INVESTMENT COMPANY INSTITUTE

1401 H Street, NW, Washington, DC 20005-2148, USA
202/326-5800 www.ici.org

September 8, 2009

Ms. Elizabeth Murphy
Secretary
U.S. Securities and Exchange Commission
100 F. Street, N.E.
Washington, DC 20549-1090

Re: Proposed Amendment to Municipal Securities Disclosure (File No. S7-15-09)

Dear Ms. Murphy:

The Investment Company Institute[1] supports the Securities and Exchange Commission's proposal to enhance the disclosure of information regarding municipal securities by amending Rule 15c2-12 under the Securities Exchange Act of 1934.[2] Timely and efficient access to comprehensive and accurate information about municipal securities is critical to investors. At the end of 2008, investors held 33 percent of the $2.7 trillion municipal securities market through funds and another 36 percent directly.[3]

Disclosure under the current municipal securities regulatory regime, however, is limited, non-standardized, and often stale. This creates difficulties for investors, who need detailed, consistent, and timely disclosure in performing their own credit analysis, evaluating credit assessments performed by others, making informed investment decisions, and monitoring their securities portfolios. This is particularly true given the complexity of the municipal securities market, which consists of over 50,000 state and local government issuers and has approximately two million different securities outstanding.

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[1] The Investment Company Institute is the national association of U.S. investment companies, including mutual funds, closed-end funds, exchange-traded funds (ETFs), and unit investment trusts (UITs). ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. Members of ICI manage total assets of $11.02 trillion and serve almost 93 million shareholders.

[2] *See* Securities and Exchange Commission Release No. 60332 (July 18, 2009), 74 FR 36831 (July 24, 2009), available at http://www.sec.gov/rules/proposed/2009/34-60332.pdf.

[3] 2009 Investment Company Fact Book, 49th Edition.

For these reasons, the Institute has repeatedly called for reform of the municipal securities disclosure regime.[4] The SEC, through the proposal, has generally reached the limits of its authority to increase disclosure in the municipal securities markets and we commend it for taking the steps that it could to increase disclosure.[5] The greater availability of information, if the proposed amendments are adopted, will address several of the Institute's concerns regarding the lack of transparency in the municipal securities markets.

Currently, the Tower Amendment prohibits the SEC and the Municipal Securities Rulemaking Board ("MSRB") from directly or indirectly requiring issuers of municipal securities to file documents with them before securities are sold.[6] We urge the SEC to pursue the assistance of Congress to more fundamentally address municipal securities disclosure and strongly urge Congress to repeal the Tower Amendment to permit the SEC to impose appropriate and tailored disclosure obligations on municipal securities issuers. Our specific comments on the proposal follow.

I. Summary of Recommendations

- We support the proposal to eliminate the current exemption from Rule 15c2-12 for demand securities, including VRDOs.
- We support the creation of a definitive timeframe by which event notices must be filed. While we support the proposed ten-business day period, we recommend the SEC further shorten the time period to, for example, five business days.
- We support the proposal to eliminate the "materiality" threshold for determining whether submission of certain event notices is required. We recommend that the SEC also eliminate this threshold for bond calls and non-payment related defaults, thereby requiring mandatory disclosure, because of the importance of these events to investors in informing their

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[4] *See e.g., Industry Perspectives on the Obama Administration's Financial Regulatory Reform Proposals,* Testimony of Paul Schott Stevens, President and CEO, Investment Company Institute, before the Committee on Financial Services United States House of Representatives, dated July 17, 2009, available at http://www.ici.org/pressroom/speeches/09_reg_reform_jul_tmny#TheAdmin, Statement of Paul Schott Stevens, President and CEO, Investment Company Institute, SEC Roundtable on Oversight of Credit Rating Agencies, dated April 15, 2009, available at http://www.ici.org/policy/markets/domestic/09_oversight_stevens_stmt, and Letter from Karrie McMillan, General Counsel, Investment Company Institute, to Florence Harmon, Acting Secretary, Securities and Exchange Commission, dated September 22, 2008 ("September 2008 Letter").

