AT LOWER RATES OF INTEREST THAN CORPORATE BONDS. A PRIVATE CORPORATE ENTERPRISE, THEREFORE, HAS THE ADVANTAGES OF LOW-COST FINANCING WITHOUT MANY OF THE RESTRICTIVE CONDITIONS IMPOSED ON OTHER ISSUERS OF SECURITIES. FURTHERMORE, IN SOME CASES, THE BOND-FINANCED FACILITIES MAY BE TAX EXEMPT WHILE OWNED BY THE MUNICIPALITY.

STATE LAWS GOVERNING THE ISSUANCE OF INDUSTRIAL DEVELOPMENT BONDS VARY WIDELY. HOWEVER, MOST OFFERINGS HAVE CERTAIN COMMON FEATURES. TYPICALLY, THE PROCEEDS TO THE MUNICIPALITY OR OTHER GOVERNMENTAL AUTHORITY FROM THE SALE OF THE INDUSTRIAL DEVELOPMENT BONDS ARE USED TO FINANCE THE CONSTRUCTION OR ACQUISITION OF PLANT FACILITIES WHICH ARE ULTIMATELY USED BY A PRIVATE BUSINESS ENTERPRISE.

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THE PRINCIPAL AND INTEREST ON THE BONDS IS PAID SOLELY OR IN MAJOR PART FROM THE REVENUES RECEIVED BY THE GOVERNMENTAL ENTITY UNDER ITS CONTRACT WITH THE PRIVATE COMPANY. THE TERMS OF SUCH A CONTRACT, TYPICALLY A LEASE, ARE CALCULATED TO SUSTAIN THE GOVERNMENTAL ENTITY'S DEBT SERVICE OBLIGATION ON THE BONDS. THEREFORE, INDUSTRIAL DEVELOPMENT BONDS ARE UNLIKE OTHER MUNICIPAL SECURITIES BECAUSE THEY ARE NOT BACKED BY THE GENERAL CREDIT AND TAXING AUTHORITY OF THE GOVERNMENTAL ENTITY-ISSUER. A HOLDER OF AN INDUSTRIAL DEVELOPMENT BOND MUST DEPEND ON THE ABILITY OF THE PARTICIPATING CORPORATE ENTITY, NOT THE GOVERNMENTAL ISSUER, TO GENERATE REVENUES SUFFICIENT TO MEET THE PERIODICALLY MATURING PRINCIPAL AND INTEREST PAYMENTS. IN MY OPINION, THE DISTINCTIONS BETWEEN INDUSTRIAL DEVELOPMENT BONDS AND GENERAL OBLIGATION BONDS ARE CRUCIAL TO AN ANALYSIS OF WHAT THE STATUS OF INDUSTRIAL DEVELOPMENT BONDS SHOULD BE UNDER THE FEDERAL SECURITIES LAWS.

I AM CONCERNED ABOUT THE USE OF INDUSTRIAL DEVELOPMENT BONDS BECAUSE TO SOME EXTENT, THE CAPITAL RAISING FUNCTION IS BEING INCREASINGLY PERFORMED BY THE GOVERNMENT RATHER THAN THE PRIVATE SECTOR. FROM 1976 TO 1977, UNDERWRITINGS OF MUNICIPAL SECURITIES, INCLUDING INDUSTRIAL REVENUE BONDS, INCREASED FROM \$55.5 BILLION TO \$77.4 BILLION, WHEREAS CORPORATE UNDERWRITINGS DECREASED FROM \$36 BILLION

TO \$32 BILLION. STATISTICS INCLUDED IN THE PRESIDENT'S 1978 TAX PROGRAM SHOW THAT BORROWINGS BY PRIVATE ENTERPRISES BY MEANS OF INDUSTRIAL DEVELOPMENT BONDS ON WHICH INTEREST IS EXEMPT UNDER THE INTERNAL REVENUE CODE HAVE INCREASED FROM \$297 MILLION IN 1971 TO \$3.5 BILLION IN 1977. IN PARTICULAR, OFFERINGS OF POLLUTION CONTROL BONDS INCREASED FROM \$77 MILLION IN 1971 TO \$3 BILLION IN 1977.

