

**MEMO# 17742**

July 1, 2004

## **DRAFT INSTITUTE LETTER ON SEC REGULATION OF ASSET-BACKED SECURITIES**

[17742] July 1, 2004 TO: FIXED-INCOME ADVISORY COMMITTEE No. 8-04 MONEY MARKET FUNDS ADVISORY COMMITTEE No. 9-04 SEC RULES COMMITTEE No. 58-04 RE: DRAFT INSTITUTE LETTER ON SEC REGULATION OF ASSET-BACKED SECURITIES As we previously informed you,<sup>1</sup> the Securities and Exchange Commission has published for comment proposed rules governing the issuance of asset-backed securities ("ABS"). The proposed rules largely codify SEC staff no-action letters and other interpretive guidance under the Securities Act of 1933 and the Securities Exchange Act of 1934. Specifically, the proposed rules would: (1) provide tailored disclosure guidance and requirements for Securities Act and Exchange Act filings involving ABS; (2) update and clarify the Securities Act registration requirements for ABS offerings; (3) streamline and codify existing interpretive positions that permit the use of written communications in a registered offering of ABS in addition to the statutory registration statement prospectus; and (4) consolidate and codify existing interpretive positions that allow modified Exchange Act reporting that is more tailored and relevant to ABS. The Institute has prepared a draft comment letter on the proposed rules. The most significant aspects of the draft letter are summarized below and a copy of the draft letter is attached. Comments on the proposed rules are due to the SEC no later than July 12, 2004. We have scheduled a conference call to discuss the Institute's draft comment letter for Wednesday, July 7 at 4:00 p.m. EST. The dial-in number for the call will be 800-857-3796 and the passcode for the call will be 10054. If you would like to participate on the call, please contact Stephanie Gerace by phone at 202-326-5833 or by e-mail at sgerace@ici.org. In the meantime, if you have any comments on the draft letter, please contact the undersigned by phone at 202-371-5410 or by e-mail at jheinrichs@ici.org. I. Disclosure in ABS Prospectuses The proposed rules would add substantial disclosure requirements relating to the background, experience, performance, and roles of various parties involved with ABS transactions, such as the sponsor, the depositor, the servicer, and the trustee. The draft letter supports the proposed requirements for more ABS-tailored disclosure in prospectuses. The 1 Memorandum to Fixed-Income Advisory Committee No. 7-04, Money Market Funds Advisory Committee No. 8-04 and SEC Rules Members No. 81-04, dated June 3, 2004 [17574]. 2 letter does suggest 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 investment decisions. II. Ongoing Disclosure The proposed rules would codify the modified reporting system under the Exchange Act that is currently in place for ABS issuers. The draft letter generally supports the proposed rules' approach to ongoing reporting. The draft letter notes that the Institute is concerned with the practice of ABS issuers ceasing to report under the Securities Exchange Act once they qualify for the

automatic suspension under Section 15(d) of that Act. Because most ABS are not listed on an exchange and are held by less than 300 record holders, they are permitted to suspend periodic reporting under Section 15(d). The draft letter states that the ability to suspend reporting under Section 15(d) should be restricted by requiring issuers to waive their ability to suspend reporting as a condition for registration form eligibility.

### III. Delivery of Information Prior to Sale

The proposed rules would codify a series of no-action letters that do not require broker-dealers under Exchange Act Rule 15c2-8(b) to deliver a copy of a preliminary prospectus to any person who is expected to receive a confirmation of sale at least 48 hours prior to the sending of the confirmation. The draft letter states that the Institute continues to believe that, due to the complex nature of many ABS, delivery of certain information prior to the completion of a transaction should be required, at least in certain cases. The draft letter notes that the Institute has previously called for requiring broker-dealers to deliver preliminary prospectuses at least 48 hours prior to the sending of the confirmation statement. The Commission's proposals would, however, exempt broker-dealers from Rule 15c2-8(b) and thereby heighten the current problem of ABS purchasers being forced to make investment decisions under compressed time periods. The draft letter recommends that if the Commission is unwilling to require prior delivery of prospectuses, it instead require ABS informational and computational materials delivered in advance of a prospectus to include certain specified information. The draft letter states that this would help ensure that investors at least receive the most important information about an offering in a timely fashion.

Jane G. Heinrichs Assistant Counsel Attachment (in .pdf format)