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Guam Economic Development Authority

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# Municipal Securities Disclosure Policy and Procedures

## Guam Economic Development Authority

### July 2016



## **I. Introduction**

### **a. Purpose**

This Municipal Securities Disclosure Policy and Procedures (the “Policy”) provides a policy framework and establishes procedures for the Government of Guam’s compliance with primary and continuing disclosure requirements under federal securities laws for bonds, notes, and other obligations (collectively “Obligations”) issued by the Guam and backed by Guam revenue or issued by third parties but that carry a backup pledge of or other financial recourse of the Government. The Guam Economic Development Authority (“GEDA”), in consultation with the issuers of obligations backed directly by Government of Guam revenue, developed this Policy to aid Guam in meeting its disclosure responsibilities under Securities and Exchange Commission (SEC) regulations and associated contractual undertakings relating to disclosure. This document also is intended to serve as an orientation and training guide for Guam officials.

Formalizing current Guam disclosure practices via written policy and procedures is intended to further two key goals: i) compliance with applicable federal law and regulations; and ii) timely and cost-effective funding of Guam’s long-term capital needs. Specifically, the benefits of timely and complete disclosure include:

Entities of the Government of Guam subject themselves to the requirements of federal securities laws when they issue municipal debt via the public bond market. The framework of the current system of securities regulation was put in place by the Securities Act of 1933 (the “33 Act”) and the Securities and Exchange Act of 1934 (the “34 Act”, and together with the 33 Act, the “Securities Acts”), which included broad anti-fraud provisions (requiring sellers to tell investors the whole truth) and created the SEC. Although municipal debt was initially exempt from many Securities Acts provisions, amendments passed in 1975 expanded their applicability to include a “government or political subdivision, agency or instrumentality of a government”, making clear that Guam and local government issuers are not exempt from the antifraud provisions of Section 17(a) of the 33 Act, Section 10(b) of the 34 Act, and SEC Rule 10b-5 (issued under Section 10(a) of the 34 Act).

SEC regulations and enforcement activities regarding disclosure practices (both primary and secondary market) continued to evolve as new forms of municipal debt proliferated and a few high profile defaults occurred. Investors, regulators and the financial press largely focused on the absence of ongoing information of many municipal credits. Large issuers tended to be in the market more frequently and provided ongoing information, both in official comments and in periodic financial reports, but small issuers could go years without issuing additional debt and, thus, without providing any updated information to the market. Investors complained about this lack of ongoing or “continuing” disclosure.

### **b. SEC Regulations**

In response to these concerns, the SEC promulgated, and has subsequently amended from time to time, Rule 15c2-12 (the “Rule”) prohibiting underwriters from offering bonds unless the issuer

provides an official statement (effective 1989) and contractually promises to provide specified disclosures prescribed in the Rule (effective 1994), including annual financial information, audited financial statements (when and if available), and event notices.

To facilitate compliance with the Rule, each Guam Issuer must enter into a continuing disclosure agreement with the original purchaser/underwriter in connection with each new issuance of obligations, thereby contractually promising to provide the market with these disclosures.

Simultaneous with the 1994 amendment to the Rule, the SEC issued an interpretive release repeating its basic assertion of issuer liability under Rule 10b-5 that “disclosure documents used by municipal issuers, such as official statements, are subject to the prohibition against false or misleading statements of material facts, including the omission of material facts necessary to make the statements made, in light of the circumstances in which they were made, not misleading.”

An omitted fact is material if there is a substantial likelihood that, under all the circumstances, the omitted fact would have assumed actual significance in the deliberations of the reasonable investor. There must be substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the “total mix” of information made available.

The focus of materiality is on the importance of the information to investors making investment decisions. Examples of information that might be material include: issuer financial statements, unfunded pension liabilities, anticipated loss of significant revenue sources, and anticipated or pending litigation in which there is a potential adverse judgment that could materially affect the issuer’s financial position or operations. No specific listing of material information can be made, as the identification of material information will vary over time, from issuer to issuer, and with the nature of the municipal debt at issue.