INDUSTRIAL DEVELOPMENT BONDS HAVE NOT ALWAYS BEEN EXEMPT FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933. IN THE MID-1960'S, AT ABOUT THE SAME TIME THE TREASURY DEPARTMENT BEGAN A REEXAMINATION OF THE TAX EXEMPTION FOR ALL INDUSTRIAL DEVELOPMENT BONDS, THE COMMISSION ALSO UNDERTOOK A REVIEW OF THEIR EXEMPT STATUS UNDER THE FEDERAL SECURITIES LAWS. THE COMMISSION ULTIMATELY CONCLUDED THAT THE GOVERNMENTAL ENTITY WAS ONLY THE NOMINAL ISSUER OF INDUSTRIAL DEVELOPMENT BONDS; BONDHOLDERS IN FACT LOOKED TO THE CREDIT OF THE PRIVATE ENTERPRISE USER, RATHER THAN THE CREDIT OF THE GOVERNMENTAL ISSUER, FOR PAYMENT OF PRINCIPAL AND INTEREST. ACCORDINGLY,

THE COMMISSION CONCLUDED THAT THE OBLIGATION OF THE PRIVATE ENTERPRISE WITH REGARD TO THE BONDS DID NOT COME WITHIN THE GOVERNMENTAL ENTITY EXEMPTIONS THEN CONTAINED IN THE FEDERAL SECURITIES LAWS.

FULL COMPLIANCE WITH THE SECURITIES ACT OF 1933, THE SECURITIES EXCHANGE ACT OF 1934 AND THE TRUST INDENTURE ACT OF 1939 WAS THEREFORE REQUIRED WITH RESPECT TO THE PRIVATE ENTERPRISE'S INTEREST BECAUSE OF THE INHERENT DIFFERENCES BETWEEN INDUSTRIAL DEVELOPMENT BONDS AND OTHER MUNICIPAL SECURITIES. THIS APPROACH WAS CODIFIED IN 1968 WITH THE ADOPTION BY THE COMMISSION OF RULE 131 UNDER THE SECURITIES ACT OF 1933 AND RULE 3B-5 UNDER THE SECURITIES EXCHANGE ACT OF 1934.

RULES 131 AND 3B-5 CONSTITUTED A DEFINITIVE STATEMENT OF THE COMMISSION'S POSITION ON INDUSTRIAL DEVELOPMENT BONDS. UNDER THESE RULES THE ISSUANCE OF AN INDUSTRIAL DEVELOPMENT BOND BY A GOVERNMENTAL ENTITY IS CONSIDERED TO INVOLVE THE ISSUANCE OF A "SEPARATE SECURITY" AS TO WHICH THE GOVERNMENTAL ENTITY EXEMPTIONS IN THE SECURITIES ACTS WERE NOT APPLICABLE. ACCORDINGLY, REGISTRATION OF THE SEPARATE SECURITY UNDER THE SECURITIES ACT OF 1933 AND THE TRUST INDENTURE ACT OF 1939 AND COMPLIANCE WITH THE SECURITIES EXCHANGE ACT OF 1934 WAS REQUIRED WITH RESPECT TO THAT PORTION OF THE BOND OBLIGATION PAYABLE FROM THE PRIVATE ENTERPRISE'S CONTRACTUAL PAYMENTS.

THESE RULES DID NOT AFFECT THE EXEMPTIONS UNDER THE SECURITIES ACTS FOR SECURITIES ISSUED BY THE GOVERNMENTAL ENTITY ITSELF. NOR DID THESE RULES AFFECT THE EXEMPTIONS FOR REVENUE BONDS ISSUED TO FINANCE A PROJECT OPERATED BY A GOVERNMENTAL ENTITY RATHER THAN A PRIVATE BUSINESS. FURTHER, UNDER THE RULES NO "SEPARATE SECURITY" WAS DEEMED TO EXIST IF A GOVERNMENTAL ENTITY HAVING TAXING AUTHORITY OR OTHER RESOURCES GUARANTEED PAYMENT OF THE INDUSTRIAL DEVELOPMENT BOND OBLIGATIONS IN THE EVENT OF CONTRACT DEFAULT BY THE PRIVATE ENTERPRISE.

