

**MEMO# 24465**

August 4, 2010

# **ICI Comment Letter on SEC Proposal to Modify Asset-Backed Securities Regulation**

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TO: FIXED-INCOME ADVISORY COMMITTEE No. 14-10  
MONEY MARKET FUNDS ADVISORY COMMITTEE No. 34-10  
MUNICIPAL SECURITIES ADVISORY COMMITTEE No. 31-10  
SEC RULES MEMBERS No. 75-10 RE: ICI COMMENT LETTER ON SEC PROPOSAL TO MODIFY ASSET-BACKED SECURITIES REGULATION

The Institute has filed a comment letter on the Securities and Exchange Commission's proposal to substantially revise Regulation AB and other rules regarding the offering process, disclosure, and reporting for publicly-issued asset-backed securities ("ABS"), and impose new disclosure standards for privately placed ABS. Specifically, the proposal would require more detailed and current information about the pooled assets in an ABS and provide additional time for investors to make investment decisions. The rules only would apply to issuances of ABS and other structured finance products that are issued after the implementation date of the final rules. The letter is summarized below.

## **I. Disclosure Enhancements**

### **Disclosure Items and Timing**

The letter supports the Commission's efforts to update and expand the disclosure regime for ABS and structured finance products by increasing the amount and timing of disclosure. The letter states that specific, granular data regarding the characteristics for each loan in the asset pool, related obligors, and collateral, as well as information on the performance of pool assets both at the time of securitization and on an ongoing basis, is critical to an investor's ability to analyze the performance, risks, and potential returns of an ABS offering. The letter supports standardization of the disclosure and the format of the disclosure to assist investors with effectively and efficiently sorting through information,

determining which data is important to their particular investment decision. The letter also supports the proposal to require an issuer to file a preliminary prospectus with the Commission for each offering at least five business days prior to the first sale in that ABS because it provides investors with sufficient time to evaluate and make an informed investment decision.

### **Shelf-Offerings and Private Offerings**

The letter strongly supports the proposal to modify the criteria for shelf-offering eligibility by eliminating the ability of an ABS issuer to suspend reporting with the Commission after one year, so long as a non-affiliate holds securities issued in the offering. It emphasizes the importance to investors of having continuous, fulsome disclosure to be able to analyze the implications of changes to the credit quality and risk profile of their ABS investments.

The letter supports the proposed changes to the disclosure regime for privately placed ABS. It states that investors in the private market must have access to, and sufficient time to adequately consider, material information regarding ABS to make informed investment decisions, similar to investors in the public market. The letter recognizes that the proposal is likely to alter the mix of issuers making private placements but explains that the changes could improve the quality of privately offered ABS, as opposed to compromising the function of the private placement market as a means of efficient capital formation.

## **II. Scope of the Proposal**

The letter supports the proposed changes to the definition of “asset-backed security.” It also generally supports the proposed application of the expanded private placement disclosure provisions to all “structured finance products,” a universe of securities that is broader than the definition of asset-backed security. The letter, however, seeks exemptions for municipal tender option bonds (“TOBs”) and asset-backed commercial paper (“ABCP”) from the proposed regulatory framework

### **TOBs**

The letter recommends that the Commission either clarify that municipal TOBs are not within the scope of the proposal or provide an exemption for municipal TOBs from the proposal. It explains that the structure of municipal TOBs does not satisfy the requirement in the proposed definition of structured finance product that the security be “collateralized by any pool of self-liquidating financial assets” because the collateral held in a municipal TOB trust (i.e., the municipal bond or bonds) is not self-liquidating during the life of the trust. It further states that the proposed requirements would not offer any additional benefit to the municipal TOB market from a disclosure perspective. Finally, the letter concludes that including TOBs within the scope of the proposal could have the unintended consequence of reducing municipal TOB issuance which would reduce the amount of available municipal TOBs that could be acquired by tax-exempt money market funds and limit a significant source of funding for municipalities.

### **ABCP**

The letter recommends that the Commission exempt ABCP from the proposed regulatory framework for ABS. The letter explains that ABCP is not the type of ABS the Commission intended to capture within the scope of the proposal given that ABCP investors do not depend upon the cash flows generated by the financial receivables to which the ABCP

program has exposure for repayment. It states that the existing regulatory framework for ABCP, including the frequent and comprehensive disclosure regime, serves investors' needs. It also states that the benefits to investors from asset-level disclosure under the proposal would be outweighed by the risk of shrinking the \$400 billion ABCP market. Specifically, the letter explains that if the ABCP market is reduced further, money market funds, which provide an important source of funding for the ABCP market, would have fewer options for investment, making management of such funds more difficult.

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[Attachment](#)

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