[5] *See Opening Statement Before the Commission Open Meeting,* Mary L. Schapiro, Chairman, Securities and Exchange Commission, July 15, 2009 ("These proposals represent an important Commission effort to do what we can, within our statutory authority, to address the disclosure disparity that exits for municipal securities.").

[6] Congress passed the Securities Act Amendments of 1975, mandating the creation of the MSRB to establish a set of fair practices for the underwriting and trading of municipal securities. The 1975 Amendments also included a set of provisions prohibiting the SEC and the newly created MSRB from directly or indirectly requiring issuers of municipal securities to file documents with them before the securities are sold. These provisions were referred to as the Tower Amendment.

investment decisions. We also recommend that the SEC modify the event notice regarding substitution of credit or liquidity providers, or their failure to perform, to include any renewal or modification of any credit or liquidity facility or other agreement supporting or otherwise material to a municipal security.

- We support the proposal to add four additional events to the disclosure requirements of Rule 15c2-12. With respect to the disclosure relating to the announcement of a merger, we recommend that the SEC require disclosure of basic information related to the merger as well as disclosure of exchange offers and significant affiliations. We also recommend that, in the case of disclosure of certain bankruptcy events, the SEC clarify that the filing of a bankruptcy petition itself triggers the disclosure requirement.
- We recommend that the SEC add four more event notices to the disclosure requirements of Rule 15c2-12. First, we recommend that the SEC require disclosure to reflect the creation of any material financial obligations (including contingent obligations) whether in the form of long- or short-term direct debt, hedge, swap or other derivative instrument, capital lease, operating lease or otherwise. Second, we recommend the SEC adopt a "catch-all" notice requirement for any event materially impacting the value of a bond. Third, we recommend that the SEC adopt an event notice to clarify the tax-exempt status of a bond. Fourth, we recommend the SEC adopt an event notice to disclose modifications to escrow agreements or escrows.
- We urge the SEC to continue to recommend to Congress that it impose certain disclosure requirements directly on municipal issuers, and clarify the legal responsibilities of officials and underwriters of municipal issuers for the disclosure documents they authorize and/or distribute.

II. Need for Reform of Municipal Securities Disclosure Regime

The SEC recognized and underscored the importance of sufficient disclosure and transparency in municipal securities when it adopted Rule 15c2-12, establishing requirements on the initial disclosure, periodic disclosure, and secondary market reporting of municipal securities.[7] In adopting the Rule, the SEC indicated that the premise of the Rule was to prohibit recommendations for which adequate information was not available and to assist investors in protecting themselves from misrepresentation and other fraudulent activities by brokers, dealers, and municipal dealers. The disclosure and transparency provided in the Rule, however, has not kept pace with the extraordinary growth of the municipal securities industry or developments in the marketplace and is in dire need of improvements to meet the informational needs of today's investors.

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[7] *See* Securities and Exchange Commission Release No. 26985 (June 28, 1989), 54 FR 28799 (July 10, 1089) and Securities and Exchange Commission Release No. 34961 (November 10, 1994), 59 FR 59590 (November 17, 1994) ("1994 Amendments").

Most significantly, many of the conditions that existed when Congress and the SEC first considered municipal disclosure requirements have changed dramatically. For example, the municipal securities market is no longer localized and municipal securities now trade on a nationwide scale. Notwithstanding its reputation as a "buy and hold" market, municipal securities trading volume has increased substantially[8] and the market no longer consists solely of straightforward general obligation bonds but is composed of many complex instruments, some of which are not backed by the relevant government's full faith and credit.[9] In addition, until recently, the lack of sufficient disclosure was tempered by the fact that most municipal securities were insured, with a presumption that in the absence of publicly available information, a bond insurer had ready access to the municipal issuer's most recent financial statements and had performed due diligence on the issuer. Currently, however, all municipal bond insurers' credit ratings have been downgraded and investor confidence in the viability of the insurance industry, and its ability to conduct quality risk assessments, has been seriously damaged by the recent financial crisis.[10] Finally, many of the problems relating to the credit market crisis stemmed from inadequate disclosure and transparency about the specific and changing risks associated with certain products and market participants, such as the liquidity problems facing municipal auction-rate securities and the rating downgrades of municipal bond insurers. For all of these reasons, it is critical to amend the regulatory framework to provide investors with more accurate, current, and complete information.[11]