ALTHOUGH RULES 131 AND 3B-5 REMAIN IN EFFECT THEY HAVE NOT RESULTED IN GIVING PURCHASERS OF IDB'S THE PROTECTION OF THE FEDERAL SECURITIES LAWS BECAUSE OF AMENDMENTS TO THE STATUTES ENACTED IN AUGUST 1970. THESE AMENDMENTS PROVIDED GENERAL EXEMPTIONS FROM THE SECURITIES ACTS FOR INDUSTRIAL DEVELOPMENT BONDS. SECTION 3(A)(2) OF THE SECURITIES ACT OF 1933 AND SECTION 3(A)(12) OF THE SECURITIES EXCHANGE ACT OF 1934 PROVIDE IDENTICAL EXEMPTIONS FROM THOSE ACTS FOR INDUSTRIAL DEVELOPMENT BONDS THAT MEET CERTAIN QUALIFICATIONS SET FORTH IN SECTION 103 OF THE INTERNAL REVENUE CODE OF 1954.

GENERALLY, TWO TYPES OF INDUSTRIAL DEVELOPMENT BOND ISSUES ARE ENCOMPASSED BY THESE PROVISIONS. THE FIRST IS AN ISSUANCE OF BONDS THE INTEREST ON WHICH IS EXCLUDABLE FROM GROSS INCOME BECAUSE SUBSTANTIALLY ALL OF THE PROCEEDS OF THE SALE ARE TO BE USED TO PROVIDE CERTAIN FACILITIES, SUCH AS SPORTS, CONVENTION AND TRANSPORTATION FACILITIES, POLLUTION CONTROL FACILITIES OR FACILITIES FOR THE FURNISHING OF ELECTRIC ENERGY, AIR OR WATER. THE OTHER EXEMPT INDUSTRIAL DEVELOPMENT BOND ISSUES ARE BONDS THE INTEREST ON WHICH IS EXCLUDABLE FROM GROSS INCOME BECAUSE THE AGGREGATE FACE-AMOUNT OF THE BONDS DOES NOT EXCEED \$5,000,000 AND SUBSTANTIALLY ALL OF THE PROCEEDS OF THEIR SALE ARE TO BE USED FOR THE ACQUISITION, CONSTRUCTION OR IMPROVEMENT OF LAND OR PROPERTY OF A CHARACTER SUBJECT TO THE DEPRECIATION ALLOWANCE.

TO SUMMARIZE THE PRESENT STATUS OF INDUSTRIAL DEVELOPMENT BONDS UNDER THE FEDERAL SECURITIES LAWS, THE "SEPARATE SECURITIES" OF PRIVATE ENTERPRISES EMBODIED IN CERTAIN INDUSTRIAL DEVELOPMENT BONDS WHICH QUALIFY UNDER THE INTERNAL REVENUE CODE ARE EXEMPTED SECURITIES UNDER THE FEDERAL SECURITIES ACTS. THE "SEPARATE SECURITIES" OF GOVERNMENTAL ENTITIES EMBODIED IN EITHER QUALIFIED OR NON-QUALIFIED INDUSTRIAL DEVELOPMENT BONDS ARE EXEMPT ALSO. ONLY THE "SEPARATE SECURITIES" OF PRIVATE ENTERPRISES EMBODIED IN INDUSTRIAL DEVELOPMENT BONDS WHICH DO NOT MEET THE SPECIFIED REQUIREMENTS IN THE INTERNAL REVENUE CODE ARE FULLY SUBJECT TO THE PROVISIONS OF THE FEDERAL SECURITIES ACTS.

NOTWITHSTANDING THE EXEMPTION FOR INDUSTRIAL DEVELOPMENT BONDS IN SECTION 3(A)(2) OF THE SECURITIES ACT OF 1933 AND SECTION 3(A)(12) OF THE SECURITIES EXCHANGE ACT OF 1934, THE ANTIFRAUD PROVISIONS OF SECTION 17 OF THE SECURITIES ACT AND SECTION 10 OF THE EXCHANGE ACT APPLY TO ALL INDUSTRIAL DEVELOPMENT BONDS. EXEMPTIONS FOR CLASSES OF SECURITIES PROVIDED IN SECTION 3 OF THE SECURITIES ACT ARE NOT APPLICABLE TO SECTION 17. SECTION 10(B) OF THE EXCHANGE ACT APPLIES TO FRAUDULENT REPRESENTATIONS IN CONNECTION WITH THE PURCHASE OR SALE OF ANY SECURITY, WHETHER OR NOT EXEMPTED.

