

**MEMO# 24441**

July 26, 2010

## **ICI Draft Comment Letter on SEC Proposal to Modify Asset-Backed Security Regulation; Comments Due to ICI by July 30**

[24441]

July 26, 2010

TO: FIXED-INCOME ADVISORY COMMITTEE No. 12-10  
MONEY MARKET FUNDS ADVISORY COMMITTEE No. 30-10  
MUNICIPAL SECURITIES ADVISORY COMMITTEE No. 28-10  
SEC RULES COMMITTEE No. 29-10 RE: ICI DRAFT COMMENT LETTER ON SEC PROPOSAL TO MODIFY ASSET-BACKED SECURITY REGULATION; COMMENTS DUE TO ICI BY JULY 30

As we previously informed you, the Securities and Exchange Commission has proposed rules that would 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. [1] Specifically, the proposed provisions 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 Institute has prepared a draft comment letter, which is attached and briefly summarized below.

Comments on the proposal are due to the SEC on Monday, August 2. If you have comments on the attached draft letter, please provide them to Heather Traeger via e-mail at [htraeger@ici.org](mailto:htraeger@ici.org) or by phone at 202/326-5920 by Friday, July 30.

# Disclosure Enhancements

## Disclosure Items and Timing

The draft 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 draft 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. [2] 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. [3]

## Shelf-Offerings and Private Offerings

The draft 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 draft 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.

## Scope of the Proposal

The draft 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 questions, however, whether tender options bonds ("TOBs") would be included within the proposed definition of structured finance product. It recommends that the Commission either clarify, in any adopting release, that TOBs are not within the scope of the proposal or provide an exemption for TOBs from the proposal. The letter explains that including TOBs within the scope of the proposal could have the unintended consequence of reducing TOB issuance which would reduce the amount of available TOBs that could be acquired by tax-exempt money market funds and limit a significant source of funding for municipalities.

Heather L. Traeger  
Associate Counsel

[Attachment](#)

**endnotes**

[1] See SEC Release Nos. 33-9117; 34-61858 (April 7, 2010), available at: <http://www.sec.gov/rules/proposed/2010/33-9117.pdf> and [Memorandum](#) to SEC Rules Members No. 40-10, Municipal Securities Advisory Committee No. 14-10, and Fixed-Income Advisory Committee No. 6-10 [24275], dated April 28, 2010.

[2] In supporting the need for detailed disclosure, the draft letter cautions the Commission to ensure that such disclosure is meaningful to investors without overwhelming them with less relevant information.

[3] The letter explains that, if the Commission considers a shorter delivery period, an investor should be provided with no less than a three-day period to enable the investor to evaluate an ABS offering.

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