We recognize that the benefits of increased disclosure come with costs to municipal issuers for complying with more stringent requirements when they access the public credit markets. Many issuers have claimed that such costs could be significant and have therefore been opposed to increasing disclosure. We believe, however, that these costs would be minimal for many issuers as they currently provide the major rating agencies with financial information, such as annual reports (audited, if

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[8] Over $5.5 trillion of long and short-term municipal securities traded in 2008 in more than 11 million transactions. *See* MSRB, Real-Time Transaction Reporting, Statistical Patterns in the Municipal Market, Monthly Summaries 2008.

[9] In 2008, 140 municipal issuers defaulted on $7.6 billion in bonds. *See Address before the New York Financial Writers' Association Annual Awards Dinner*, Mary L. Schapiro, Chairman, Securities and Exchange Commission, June 18, 2009. While the record of defaults in municipal securities is not high in absolute terms, corporate securities have similar default rates and their disclosure regime produces detailed, timely, and accessible information.

[10] Indeed, only 3 percent of new state and local government issuance in the first half of 2009 was insured. Calculated using data from The Bond Buyer (August 10, 2009, page 8) and the Federal Reserve Board at http://www.federalreserve.gov/econresdata/releases/govsecure/current.htm.

[11] As SEC Chairman Schapiro recently testified, "Accurate information is the lifeblood of the securities markets." *Testimony Concerning Enhancing Investor Protection and Regulation of the Securities Markets,* Mary L. Schapiro, Chairman, Securities and Exchange Commission, before the United States Senate Committee on Banking, Housing and Urban Affairs, dated March 26, 2009, available at http://www.sec.gov/news/testimony/2009/ts032609mls.htm.

available) and budgets, on a regular basis. Consequently, we believe that the benefits of increased disclosure would likely outweigh the associated costs.[12]

III. The Proposal

A. Elimination of Exemption for VRDOs

The proposal would eliminate the current exemption for demand securities, including variable rate demand securities ("VRDOs"), from Rule 15c2-12, thereby subjecting these securities to the requirement to provide continuing disclosure documents to the MSRB. As a result, in connection with a primary offering of VRDOs, underwriters would need to reasonably determine that the issuer or obligated person has entered into a continuing disclosure agreement with respect to the submission of continuing disclosure documents to the MSRB. The SEC explains that the growth of the VRDO market since 1989, *e.g.,* the increased amount of issuances, high trading volume, and increased number of investors, warrants an improvement in the availability of information in this segment of the municipal market.

We support the proposed amendment to improve VRDO disclosure. Such information is critical in assisting investors to make informed investment decisions. A typical VRDO is supported by a number of agreements, including a credit enhancement or letter of credit, a remarketing agreement, and a liquidity or repurchase agreement. A violation of, or material changes to, any of these agreements has significant implications for an investor because the VRDO, in effect, fails and must undergo remarketing. Generally, however, there are no continuing disclosure agreements in place with respect to VRDOs because primary offerings of these securities are exempt from Rule 15c2-12.[13]

Recent rule changes by the MSRB have created the first VRDO-related disclosure obligation, albeit in the limited context of interest rate reset information.[14] In recognition of the need for

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[12] We believe there are several other benefits from enhanced disclosure in the municipal securities market in addition to providing investors with the information they need to make investment decisions. For example, if increased availability of financial information reduces overall search and transaction costs, this has a positive effect on liquidity in the market. *See* "Economic Consequences of SEC Disclosure Regulation: Evidence from the OTC Bulletin Board," Brian Bushee and Christian Leuz, Journal of Accounting and Economics, 2005, vol. 39 (finding that firms that were newly compliant with the SEC disclosure regulation experienced significant increases in liquidity consistent with a reduction of information asymmetry from improved disclosure. The authors also found that firms that were already in compliance prior to the disclosure regulation taking effect experienced positive stock returns and permanent increases in liquidity after the rule took effect, indicating positive externalities from the mandatory regulation disclosure.)