AS I AM SURE YOU ARE AWARE, THERE IS LEGISLATION PENDING BEFORE CONGRESS WHICH WOULD PROVIDE DISCLOSURE REQUIREMENTS FOR MUNICIPAL SECURITIES. WHILE SEVERAL BILLS HAVE BEEN INTRODUCED, THE BILL INTRODUCED ON DECEMBER 1, 1977, BY SENATORS WILLIAMS, PROXMIRE AND JAVITS, S.2339, "THE MUNICIPAL SECURITIES FULL DISCLOSURE ACT OF 1977" APPEARS TO BE THE MOST VIABLE AT THIS TIME. AS PROPOSED, HOWEVER, S.2339 WOULD SUBJECT INDUSTRIAL DEVELOPMENT BONDS ONLY TO THAT DEGREE OF REGULATION WHICH WOULD BE IMPOSED BY THAT BILL AND THE OTHER FEDERAL SECURITIES LAWS ON ALL OTHER MUNICIPAL SECURITIES AND WOULD NOT DELETE THE EXEMPTION FROM REGISTRATION FOR QUALIFIED INDUSTRIAL REVENUE BONDS. UNDER S. 2339, ISSUERS OF MUNICIPAL SECURITIES WOULD BE REQUIRED TO PREPARE A DISTRIBUTION DOCUMENT PRIOR TO MAKING OFFERS AND SALES OF AN ISSUE OF MUNICIPAL SECURITIES. IN ADDITION, ISSUERS WITH MORE THAN \$50 MILLION OF MUNICIPAL SECURITIES OUTSTANDING DURING ANY PORTION OF A FISCAL YEAR WOULD BE REQUIRED TO PREPARE AN ANNUAL REPORT AND REPORT ANY EVENTS OF DEFAULT DURING THAT FISCAL YEAR. WHILE ISSUERS WOULD BE REQUIRED TO MAKE THESE DOCUMENTS PUBLICLY AVAILABLE, THEY WOULD NOT BE REQUIRED TO FILE SUCH DOCUMENTS WITH THE COMMISSION.

THE COMMISSION INTENDS TO RECOMMEND LEGISLATION TO CONGRESS WHICH WOULD ELIMINATE THE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT OF 1933 FOR QUALIFIED INDUSTRIAL DEVELOPMENT BONDS USED TO PROVIDE FINANCING TO PRIVATE ENTERPRISES.

IN ADDITION, IT WOULD DELETE THE EXEMPTION FOR SUCH BONDS IN THE TRUST INDENTURE ACT OF 1939. THE BILL WOULD NOT AFFECT THE INCLUSION OF INDUSTRIAL DEVELOPMENT BONDS WITHIN THE DEFINITION OF "EXEMPTED SECURITIES" IN THE SECURITIES EXCHANGE ACT OF 1934, ALTHOUGH IT MIGHT CONTAIN SOME CONFORMING AMENDMENTS, THERE ARE VALID POLICY REASONS FOR DISTINGUISHING BETWEEN THE TREATMENT OF INDUSTRIAL DEVELOPMENT BONDS IN THE SECURITIES ACT AND THE EXCHANGE ACT.

INDUSTRIAL DEVELOPMENT BONDS AND OTHER MUNICIPAL SECURITIES ARE SOLD BY THE SAME BROKERS AND DEALERS AND SIMILAR TYPES OF INVESTORS PURCHASE BOTH OF THESE TYPES OF SECURITIES. MOREOVER, THE REGULATORY STRUCTURE ESTABLISHED BY THE SECURITIES ACT AMENDMENTS OF 1975 IS APPLICABLE TO BROKERS AND DEALERS WHO EFFECT TRANSACTIONS IN ANY MUNICIPAL SECURITIES, INCLUDING INDUSTRIAL DEVELOPMENT BONDS, AND THIS STRUCTURE PROVIDES ADEQUATE AND SUITABLE REGULATION OF SUCH BROKERS AND DEALERS. AT THIS TIME, THE COMMISSION HAS BEEN PRESENTED WITH NO EVIDENCE OF ABUSES WHICH WOULD LEAD US TO RECOMMEND THAT INDUSTRIAL DEVELOPMENT BONDS NO LONGER SHOULD QUALIFY FOR EXEMPT MARGIN CREDIT.