### **c. Guam Officials’ Liability**

The requirements imposed by SEC regulations can create risks for Guam officials who oversee the disclosure process. While the prudent selection and use of experts can minimize liability and provide certain safeguards, GEDA and the Government of Guam Issuers have a level of responsibility for accurate and complete disclosure that cannot be completely delegated. Having a good understanding of the principals of disclosure will enhance officials’ ability to make the right decisions when dealing with their own facts and circumstances. GEDA will endeavor to use best practices and uniform procedures, and attorneys, consultants or other experts, as necessary, to ensure primary and secondary disclosure is timely completed in full compliance with SEC regulations.

## II. SEC Disclosure Requirements

### a. Primary Offering Disclosure

Each time a Guam Issuer issues Obligations backed by a Government of Guam revenue, the issuer is responsible for preparing a preliminary official statement (POS) and a final official statement (OS). These official statements consist of two basic parts:

**Part I.** Transaction-specific description of the Obligations being issued and the offering, prepared at the time of the transaction, and commonly referred to as the ‘front-half’ of the OS.

**Part II.** “Information Concerning the Island of Guam” included as Appendix A in each OS. Appendix A provides current and historic information on key economic and demographic information, the Guam budget and finances, Guam debt, retirement system funding and financial positions, and other information deemed necessary to comply with SEC disclosure requirements. Appendix A is commonly referred to as the ‘back-half’ of the OS.

The POS and OS are intended to provide requisite disclosure to the original purchasers of the Obligations.

### b. Continuing Disclosure

Continuing disclosure information is intended to reflect the financial or operating condition of an issuer as it changes over time, as well as specific events occurring after issuance, that can have an impact on both the ability to pay amounts owed and the market value of the Obligation if bought or sold prior to maturity. Each publically issued Guam Obligation has its own continuing disclosure requirements, and not all types of continuing disclosure will apply to each.

For each new issuance, SEC Rule 15c2-12(b)(5)(i) requires a written agreement between the issuer and the original purchaser/underwriter for the benefit of holders of municipal securities, to provide the following to the Municipal Securities Rulemaking Board (“MSRB”) in an electronic format as prescribed by the MSRB:

- Annual financial information for the obligated person for whom financial information or operating data is presented in the final official statement (Annual Information);
- Audited financial statements (when and if available) for each obligated person covered by (b)(5)(i)(A) of the Rule;
- Notice of the occurrence of any of the following material events, within the meaning of the Rule, within 10 business days of the occurrence of the event:
  - principal and interest payment delinquencies
  - non-payment related defaults, if material
  - unscheduled draws on any debt service reserves, or on credit enhancements reflecting financial difficulties

- substitution of credit or liquidity providers (credit enhancement facility providers), or their failure to perform
- adverse tax opinions, the issuance by the IRS of proposed or final determinations of taxability, Notice of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Bonds, or other material events affecting the tax-exempt status of the Bonds
- modifications to rights of registered owners or beneficial owners, if material
- bond calls, if material, and tender offers
- defeasances
- release, substitution, or sale of property securing repayment, if material
- bankruptcy, insolvency, receivership or similar event of the obligated person
- consummation of a merger, consolidation or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, or the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material
- appointment of a successor or additional trustee or the change of name of a trustee, if material
- rating changes
- the failure to provide the Annual Information within the specified time
- any change in the accounting principles applied in the preparation of the annual financial statements or in the fiscal year

The foregoing list of required disclosures is subject to change in the event of additional amendments to the Rule and corresponding additions to future continuing disclosure agreements.

Supplementing the material events in the Rule listed above, the Government of Guam also agrees in its continuing disclosure undertakings to provide to timely notice of any failure of the Legislature to appropriate moneys for the purpose of paying costs to be incurred by Guam in performing the continuing disclosure agreement for the applicable fiscal period and termination of the continuing disclosure agreement.

### **c. Voluntary Disclosure**

Although the Rule prescribes certain annual information and event-based disclosures that must be filed, issuers may determine that additional information would be of interest to investors. To this end, Guam Issuers may choose to voluntarily disclose other information to the MSRB that goes beyond the requirements of the Rule. This information may include, but is not limited to, items such as monthly financial reports, updates on issues that could affect the Guam's budgetary, financial, or economic position, annual/biennial budgets, and changes in rating outlooks.