[13] The SEC did not reconsider any of the VRDO exemptions contained in Rule 15c2-12 when it adopted the 1994 Amendments. *See* 1994 Amendments, *supra* note 7.

[14] Since April 1, 2009, MSRB rules have required dealers that act as remarketing agents for VRDOs to report certain interest rate and descriptive information following a VRDO interest rate reset to the MSRB. This information is then made

disclosure beyond this information, the MSRB already has proposed additional VRDO disclosure requirements.[15] While we support the MSRB's proposals, the information that would be available to investors upon adoption of the SEC's proposal would be much more significant. Specifically, the availability of continuing disclosure information regarding VRDOs would greatly benefit investors by enhancing their ability to make and monitor their investment decisions and protect themselves from misrepresentations and questionable conduct in this segment of the municipal securities market.[16]

B. Timeframe for Submitting Event Notices

The proposal would establish a timeframe to submit event notices of not greater than ten business days after the occurrence of a reportable event. This requirement would replace the imprecise "timely manner" language in the current Rule. As observed by the SEC, the absence of a specific time period with respect to "timely" has resulted in event notices being submitted months after the events have occurred to the detriment of investors who need this information to make informed investment decisions on when, and which, municipal securities to buy and sell.

We strongly support the establishment of a definitive timeframe by which event notices must be filed, and have repeatedly called for improvements to the timeliness of municipal securities disclosure.[17] Reducing the time between the event and the required notice better informs the market that an event occurred, which is essential to evaluating a bond's credit quality and pricing. It also provides more timely information to pricing evaluation services and relieves them of dependence on bondholders to disclose the required information to them. Without the proper notification, bonds could be priced incorrectly until the disclosure had been made.

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available to the public through the MSRB's Electronic Municipal Market Access ("EMMA") system. *See SEC Approves Proposal To Increase Transparency Of Auction Rate Securities And Variable Rate Demand Obligations,* MSRB Notice 2009-04 (January 9, 2009), available at http://www.msrb.org/msrb1/whatsnew/2009-04.asp.

[15] The MSRB has proposed to enhance its current VRDO disclosure by requiring, among other information, the identity of and contact information for the tender agent and the identity of all liquidity providers along with information that would allow investors to determine whether a VRDO remarketing agent or liquidity provider holds a position in the VRDO at the time of the interest rate reset. For existing VRDOs, the proposal would require dealers to provide the current versions of documents to the MSRB within thirty days after the effective date of the draft amendments. On an ongoing basis, dealers would be required to provide any new or amended versions of these documents within one business day of receipt. *See Request for Comment on Additional Increases in Transparency of Municipal Auction Rate Securities and Variable Rate Demand Obligations,* MSRB Notice 2009-43 (July 14, 2009), available at: http://www.msrb.org/msrb1/whatsnew/2009-43.asp.

[16] As discussed below, we believe that applying the proposed amendments only on a prospective basis has the potential to create confusion for investors, although we recognize the limitations placed on the SEC's authority to act in this area by the Tower Amendment. *See supra* Section E. Effective Date and Transition.

[17] *See supra* note 4.

While we support the ten-business day timeframe in the proposal, we recommend that the SEC reduce further the maximum time period for filing event notices to, for example, five business days in recognition of the relevance and importance to investors of receiving timely disclosure as soon as practicable. Ten business days continues to be a greater time period than required in the taxable debt market. We believe, however, that municipal securities information is of no less importance and value to municipal securities investors than information about taxable debt is to investors in that market. We also believe that, much as for taxable debt issuers, five business days would provide sufficient time to discover the occurrence of an event, assess its materiality, and prepare and disseminate a notice.[18] In addition, by using as a trigger the time the event occurred, the issuer, who should know that an event might occur prior to it happening, would have ample time to prepare the event notice. Moreover, by waiting until the event occurs, it would be a rare occasion in which there would be a need to rescind notices for events that were anticipated but did not materialize.

In no circumstances would we support a time period of greater than 10 business days. As stated by the SEC in the proposal, longer delays in providing investors with event notices would undermine the effectiveness of the Rule.