THE EFFECT OF THE PROPOSED LEGISLATION I HAVE DESCRIBED WOULD BE TO REQUIRE REGISTRATION OF INDUSTRIAL DEVELOPMENT BONDS BY THE PRIVATE ENTERPRISES WHICH BENEFIT FROM THE PROCEEDS ON THEIR SALE AND WHOSE CONTRACTUAL PAYMENTS TO THE GOVERNMENTAL ENTITY ARE USED TO SATISFY IN WHOLE OR IN PART THE DEBT SERVICE REQUIREMENTS ON THE BONDS. AS A RESULT OF THE APPLICABILITY OF THE REGISTRATION REQUIREMENTS TO THESE PRIVATE ENTERPRISES, OF COURSE, THEY WOULD BE REQUIRED ALSO TO FILE REPORTS PURSUANT TO SECTION 15(D) OF THE SECURITIES EXCHANGE ACT OF 1934. APPROPRIATE AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF 1934 WILL BE INCLUDED IN THE BILL TO ASSURE THAT THE PRIVATE ENTERPRISES COMPLY WITH THIS REPORTING REQUIREMENT.

I BELIEVE THERE ARE A NUMBER OF GOOD ARGUMENTS FOR SIMILAR TREATMENT UNDER THE SECURITIES ACT OF 1933 OF INDUSTRIAL DEVELOPMENT BONDS AND OTHER SECURITIES ISSUED BY COMMERCIAL OR INDUSTRIAL ENTITIES. INDUSTRIAL DEVELOPMENT BONDS ARE REALLY NO DIFFERENT FROM OTHER FORMS OF CORPORATE DEBT. THE AMOUNT OF THE PRIVATE ENTERPRISE'S CONTRACTUAL PAYMENTS TO THE GOVERNMENTAL ENTITY IS DETERMINED ON THE BASIS OF THE PRINCIPAL AND INTEREST PAYMENTS ON THE BONDS AND THE GOVERNMENTAL ENTITY IS OBLIGATED GENERALLY ONLY TO THE EXTENT OF APPLYING THE REVENUES RECEIVED FROM THE PRIVATE USER TO THE DEBT SERVICE REQUIREMENTS. THEREFORE, A BONDHOLDER OR A PROSPECTIVE BONDHOLDER SHOULD BE PROVIDED WITH INFORMATION WITH WHICH TO EVALUATE THE BUSINESS OPERATIONS AND FINANCIAL POSITION OF THE PRIVATE ENTITY.

THE DISCLOSURE SYSTEM DEVELOPED FOR INDUSTRIAL COMPANIES SUBJECT TO THE SECURITIES ACTS IS APPROPRIATE FOR THE DOCUMENTS TO BE FILED BY THESE PRIVATE INDUSTRIAL ENTERPRISES. SPECIAL DISCLOSURE MECHANISMS DEVELOPED FOR MUNICIPAL SECURITIES WOULD NOT BE COMPLETELY SUITED TO NONGOVERNMENTAL ISSUERS OF INDUSTRIAL DEVELOPMENT BONDS BECAUSE OF SUBSTANTIAL DIFFERENCES BETWEEN PRIVATE ENTERPRISES AND GOVERNMENTAL ISSUERS. APPROPRIATE DISCLOSURE WITH REGARD TO GOVERNMENTAL ISSUERS REQUIRES INFORMATION ABOUT THE ISSUER'S TAXING AUTHORITY AND COLLECTION EXPERIENCE, ITS BUDGET AND OTHER DATA SUBSTANTIALLY DIFFERENT FROM THAT RELEVANT TO INDUSTRIAL CORPORATIONS.

THE DELICATE LEGAL AND POLITICAL PROBLEMS RAISED BY THE POSSIBLE REGULATION OF STATE AND LOCAL GOVERNMENTS BY A FEDERAL ADMINISTRATIVE AGENCY, WHICH LED TO THE SECURITIES ACTS EXEMPTIONS FOR MUNICIPAL BONDS, AND WHICH ARE ADDRESSED IN S.2339, DO NOT EXIST IN THE CASE OF IDB'S.

IN CONTRAST TO "TRUE" MUNICIPAL SECURITIES, ISSUANCES OF INDUSTRIAL DEVELOPMENT BONDS ARE NOT SUBJECT TO LEGAL OR POLITICAL CONTROLS UPON THE CAPITAL RAISING FUNCTION OTHER THAN RESTRICTIONS INHERENT IN AND IMPOSED UPON ACCESSIBILITY TO THE MARKET. A "TRUE" MUNICIPAL SECURITY IS A DEBT OBLIGATION OF A STATE OR LOCAL GOVERNMENT AGENCY CREATED BY PUBLIC LAW TO REGULATE AND ADMINISTER THE AFFAIRS OF A PARTICULAR AREA. THE OBJECTIVE OF THE GOVERNMENTAL INSTRUMENTALITY IS NOT PRIVATE PROFIT BUT PUBLIC BENEFIT.