### **III. Guam Disclosure Compliance**

#### **a. New Issue Official Statements**

For each public offering, the Guam Issuer must prepare or have prepared a POS and a final OS. The Guam Issuer, along with its legal counsel and GEDA, reviews and discusses necessary disclosure information in drafting the OS. At transaction closing, the Guam Issuer provides a certification stating that the information contained in the OS, including Appendix A, both as of its date and the date of closing, does not contain any untrue statement of material fact or omit to Guam any material fact necessary to make the statements contained therein, in light of the circumstances under which they were made, not misleading.

The Guam Issuer also includes in such certification a statement that, to the best of its knowledge, there has been no material adverse change (other than in the ordinary course of the operations of the Guam) in the financial condition of the Guam from that set forth in or contemplated by the OS.

In connection with each bond issue, the Guam Issuer should retain legal counsel for assistance and advice regarding the Guam Issuer's disclosure responsibilities with respect to the POS and OS. This legal counsel may be the Bond Counsel for the issue or it may be separately engaged Bond Counsel.

#### **Appendix A – Information Concerning the Island of Guam**

GEDA is responsible for maintaining "Information Concerning the Island of Guam" that is included as Appendix A in each POS and OS for Government of Guam Obligations. GEDA continually updates Appendix A and provides a copy to each Guam Issuer and other issuers of Guam Obligations for use in their official statements. Each issuer is required to review and confirm that the information in Appendix A is sufficient and appropriate under SEC disclosure requirements for that issuer's particular issuance.

The GEDA Administrator also certifies that the information contained within Appendix A as of the date of the OS and as of the date of closing, does not contain any untrue statement of material fact or omit to Guam any material fact necessary to make the statements contained therein, in light of the circumstances under which they were made, not misleading.

GEDA, in consultation with Bond Counsel, has developed and adheres to the following best practices in its review, updating and maintenance of Appendix A:

- Utilize media reports and direct discussions with Guam and retirement system officials to identify potential disclosure items.
- Emphasize clear and concise disclosure.
- Make recommendations for improving the disclosure process and regularly solicit and consider recommendations made by others.
- Do not view the process of updating the Guam's disclosure as a mechanical insertion of more

current numbers. All parties involved in the disclosure process are asked to consider the need for additions and revisions in both its content and form.

- Regularly communicate with those Guam departments and agencies that serve as a source of the information contained in Appendix A to ensure timely updates. This includes communicating with the Office of the Attorney General for any updates to existing descriptions of threatened or pending litigation as well as requesting information on any new pending or threatened litigation that should be described.
- Provide any other reports or information that would aid in causing disclosures to be materially accurate and not misleading.

#### **b. Continuing Disclosure**

Pursuant to ORC 126.11(E), GEDA is responsible for ensuring compliance with continuing disclosure requirements. GEDA accepts responsibility at the time of issuance for ongoing compliance with the requirements set-forth in each continuing disclosure agreement entered into by the Guam Issuers, including the provision of required Annual Information, annual financial statements (when and if available) and material event notices. GEDA also accepts disclosure responsibility for obligations with financial recourse to Guam revenue issued by other Guam agencies and authorities

GEDA consults with its Bond Counsel regularly and as needed to discuss possible disclosure events and ensure timely compliance with material event disclosure requirements.

#### **c. Training**

GEDA's Public Finance Division will provide and/or participate in continuing education/training regarding municipal securities disclosure compliance and related best practices at least once each fiscal biennium.

#### **d. Government of Guam (GO, LO, COP's) Disclosure Agent – GEDA**

The Government of Guam has engaged the Guam Economic Development Authority (GEDA) to serve as the Government's primary disclosure dissemination agent. In this role, GEDA files and disseminates the Guam's continuing disclosure information, material event notices, and voluntary notices to the MSRB's Electronic Municipal Market Access (EMMA) system as required by the Rule and the island's continuing disclosure agreements.

The GEDA website will also serve as an investor relations portal, providing investors the ability to research Guam information both on GEDA's website and through links to the Guam's investor relations portal located on GEDA's website.

#### **IV. GEDA Disclosure Process**

GEDA prepares and submits required annual disclosure for all Government of Guam General, Limited and COP Obligations (see Exhibit B for current list of Guam Obligations). The annual disclosure requirements consist of Annual Information and certain audited financial statements (when and if available), as required by continuing disclosure agreements entered into by Guam pursuant to the Rule.

