

**MEMO# 23774**

September 10, 2009

# **ICI Comment Letter on SEC Proposal to Enhance Municipal Securities Disclosure**

[23774]

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TO: MUNICIPAL SECURITIES ADVISORY COMMITTEE No. 41-09  
MONEY MARKET FUNDS ADVISORY COMMITTEE No. 36-09  
SEC RULES MEMBERS No. 96-09 RE: ICI COMMENT LETTER ON SEC PROPOSAL TO  
ENHANCE MUNICIPAL SECURITIES DISCLOSURE

The Institute has filed a comment letter supporting the Securities and Exchange Commission's proposed amendments to Rule 15c2-12 under the Securities Exchange Act of 1934 relating to municipal securities disclosure. [\\*](#) The amendments would modify certain requirements regarding continuing disclosure obligations including the list of specific disclosure events ("event notices") and the timing of such disclosure. In addition, the amendments would eliminate an exemption from Rule 15c2-12 for variable rate demand obligations ("VRDOs").

The Institute's letter is attached and briefly summarized below.

## **Elimination of Exemption for VRDOs**

The letter supports the proposal to improve VRDO disclosure by eliminating the current exemption from Rule 15c2-12 for demand securities. The letter also notes that the Institute supports recent efforts by the Municipal Securities Rulemaking Board ("MSRB") to improve VRDO disclosure but believes that adoption of the SEC's proposal would be much more significant for enhancing VRDO disclosure.

## **Timeframe for Submitting Event Notices**

The proposal would establish a timeframe to submit event notices of not greater than ten business days after the occurrence of a reportable event. The letter supports the creation of a definitive timeframe by which event notices must be filed but recommends the SEC further shorten the time period to, for example, five business days. The letter supports using a trigger date of when the reportable event occurred, to balance the perceived operational burdens associated with adopting a five-business day timeframe for disclosure with the benefits of timely disclosure to investors and the markets. The letter states that the Institute would not support a time period of greater than 10 business days in any circumstances.

## **Materiality Determination for Certain Event Notices**

The letter agrees with the SEC's assessment that certain event notices should always be disclosed while others should require a materiality determination, and it supports mandatory disclosure for the seven event notices listed in the proposal. The letter recommends, however, that the SEC eliminate this materiality threshold, thereby requiring mandatory disclosure, for bond calls and nonpayment related defaults because of the importance of these events to investors in informing their investment decisions. The letter also recommends that the SEC modify the event notice regarding substitution of credit or liquidity providers, or their failure to perform, to include any modification of any credit or liquidity facility or other agreement supporting or otherwise material to a municipal security.

## **Proposed Additional Event Notices**

The letter supports the proposal to add four additional events to the disclosure requirements of Rule 15c2-12. With respect to the proposed disclosure relating to the announcement of a merger, the letter recommends that the SEC require disclosure of basic information related to the merger as well as disclosure of exchange offers and significant affiliations. It also recommends that, in the case of disclosure of certain bankruptcy events, the SEC clarify that the filing of a bankruptcy petition itself triggers the disclosure requirement.

In addition, the letter recommends that the SEC add four more event notices to the disclosure requirements of Rule 15c2-12. First, the SEC should require disclosure to reflect the creation of any material financial obligations (including contingent obligations) whether in the form of long- or short-term direct debt, hedge, swap or other derivative instrument,

capital lease, operating lease or otherwise. The disclosure would include basic information about the obligation. Second, the SEC should adopt a “catch-all” notice requirement for any event materially impacting the value of a bond. Both of these event notices would be triggered by materiality determinations.

Third, the SEC should adopt an event notice to clarify the tax-exempt status of a bond by (1) confirming an issuer’s timely expenditure of proceeds and/or appropriate limitation of earnings on unexpended proceeds and (2) providing notice of any legal or regulatory challenges to the tax exempt status of a bond. Fourth, and finally, the letter recommends that the SEC adopt an event notice to disclose modifications to escrow agreements or escrows. These event notices would be required in all circumstances.

## **Effective Date and Transition**

While the letter supports the proposed three-month effective date for compliance with the amendments, it notes that there is room for confusion, by some investors, in a regulatory framework in which municipal bonds are subject to different disclosure requirements. The letter recognizes, however, that the SEC’s authority to address this disparity is limited by the Tower Amendment. Accordingly, the letter states that disclosure improvements to bonds issued after adoption of the proposal would be significantly better than no disclosure improvements.

## **Repeal Tower Amendment**

The letter advocates for repeal of the Tower Amendment. Specifically, it urges the SEC to seek authority from Congress to require municipal issuers to make publicly available in a timely manner municipal issuer offering documents, periodic reports, and any other information that that SEC deems necessary or appropriate in the public interest or for the protection of investors.

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## **[Attachment](#)**

### **endnotes**

\* See [Memorandum](#) to Municipal Securities Advisory Committee No. 36-09 and Money Market Funds Advisory Committee No. 32-09, dated July 27, 2009 [23655].

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