THE BONDS ARE BACKED BY THE CREDIT OF THE GOVERNMENT AND, ULTIMATELY, THE AUTHORITY TO TAX. THEREFORE, THROUGH THE ELECTION AND VOTING PROCESS, THE PUBLIC HAS SOME CONTROL OVER THE GOVERNMENT ISSUER WHICH IN TURN IS ACCOUNTABLE TO THE PUBLIC.

FINALLY, AS THE USE OF INDUSTRIAL DEVELOPMENT BONDS INCREASED OVER THE YEARS, THE NUMBER OF PROBLEMS AND ABUSES RELATED TO SUCH USE HAS ALSO INCREASED. SINCE JANUARY 1975, THE SEC HAS LEARNED OF INSOLVENCIES INVOLVING AT LEAST 50 PRIVATE ENTERPRISES WHICH BENEFITED FROM ISSUANCES OF INDUSTRIAL DEVELOPMENT BONDS. IN ADDITION, IN RECENT YEARS THERE HAS BEEN AN INCREASING AMOUNT OF LITIGATION BROUGHT BY THE COMMISSION AND INVESTORS IN INDUSTRIAL DEVELOPMENT BONDS. IN CONNECTION WITH AN ADMINISTRATIVE PROCEEDING BROUGHT AGAINST A BROKER-DEALER IN 1976, THE COMMISSION FOUND THAT THE BROKER FAILED TO INFORM PERSONS TO WHOM IT SOLD INDUSTRIAL DEVELOPMENT BONDS ABOUT THE DETERIORATING FINANCIAL POSITION OF THE COMPANY WHOSE OPERATIONS WERE BEING FINANCED BY THE PROCEEDS ON THE BONDS. THE COMPANY'S FINANCIAL POSITION WEAKENED SUBSEQUENT TO THE INITIAL \$4.8 MILLION BOND OFFERING AND THE COMPANY FILED A PETITION IN BANKRUPTCY 18 MONTHS LATER. (BACHE HALSEY STUART, INC., SECURITIES EXCHANGE ACT RELEASE NO. 12847 (OCT. 1, 1976).)

IN ANOTHER CASE, A DISTRICT COURT HAS GRANTED CLASS CERTIFICATION WITH REGARD TO PLAINTIFFS' ALLEGATIONS THAT THE OPINION LEGENDED ON THE BOND CERTIFICATES FALSELY STATED THAT INTEREST ON THE BONDS WOULD BE EXEMPT FROM FEDERAL TAXATION. THE PLAINTIFFS HAD ALLEGED ALSO THAT THE \$2.5 MILLION INDUSTRIAL DEVELOPMENT BOND OFFERING WAS OFFERED AND SOLD ON THE BASIS OF MISLEADING OR INCOMPLETE DISCLOSURE ABOUT THE FINANCIAL POSITION OF THE CORPORATE ISSUER, THE SPECULATIVE NATURE OF THE INVESTMENT AND THE USE OF PROCEEDS FROM THE OFFERING. THE COURT DENIED CLASS CERTIFICATION ON THESE DISCLOSURE QUESTIONS, HOWEVER. (COHEN V. MARINE PROTEIN CORP., CCH FED. SEC. PARA. 96,267 (S.D.N.Y. 1977).) IN ANOTHER CASE BROUGHT BY PURCHASERS OF BONDS, THE PLAINTIFFS ARE SUING BOND COUNSEL, COUNSEL TO THE GOVERNMENTAL ENTITY, THE PRIVATE ENTERPRISE AND OTHERS. THE PLAINTIFFS ALLEGE THAT THE DEFENDANTS MISSTATED OR OMITTED TO STATE AT LEAST 21 MATERIAL FACTS IN CONNECTION WITH THE SALE OF INDUSTRIAL DEVELOPMENT BONDS. (MCCRYSTAL V. BARNWELL COUNTY, SOUTH CAROLINA, 422 F. SUPP. 219 (S.D.N.Y. 1976).

COMPLAINTS HAVE BEEN FILED BY THE COMMISSION IN SEVERAL CASES INVOLVING MISREPRESENTATION OF INFORMATION ABOUT VARIOUS MATTERS INCLUDING THE FINANCIAL CONDITION OF THE CORPORATE ISSUER, THE USE OF PROCEEDS ON THE SALE OF THE BONDS AND THE FEASIBILITY OF THE PROJECT. A COMPLAINT WAS FILED WITH RESPECT TO AN INDUSTRIAL BOND OFFERING TOTALING \$1.2 MILLION AND SOLD TO MORE THAN NINETY PERSONS.