C. Materiality Determination for Certain Events

The proposal would eliminate the current "materiality" threshold for determining whether submission of certain event notices is required. In so doing, the SEC has determined that certain events that reflect on the creditworthiness of the issuer or the terms of the bond are of such importance to investors and other market participants that they should always be publicly disclosed.[19] At the same time, the SEC has determined that other events should remain subject to a materiality determination.[20]

We agree with the SEC's assessment that many disclosure events are of such high consequence and relevance to investors in informing their investment decisions that they should be disclosed as a

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[18] In the Release, the SEC explains that, despite the proposed maximum time period of ten business days for submitting event notices, "in many instances it is likely that a notice could be submitted in fewer than ten business days," depending on the particular facts and circumstances surrounding the event. *See supra* note 2.

[19] These events include: (1) principal and interest payment delinquencies with respect to the securities being offered; (2) unscheduled draws on debt service reserves reflecting financial difficulties; (3) unscheduled draws on credit enhancements reflecting financial difficulties; (4) substitution of credit or liquidity providers, or their failure to perform; (5) defeasances; and (6) rating changes. In addition, the proposal would amend Rule 15c2-12 to provide for mandatory disclosure of adverse tax opinions, the issuance by the Internal Revenue Service ("IRS") of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax-exempt status of securities, or other events affecting the tax-exempt status of the security.

[20] These events include: (1) non-payment related defaults; (2) modifications to the rights of security holders; (3) bond calls; and (4) the release, substitution, or sale of property securing repayment of the securities.

matter of course. We also support the SEC's assessment that certain disclosure events may be of less significance to investors and the marketplace, as determined by a facts and circumstances analysis, warranting a materiality determination regarding their disclosure. Although we support the proposed category of items that would always need to be disclosed, we recommend that the SEC consider requiring mandatory disclosure of at least two of the events for which the proposal would maintain a materiality determination, and expanding the scope of one of the existing event notices.

First, we believe that bond calls are always material to investors, regardless of the type of bond call. Thus, we would urge the SEC to require disclosure for all bond calls. Second, the proposal would require that a non-payment related default would only be disclosed if material.[21] We believe that the violation of a legal covenant is an important component of an investor's analysis of the bond being offered, and its disclosure should not be discretionary. For example, in the non-profit health care sector, rating agencies often ignore the violation of a rate covenant or a liquidity covenant in assigning their ratings. Third, the SEC should modify the event notice regarding substitution of credit or liquidity providers, or their failure to perform, to include any renewal or modification of any credit or liquidity facility or other agreement supporting or otherwise material to a municipal security. As discussed above in the context of demand securities and VRDOs, changes to or violations of any of the credit or liquidity agreements structured into a municipal security can have significant implications for an investor by modifying the overall security, causing a mandatory tender event and/or impacting the prospects for remarketing.[22]

D. Proposed Additional Event Notices

The proposal would add four additional events to the disclosure requirements of Rule 15c2-12. These would include: (1) tender offers; (2) bankruptcy, insolvency, receivership or similar proceeding of the obligated person; (3) merger, consolidation, acquisition, and sale of all or substantially all assets of the obligated person, if material; and (4) appointment of a successor or additional trustee, or the change of name of a trustee, if material. We support the addition of these event notices to the Rule's disclosure obligations because each one of them provides meaningful insights and information regarding a particular bond.

To further improve the value of these disclosures, we recommend that the SEC require disclosure of several additional pieces of information. For example, the SEC should require disclosure of basic information related to a merger. Such information should include the offer price, change in

[21] The SEC should clarify that this event notice extends to all non-payment related defaults regardless of whether the breach is styled as a "default" or a "covenant breach" – *e.g.*, hospital rate covenants in which the issuer must engage a management consultant because of a breach of its "financial covenant."

[22] We recognize that the information encompassed by this recommendation should be disclosed in the current requirement for notice of modifications to the rights of security holders. We believe that it is more appropriate and useful to investors, however, to include this information in the event notice for substitutions and violations of credit or liquidity agreements.

offer price, withdrawal rights, identity of the offeror, an offeror's ability to finance the offer, conditions to the offer, and the timeframe and manner for tendering securities and the method of acceptance. This information is necessary to understand the nature of the transaction and to permit the valuation of the outstanding bonds of the various participating parties. Similarly, we believe that exchange offers and significant affiliations should be included in this disclosure requirement. With respect to the proposed disclosure of certain bankruptcy events, we recommend that the SEC clarify that the filing of a bankruptcy petition itself triggers the disclosure requirement. It would undermine the value of the disclosure to wait until the entry of an order confirming a bankruptcy plan, which often does not occur until years into a bankruptcy case, or the appointment of a receiver or similar officer, which may happen sooner, but still may take an extended period of time.

