

MEMO# 14139

November 13, 2001

INSTITUTE LETTER TO SEC OMS DIRECTOR MARTHA HAINES REGARDING DISCLOSURE ISSUES IN THE SECONDARY MARKET

[14139] November 13, 2001 TO: FIXED-INCOME ADVISORY COMMITTEE No. 17-01 RE: INSTITUTE LETTER TO SEC OMS DIRECTOR MARTHA HAINES REGARDING DISCLOSURE ISSUES IN THE SECONDARY MARKET The Investment Company Institute recently sent a letter to Martha Haines, Director of the Securities and Exchange Commission's Office of Municipal Securities, regarding issues related to secondary market disclosure in the municipal securities market. Specifically, the letter discusses issues related to the status of Rule 15c2-12 under the Securities Exchange Act of 1934 ("Exchange Act"), the Nationally Recognized Municipal Securities Information Repository ("NRMSIR") system, and issuer communications with security holders. A copy of the letter is attached, and it is summarized below. Exchange Act Rule 15c2-12 The Institute's letter discusses the difficulty members have had in obtaining information in the secondary market. In light of this, the letter focuses on Rule 15c2-12 and suggests several improvements to it. First, the letter recommends amending the rule's exemption for short-term instruments (i.e., those having a maturity of nine months or less) so that it is only available to securities that have a final maturity of less than nine months, including all prior rollovers and refunds. The letter points out that although the original purpose of the exemption was to remove from the reporting requirements under the rule those instruments that were limited in maturity, many of the instruments that rely on this exemption are actually long-term instruments and thus could be outstanding for a number of years. Second, the letter recommends modifying the rule's notice of material events provision to more fully reflect the types of events that are material to today's investors. The letter notes that although the Commission had intended for the list of material events set forth in the rule to constitute minimum disclosure requirements, they actually have become the only ones disclosed in nearly every transaction. The letter then lists twelve events that should be added to the rule in order to increase the level of disclosure and make it on par with corporate issuers. The listed events include, among other things, initiation of an Internal Revenue Service audit, change in control of the underlying obligor or project owner, and replacement of the trustee. Third, the letter recommends that issuer financial information be provided more frequently than is currently required under the rule. The letter notes that because the financial status of an issuer can change materially during the course of a year, failure to make interim financial information available deprives investors of the opportunity to react in a timely manner to any such changes. The letter thus recommends modifying the rule to provide for more frequent reporting of financial information, including, for example, quarterly reporting for

certain sectors, and annual audit disclosure within 180 days of the end of an issuer's fiscal year. The NRMSIR System The Institute's letter discusses the shortcomings of the NRMSIR system, including the lack of centralization and organization of materials, the inconsistent posting by the NRMSIRs of disclosure documents and material events notices, and the expensive and time-consuming process involved in retrieving information from the NRMSIRs. The letter then suggests several measures to improve the quality of information provided to and by the NRMSIRs, including encouraging greater use of CUSIP numbers, providing ways to enable investors to access financial information within reasonable time limits after the end of the applicable reporting period, and developing a workable, centralized system for accessing available public information about municipal securities, free of charge. Issuer Communications with Security Holders The Institute's letter expresses concern that since Rule 15c2-12 was adopted, issuers have shied away from providing timely information to investors outside of what is required by the rule, apparently because of concerns about liability under Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. The letter applauds the staff for their efforts to encourage issuer communication with investors, adding that their participation in town meetings with issuers have helped to dispel concerns about insider trading in the municipal securities market and have encouraged a freer flow of information between issuers and the market. The letter encourages the staff to continue its efforts in this area. Barry E. Simmons Associate Counsel Attachment 3 Attachment (in .pdf format)