

**MEMO# 17764**

July 13, 2004

## **INSTITUTE COMMENT LETTER ON REGULATION OF ASSET-BACKED SECURITIES**

[17764] July 13, 2004 TO: FIXED-INCOME ADVISORY COMMITTEE No. 9-04 MONEY MARKET FUNDS ADVISORY COMMITTEE No. 10-04 SEC RULES MEMBERS No. 102-04 RE: INSTITUTE COMMENT LETTER ON REGULATION OF ASSET-BACKED SECURITIES The Institute has filed a comment letter with the Securities and Exchange Commission on proposed rules governing asset-backed securities ("ABS").<sup>1</sup> The proposed rules address the registration, disclosure and reporting requirements for ABS under both the Securities Act of 1933 and the Securities Exchange Act of 1934. The most significant aspects of the comment letter are summarized below and a copy of the letter is attached. The Institute's letter supports the proposed requirements for more ABS-tailored disclosure in prospectuses. The letter recommends, however, that certain other items be added to the required prospectus disclosure in order to ensure that investors are provided with the information they need to make informed investment decisions. The letter recognizes that these informational needs may vary based on the type of ABS offering and therefore supports the principles-based approach of the proposed disclosure requirements. The letter also generally supports the proposed rules' approach to ongoing reporting. The letter expresses concern, however, with the practice of ABS issuers ceasing to report under the Exchange Act once they qualify for the automatic suspension under Section 15(d) of that Act. The letter therefore recommends that the benefits of shelf registration afforded issuers should be conditioned upon issuers agreeing to waive their right to suspend reporting under Section 15(d). Finally, the letter strongly opposes the proposal to codify existing staff positions under Rule 15c2-8(b) under the Exchange Act that exclude broker-dealers, in connection with offerings of ABS eligible for registration on Form S-3, from the requirement to deliver preliminary prospectuses at least 48 hours prior to the sending of a confirmation. The letter also recommends requiring the delivery of ABS informational and computational materials that include additional information (as described in the letter) in a reasonable time frame, such as two business days but not less than one business day, prior to effecting sales. The letter notes that these recommendations, taken together, would address the current problems surrounding the absence of material information at the time investment decisions are made. 1 SEC Release Nos. 33-8419; 34-49644 (May 3, 2004), 69 FR 26650 (May 13, 2004) ("Release"). 2 Jane G. Heinrichs Assistant Counsel Attachment (in .pdf format) Note: Not all recipients receive the attachment. To obtain a copy of the attachment, please visit our members website (<http://members.ici.org>) and search for memo 17764, or call the ICI Library at (202) 326-8304 and request the attachment for memo 17764.

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