

MEMO# 22868

September 15, 2008

ICI Draft Comment Letter on SEC and MSRB Proposals to Amend Municipal Securities Disclosure

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TO: MUNICIPAL SECURITIES ADVISORY COMMITTEE No. 34-08
SEC RULES COMMITTEE No. 65-08 RE: ICI DRAFT COMMENT LETTER ON SEC AND MSRB
PROPOSALS TO AMEND MUNICIPAL SECURITIES DISCLOSURE

As we previously informed you, the Securities and Exchange Commission has proposed to amend Rule 15c2-12 under the Securities Exchange Act of 1934 to require that secondary market disclosure for municipal securities be provided to a single repository – the Municipal Securities Rulemaking Board (“MSRB”) – in an electronic format accompanied by prescribed identifying information. [\[1\]](#) To facilitate the proposed implementation of its proposal, the SEC simultaneously published for comment a proposed rule change by the MSRB to establish a service for receipt of secondary market disclosure information for municipal securities through its Electronic Municipal Market Access (“EMMA”) system. The Institute’s draft letter commenting on both of these proposals is attached and summarized below.

SEC and MSRB Proposals to Improve Municipal Securities Disclosure

The draft letter supports the efforts by the SEC and the MSRB to improve current disclosure of information regarding municipal securities. It states that investors need timely and efficient access to primary and secondary municipal securities market disclosure information to perform credit analysis, make informed investment decisions, monitor their securities portfolios, and protect themselves from fraud. Accordingly, the letter expresses the Institute’s belief that a centralized repository that receives electronic submissions, such as the one outlined in the MSRB’s proposal to amend EMMA, would provide for a more

efficient and effective process for the collection of secondary market disclosure documents, providing prompt and ready access to such documents for investors.

The letter specifically supports: (1) the creation of a single source for municipal securities secondary market disclosure; (2) the designation of the MSRB as the single source; and (3) the MSRB's proposal to expand EMMA to accommodate the secondary market disclosure information. It explains that together these proposals would significantly improve the ability of investors to access current municipal securities disclosure. Among others, the draft letter supports the proposed requirements that submissions be made electronically and be accompanied by identifying information. Both of these features would better enable the disclosure information to be promptly submitted, categorized, posted and accessed. The letter recommends that the required information regarding the name of any obligated person other than the issuer include identifying information on any successor parties, such as successor trustees or substituted credit providers, to assist investors in properly monitoring their portfolio securities.

The draft letter makes several recommendations regarding the transition from the current multiple-source repository system to the proposed single repository. First, it recommends that the SEC withdraw the "no-action" letters recognizing the existing nationally recognized municipal securities repositories (NRMSIRs) and designate the MSRB as the only NRMSIR. The letter explains that these actions would provide a date certain by which all secondary market disclosure documents must be submitted to the MSRB. Second, it recommends that the SEC ensure that NRMSIRs retain the historical continuing disclosure documents already in their possession for outstanding municipal securities issues or develop a process to transfer such documents to the MSRB using a reasonable transition period.

Additional Disclosure in the Municipal Securities Market

The draft comment letter remarks on the value of the SEC and MSRB proposal to improving the collection and dissemination of existing secondary market disclosure but states that additional steps must be taken to improve the content and timing of required disclosure for municipal securities. It explains that current disclosure is limited, non-standardized, and often stale; and, it offers suggestions for the SEC and the MSRB to improve disclosure within the current regulatory regime and to enhance the value of EMMA to investors in municipal securities.

The letter recommends that additional disclosure information would assist investors in better understanding the particular components and risks of a specific municipal issue. For example, information in primary offerings should include: (1) indentures; (2) loan agreements; (3) master trust indentures; (4) security documents; (5) legal opinions (e.g., tax, validity, or defeasance opinions); (6) tax certificates; and (7) certain escrow agreements. For secondary offerings, additional information should include: (1) material litigation pending or threatened; (2) material acquisitions or dispositions; (3) material casualty events; (4) changes in senior management; (5) change in control; (6) change in

accountants; (7) loss of licensure for operation of the facility; and (8) bankruptcy or receivership filings.

The draft letter also recommends that the MSRB encourage issuers to submit to EMMA information not currently required by MSRB and SEC rules, such as that listed above. In addition, it recommends that the SEC and MSRB publicly encourage issuers to submit information for all classes of municipal securities to EMMA, including securities not subject to Rule 15c2-12, such as variable rate demand obligations.

Lastly, the letter recommends that the SEC require that issuer financial information be provided more frequently to the public than is currently required under Rule 15c2-12 to enhance the usefulness of the information reported, including allowing investors to react in a timely manner to changes in financial information and alerting investors to those issuers who may be experiencing serious or systemic problems. In particular, it recommends the SEC establish meaningful timeframes for the delivery of information required pursuant to the undertakings in an issuer's continuing disclosure agreement (e.g., issuers should be required to reduce the time for filing financial reports from 270 days to 180 days). Should the SEC act to improve the timeliness of municipal securities disclosure, the draft letter recommends that the MSRB quickly expand EMMA's capabilities to provide the market with notification when disclosure documents are filed later than the required timeframe.

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[Attachment](#)

endnotes

[\[1\]](#) See Memorandum to Municipal Securities Advisory Committee No. 30-08 and SEC Rules Members No. 72-08 [22756], dated August 1, 2008, and Memorandum to Municipal Securities Advisory Committee No. 31-08 and SEC Rules Committee No. 57-08 [22766], dated August 5, 2008.