*See Exhibit A for list of current list of bonds in which GEDA files annual disclosures.*

#### **V. Periodic Review of Policy and Procedures**

This Policy and corresponding procedures shall be reviewed and updated periodically as new requirements are identified or improvements are made. Copies of any revised policy and procedures will be distributed to the Guam Issuers and posted on the GEDA website as soon as any revisions are made.

\*\*\* *END* \*\*\*

## **EXHIBIT A**

Current list of obligations in which GEDA acts as disclosure agent  
as of July 2016

### **a. Business Privilege Tax Bonds**

Under the Indenture the Government of Guam has agreed to provide the following (1) the audited financial statements of the Government (2) in the Official Statement under the heading “Business Privilege Tax Revenues” including information of the type set forth in “Table 1 – Government of Guam Business Privilege Tax Collection”, “Table 2 – Government of Guam Business Privilege Tax Monthly Collection and “Table 3 – Sectors Collecting Business Privilege Tax Revenues, and (3) Table A-19 – Summary of Major Categories of General Fund Revenues and Expenditures located in “Appendix A” of the Official Statement.

Significant Events That Must Be Reported: (1) Principal and interest payment delinquencies (2) Unscheduled draws on debt service reserves reflecting financial difficulties (3) Unscheduled draws on credit enhancements reflecting financial difficulties (4) Substitution of credit or liquidity providers, or their failure to perform (5) Issuance by the Internal Revenue Service of proposed or final determination of taxability or of a Notice of Proposed Issue (IRS Form 570 TEB) (6) Tender offers (7) Defeasances (8) Rating changes (9) Bankruptcy, insolvency, receivership or similar event of the obligated person.

Filing Deadline for Annual Disclosure: June 27 (270 days after Fiscal Year End)

### **b. GovGuam Limited Obligation Hotel Occupancy Tax (HOT) Revenue Bonds Series 2011A**

Under the Indenture the Government of Guam has agreed to provide the following (a) The audited financial statements of the Tourist Attraction Fund for the preceding fiscal year (if not available, the un-audited financials in a similar format) (b) To the extent not included in the audited financial statements of the Government’s Tourist Attraction Fund, the annual report should also include: Table 1 – Historical Rates of the Hotel Occupancy Tax, Table 2 – Annual Hotel Occupancy Tax Revenues and Visitors Calendar Years 2004-2010, Table 3 – Monthly Hotel Occupancy Tax Collections Calendar Years 2006-2010, Table 4 – Hotel Occupancy Taxes Collected Fiscal Years 2004-2010, Table 5 – Annual Visitor Arrivals to Guam, Table 7 – Annual Calendar Year Visitor Arrivals by Country, Table 9 – Top Fifteen Hotel Operations in Guam as of November 2010, and information regarding new hotel construction on Guam.

Significant Events That Must Be Reported: (1) principal and interest payment delinquencies (2) un-scheduled draws on the debt service reserves reflecting financial difficulties (3) un-scheduled draws on the credit enhancements reflecting financial difficulties (4) substitution of the credit or liquidity providers or their failure to perform (5) Issuance by the Internal Revenue Service of proposed or final determination of taxability or of a Notice of Proposal Issue (IRS Form 5701 TEB) (6) Tender offers (7) Defeasances (8) Rating changes (9) Bankruptcy, insolvency,

receivership or similar event of the obligated person.

Filing Deadline for Annual Disclosure: June 27 (270 days after Fiscal Year End)

**c. Guam Department of Education (GDOE) Series 2010A, Certificates of Participation**

Annual Disclosure Obligations: (a) Audited Financial Statements of the Government of Guam for the prior fiscal year (if unavailable unaudited financials in a similar format) (b) Budgeted revenues and expenditures of the Government of Guam for the current fiscal year (c) historic student enrollment in the John F. Kennedy High School for the prior fiscal year.

Significant Events That Must Be Reported: (a) Principal and interest payment delinquencies (b) Non-payment related defaults (c) Modifications to rights of Bondholders (d) Optional, contingent or unscheduled Bond calls (e) Defeasances (f) Rating changes (g) Adverse tax opinions or events affecting the tax-exempt status of the Certificates (h) unscheduled draws on the credit enhancements reflecting financial difficulties (i) substitution of the credit or liquidity providers or their failure to perform (j) release, substitution or sale of property securing repayment of the Certificates.

