

**MEMO# 28237**

July 2, 2014

# **ICI Draft Supplement Comment Letter on Application of Risk Retention Proposal to Third-Party Tender Option Bond Structure; Member Comments Requested by Wednesday, July 9**

[28237]

July 2, 2014

TO: FIXED-INCOME ADVISORY COMMITTEE No. 10-14  
MUNICIPAL SECURITIES ADVISORY COMMITTEE No. 11-14  
CLOSED-END INVESTMENT COMPANY COMMITTEE No. 26-14  
MONEY MARKET FUNDS ADVISORY COMMITTEE No. 13-14 RE: ICI DRAFT SUPPLEMENT COMMENT LETTER ON APPLICATION OF RISK RETENTION PROPOSAL TO THIRD-PARTY TENDER OPTION BOND STRUCTURE; MEMBER COMMENTS REQUESTED BY WEDNESDAY, JULY 9

ICI staff recently had a discussion with the staff of the Securities and Exchange Commission ("SEC"), in which the SEC staff indicated that they, the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Federal Housing Finance Agency, and Department of Housing and Urban Development (together, the "Agencies") may be close to adopting a final rule to implement the credit risk retention requirements of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"). The SEC staff was aware that industry participants are considering several alternative tender option bond ("TOB") structures intended to be consistent with the final regulations adopted under Section 619 of the Dodd-Frank Act (the "Volcker Rule"). The SEC staff indicated that if TOB program restructuring would change ICI's analysis of the rules re-proposed last year by the Agencies ("Proposed Rules") to implement the credit risk retention requirements of the Dodd-Frank Act, \* we should submit a supplemental comment letter as soon as possible.

Accordingly, ICI has drafted the attached comment letter, which addresses the application of the Proposed Rules to one of the alternative TOB structures being actively considered by the industry, third-party trusts. The letter reiterates many of the points made in the ICI 2013 Letter relating to TOB programs, modified to the extent necessary to reflect the

changed roles and responsibilities in the third-party trust structure.

One key difference from the ICI 2013 Letter is that, in that letter ICI had sought confirmation that residual holders be permitted to satisfy risk retention obligations of a banking entity sponsor without being deemed the sponsor themselves for purposes of the Proposed Rules. In light of the final Volcker Rule, and because our members have gained additional comfort with the implications of funds being deemed sponsors under the Proposed Rules, we are now instead requesting that the Agencies confirm that funds or other institutional investors in municipal bonds that purchase residual interests in a municipal TOB trust may serve as sponsor, for purposes of any final rules adopted pursuant to the Proposed Rules, and satisfy the risk retention obligations with respect to the TOB trust.

Please provide your comments on the letter in writing to Sarah Bessin by noon ET on Wednesday, July 9 at [sarah.bessin@ici.org](mailto:sarah.bessin@ici.org). We will be using our TOB discussion call, from 3-4 pm ET on Wednesday, July 9 to discuss comments on the letter (along with any other issues members wish to discuss). If you would like to participate on that call, and do not already have the dial-in number, please RSVP to Kiera Robinson at [kiera.robinson@ici.org](mailto:kiera.robinson@ici.org) and she will provide you with the dial-in information.

Sarah A. Bessin  
Senior Counsel

## [Attachment](#)

### **endnotes**

\* For a summary of ICI's 2013 comment letter on the Proposed Rules ("ICI 2013 Letter"), see ICI Memorandum No. 27658 (Oct. 30, 2013), available at [http://www.ici.org/my\\_ici/memorandum/memo27658](http://www.ici.org/my_ici/memorandum/memo27658).

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