

**MEMO# 22457**

April 23, 2008

## **Draft ICI Letter on Liquidity Protected Preferred Stock**

[22457]

April 23, 2008

TO: CLOSED-END INVESTMENT COMPANY COMMITTEE No. 19-08    RE: DRAFT ICI LETTER  
ON LIQUIDITY PROTECTED PREFERRED STOCK

As you know, we have been working with members on two separate requests for regulatory relief related to the issues closed-end funds have been experiencing as a result of failed auctions of auction market preferred stock (or AMPS). The first request was submitted to the SEC last Friday. [\[1\]](#)

Attached is a draft of the second letter to the staff. This letter describes the various structures being contemplated for preferred stock eligible for purchase by money market funds, which we call "Liquidity Protected Preferred Stock" or "LPPS." The LPPS described in the letter is similar to a type of preferred stock contemplated in a 2002 no-action letter obtained by Merrill Lynch. [\[2\]](#)

The draft letter seeks various no-action assurances and staff concurrences with our views, including:

- No-action assurances that LPPS would be eligible securities under Rule 2a-7 even if two of the demand triggers described in the MLIM Letter were removed;
- Concurrence with our view that the liquidity provider should not become an affiliate by operation of the demand feature (i.e., by virtue of its ownership of the LPPS put to it pursuant to the demand feature);
- Concurrence with our view that LPPS would not be deemed a separate class of

preferred stock from existing AMPS;

- Concurrence with our view that it would be acceptable to have a liquidity provider without the requisite short-term rating, if it had a parent with the requisite rating that provides a guarantee; and
- Either concurrence with our view that the operation of the liquidity feature should not be deemed a tender offer or, if it is, an exemption from the tender offer rules.

We are requesting member feedback on this draft by the close of business on Friday, April 25. We apologize for the short review period, but we recognize the pressing need for relief in this area and hope to file the letter with the staff as quickly as possible.

Please contact me (rcg@ici.org or 202-371-5430) with comments or suggested edits.

Robert C. Grohowski  
Senior Counsel

Securities Regulation - Investment Companies

[Attachment](#)

#### **endnotes**

[\[1\]](#) See Memorandum No. 22441, dated April 18, 2008.

[\[2\]](#) Merrill Lynch Investment Managers, SEC No-Action Letter (May 10, 2002) (the “MLIM Letter”).