Filing Deadline For Annual Disclosure: June 27 (270 days after the Fiscal Year End)

Other Filing: On or before November 15 of each fiscal year, commencing November 15, 2010, provide Municipal Securities Rulemaking Board a report indicating whether the annual deposits or transfers of rental have been made in accordance with Section 4.01(b) and (e) of the Lease agreement.

**d. Government of Guam General Obligation 2009 Bonds**

Annual Disclosure Obligations: Under the Indenture the Authority has agreed to provide the following: (a) Audited Financials for prior fiscal year (if not available, the un-audited financials in a similar format) (b) Budgeted revenues and expenditures of the Government for the current fiscal year (c) To the extent not provided in the audited financial statements, historical information of the type shown in Table A-6 of the Official Statement, entitled "Schedule of Section 30 Revenues Requested and Received" (d) To the extent not provided in the audited financial statements, historical information of the type shown in Table 3 of the Official Statement, entitled "Government of Guam Outstanding Debt."

Significant Events That Must Be Reported: (a) Principal and interest payment delinquencies (b) Non-payment related defaults (c) Modifications to rights of Bondholders (c) Optional, contingent or unscheduled bond calls (d) Defeasances (e) Rating changes (f) Adverse tax opinions or events affecting the tax-exempt status of the Bonds (g) Unscheduled draws on the debt service reserves reflecting financial difficulties (h) Unscheduled draws on credit enhancements reflecting financial difficulties (i) Substitution of the credit or liquidity providers or their failure to perform (j) Release, substitution or sale of property securing repayment of the Bonds (k) Change in Fiscal Year.

Filing Deadline for Annual Disclosure: June 27 (270 days after Fiscal Year End)

**e. Government of Guam Limited Obligation (Section 30) Bonds, 2009 Series A**

Annual Disclosure Obligations: (a) Information regarding the amount and timing of Section 30 Revenues received by the Government, including information of the type set forth in the Official Statement under the heading “Table 1 – Summary of Section 30 Revenues, Fiscal Years 2002-2009” to the extent such information is historical and not projected.

Significant Events That Must Be Reported: (a) Principal and interest payment delinquencies (b) Non-payment related defaults (c) Modifications to rights of Bondholders (d) Optional, contingent or unscheduled bond calls (e) Defeasances (f) Rating changes (g) Adverse tax opinions or events affecting the tax-exempt status of the Bonds (h) Unscheduled draws on the debt service reserves reflecting financial difficulties (i) Unscheduled draws on the credit enhancements reflecting financial difficulties (j) Substitution of the credit of liquidity providers or their failure to perform (k) Release, substitution or sale of property securing repayment of the Bonds (l) Change in Fiscal Year.

Filing Deadline for Annual Disclosure: June 27 (270 days after Fiscal Year End)

Other Filing: Nov 15 (Info. in Table 3 of the Official Statement)

**f. GEDA Tobacco Settlement Asset Backed 2007 Bonds**

Annual Disclosure Obligations: Under the Indenture, the Authority has agreed to provide the following: An Annual Report of core financial information and operating data for the prior fiscal year including: (a) Audited Financials for prior fiscal year (if not available, then un-audited financials in a similar format) (b) Material historical quantitative data on the Authority’s revenues, expenditures, financial operations, indebtedness (c) Debt Service Coverage for the most recent full Bond Year for each Series of Outstanding Bonds

Significant Events That Must be Reported: (a) Principal and interest payment delinquencies (b) Non-payment related defaults (c) Modifications to rights of Bondholders (d) Optional, contingent or unscheduled Bond calls (e) Defeasances (f) Rating changes (g) Adverse tax opinions or events affecting the tax-exempt status of the Bonds (h) Unscheduled draws on the debt service reserves reflecting financial difficulties (i) Unscheduled draws on the credit enhancements reflecting financial difficulties (j) Substitution of the credit or liquidity providers or their failure to perform (k) Release, substitution or sale of property securing repayment of the Bonds (l) Change in Fiscal Year.

Filing Deadline for Annual Disclosure: April 28 (210 days after the Fiscal Year End)

\*\*\* END \*\*\*