

MEMO# 20349

September 5, 2006

Draft Institute Comment Letter to MSRB on "Access Equals Delivery" Standard for Official Statements

©2006 Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice. [20349] September 5, 2006 TO: 529 PLAN ADVISORY COMMITTEE No. 16-06 529 PLAN MEMBERS No. 17-06 FIXED-INCOME ADVISORY COMMITTEE No. 5-06 INST. MONEY MARKET FUNDS ADVISORY COMMITTEE No. 3-06 MONEY MARKET FUNDS ADVISORY COMMITTEE No. 3-06 RE: DRAFT INSTITUTE COMMENT LETTER TO MSRB ON "ACCESS EQUALS DELIVERY" STANDARD FOR OFFICIAL STATEMENTS Attached for your review is a draft comment letter to the Municipal Securities Rulemaking Board ("MSRB") regarding electronic delivery of official statements for municipal securities. The MSRB requested comment on an electronic delivery proposal patterned after the SEC's "access equals delivery" standard, which permits broker-dealers to make prospectuses electronically available to investors rather than having to deliver printed copies.¹ The proposal and the letter are briefly summarized below. The comment letter is due to the MSRB on September 15. Please provide any comments you have on the draft letter to Mara Shreck by phone (202/326-5923) or email (mshreck@ici.org) by September 11th . MSRB Proposal and Request for Comment The MSRB proposal is modeled after the SEC's "access equals delivery" standard. Under this standard, governed by Rule 172 under the Securities Act of 1933, broker-dealers are not required to deliver a final prospectus to a customer purchasing an equity security if the registration statement for the offering is effective and the final prospectus has been filed with the SEC through its EDGAR system. Mutual funds are excluded from Rule 172. ¹ See MSRB Seeks Comments on Application of "Access Equals Delivery" Standard to Official Statement Dissemination for New Issue Municipal Securities, MSRB Notice 2006-19 (July 27, 2006) (the "Notice"). The Notice is available on the MSRB's website at: <http://www.msrb.org/msrb1/whatsnew/2006-19.asp>. ² As contemplated, MSRB Rule G-32 would be revised to replace the requirement that an official statement be physically delivered to the investor with a requirement that an investor receive notice that the official statement is available electronically. Rule G-36 would be revised to require underwriters of municipal securities offerings to submit official statements to the MSRB electronically. In order to move to the proposed system, the MSRB must determine how to provide investors electronic access to official statements. The MSRB requested comment on two alternative mechanisms for doing so: a centralized Internet website housing the official statements, or a central directory of official statements that are actually hosted on a number of other sites. The MSRB also requested comment on whether it should undertake a centralizing function or whether there are other market participants or vendors who could undertake such duties subject to appropriate supervision. The MSRB also requested

comment on whether the access equals delivery standard should be available on all new issues, or whether certain classes of new issues, such as 529 college savings plans, should remain subject to the MSRB's physical delivery requirements, in light of the fact that mutual funds were excluded from the SEC's securities offering reform initiative. Draft ICI Comment Letter The Institute's draft comment letter commends the MSRB for its initiative to promote more effective and efficient delivery of material information on municipal securities to new issue customers and the marketplace in general. It states that the Institute strongly supports the "access equals delivery" standard for official statements in the primary municipal securities market. The draft letter then addresses the specific requests for comment. It sets forth the Institute's position that investors would be best served if official statements were made available at a centralized Internet website, rather than a central directory; it does not comment on whether the centralizing function should be undertaken by the MSRB or by a third party. The draft letter also states that the Institute supports keeping municipal fund securities such as 529 plans subject to the MSRB paper delivery requirements for the time being, suggesting that consistency in regulatory requirements across similar products is preferable. Further, the draft letter explains that the SEC is currently reviewing mutual fund disclosure rules and considering the use of some form of electronic delivery. Thus, the Institute recommends that the MSRB exempt municipal fund securities from the "access equals delivery" system, but revisit the disclosure obligations for issuers of these securities after the SEC completes its review of mutual fund disclosure practices. Attachment (in .pdf format) Mara Shreck Assistant Counsel 3 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 20349, or call the ICI Library at (202) 326-8304 and request the attachment for memo 20349.