THE COMMISSION ALLEGED THAT THERE WAS INADEQUATE DISCLOSURE OF THE PRIOR FINANCIAL DIFFICULTIES OF THE PRIVATE ENTERPRISE AND THE PROCEEDS WERE USED FOR PURPOSES OTHER THAN WHAT WAS DISCLOSED IN THE OFFERING CIRCULAR. (SEC V. ADVENTURE LINE MANUFACTURING Co., LTD., 77-1013, D.KA. (JAN. 18, 1977).)

IN ANOTHER PENDING CASE, THE COMMISSION IS SEEKING AN INJUNCTION WITH REGARD TO THE OFFER AND SALE OF \$2.2 MILLION IN INDUSTRIAL DEVELOPMENT BONDS. INCLUDED AMONG THE COMMISSION'S ALLEGATIONS ARE THAT ONE OF THE PROMOTERS MISREPRESENTED THE FEASIBILITY OF THE PROPOSED ENTERPRISE AS WELL AS HIS EXPERTISE IN THE PRODUCT LINE TO BE MANUFACTURED BY THE COMPANY AND THAT THE UNDERWRITERS MISREPRESENTED VARIOUS MATERIAL FACTS INCLUDING THE FINANCIAL CONDITION OF THE CORPORATE ISSUER, THE USE OF PROCEEDS AND THE QUALIFICATIONS OF INDIVIDUALS WHO WERE TO MANAGE THE PROJECT. (SEC V. ASTRO PRODUCTS OF KANSAS, INC., 76-359, D.KA (OCT. 26, 1976).)

I AM TROUBLED ABOUT THE EXPANDED USE OF INDUSTRIAL DEVELOPMENT BONDS. INVESTORS HAVE BEEN SUBJECT TO UNDUE RISK BASED ON QUESTIONABLE POLITICAL PREMISES AND LEGAL DISTINCTIONS. WHILE THE CURTAILMENT OF THE TAX EXEMPTION FOR INTEREST PAID ON IDB'S IN 1968 LIMITED TO A CERTAIN EXTENT THE BENEFITS FOR PRIVATE ENTERPRISE, THERE STILL EXIST SOME FUNDAMENTAL FAIRNESS QUESTIONS. AS A RESULT OF THE GOVERNMENT'S TAX POLICIES, AND EXEMPTIONS FROM SEC REGISTRATION, SOME COMPANIES ARE GIVEN A COST ADVANTAGE OVER COMPETING FIRMS REGARDLESS OF THE NEEDS OF THE PARTICULAR COMPANY OR COMMUNITY.

THE AVAILABILITY OF A TAX EXEMPTION, THE EXEMPTION FROM THE SECURITIES ACTS AND THE ABSENCE OF POLITICAL ACCOUNTABILITY ARE EACH FACTORS WHICH OPERATE AS DISINCENTIVES TO A CAREFUL SCRUTINY OF INDUSTRIAL DEVELOPMENT BOND OFFERINGS COMPARABLE TO THAT GIVEN TO EITHER CORPORATE BOND OR MUNICIPAL BOND OFFERINGS.

IT IS EVIDENT THAT REFORM IS NEEDED IN THE AREA OF INDUSTRIAL DEVELOPMENT BONDS. WE ARE NOT ALONE IN RECOMMENDING REVISIONS AFFECTING INDUSTRIAL DEVELOPMENT BONDS. PORTIONS OF PRESIDENT CARTER'S TAX REFORM PACKAGE WOULD AFFECT THE TAX EXEMPT STATUS OF CERTAIN INDUSTRIAL DEVELOPMENT BONDS; THE EXEMPTION FOR POLLUTION CONTROL BONDS WOULD BE ELIMINATED. TO THE EXTENT THAT GOVERNMENT REGULATION AFFECTS RESOURCE ALLOCATION THERE IS NO COMPELLING REASON TO DISTINGUISH BETWEEN IDBs AND OTHER CORPORATE DEBT. FURTHERMORE, THE TAX EXEMPT STATUS OF IDBs IS NOT DIRECTLY RELATED TO THE NEED OF INVESTORS FOR PROTECTION.