In addition to the proposed disclosures, we recommend the SEC add four more event notices to the disclosure requirements of Rule 15c2-12 to capture events which significantly reflect upon the value of a municipal bond. First, we recommend that the SEC implement a disclosure requirement to reflect the creation of any material financial obligation (including contingent obligations) whether in the form of long- or short-term direct debt, hedge, swap or other derivative instrument, capital lease, operating lease or otherwise, because of the implications these obligations may have on the credit risk and value of the associated bonds. This disclosure should be accompanied by a description of the material terms of the obligation, including payment dates, rates, and amounts, potential termination liabilities, counterparties, and current or contingent collateral security provisions. The disclosure also would require an event notice to reflect termination of any such material financial obligation. To balance the burden such disclosure might impose and in recognition that in a number of instances such events may be sufficiently insignificant to investors, we would recommend that disclosure of such an occurrence include a materiality determination.

Second, we recommend that the SEC include a "catch-all" event notice in Rule 15c2-12, subject to a materiality determination. We believe that any event materially impacting the value of a bond should be disclosed to investors, in part as recognition that the market is lending these issuers money. As with the other event notices requiring a materiality determination, disclosure would be determined by the particular facts and circumstances of such an event. A catch-all provision would account for developments in the municipal securities markets that have a major effect on creditworthiness of municipal debt securities but outpace regulatory response – *e.g.,* the rise of swap agreements in the municipal market.

Third, we recommend the SEC adopt an event notice to clarify the tax-exempt status of a bond. The tax-exempt status of a bond is critical to an investor's investment decision to buy or sell a bond as well as an investor's ability to buy or hold a particular bond. For example, a municipal bond fund may be limited by its stated investment policy to holding only tax-exempt bonds. Likewise, a money market fund may be limited to holding a certain percentage of tax-exempt bonds. To ensure that investors are aware of any threats to the tax-exempt status of a bond, we recommend that the SEC require notice of: (1) an issuer's timely expenditure of proceeds and/or appropriate limitation of earnings on unexpended

proceeds and (2) any legal or regulatory challenges to the tax exempt status of a bond. Because of the unqualified importance of the tax exempt status of a bond, these disclosures would not be discretionary.

Fourth, we recommend the SEC adopt an event notice to disclose modifications to escrow agreements or escrows. Similar to credit or liquidity agreements, a change to, or substitution of, the security in an escrow agreement or the amount of or type of securities held or eligible to be held in an escrow could significantly alter an investor's assessment of the credit quality of a particular bond and, therefore, the investor's decision to buy or sell the bond. We believe the recommended disclosure should be mandatory to reflect the value of escrow information to investors.

E. Effective Date and Transition

The proposal would apply only to continuing disclosure agreements that are entered into in connection with primary offerings occurring on or after the effective date of the amendments, if adopted. In the case of VRDOs, this would include any remarketing of VRDOs that are primary offerings as well as initial offerings of VRDOs. The SEC is considering an effective date that would be no earlier than three months after any final adoption of the proposal.

We support the suggested three month period as an appropriate timeframe to prepare for compliance with the proposed amendments. The sooner the amendments are effective, the sooner investors will benefit from the enhanced disclosure regime.

We believe, however, that there is room for confusion on the part of investors who would have access to greater disclosure on bonds subject to the amended Rule 15c2-12 compared with earlier issues. We recognize that the SEC is limited in its ability to expand the application of the proposed enhancements to existing bonds because of the Tower Amendment. Specifically, the constraints on the SEC's authority to require disclosure directly of issuers means the SEC also is unable to require underwriters to gather information from issuers for outstanding issues. It is for this reason, among others, that we are advocating repeal of the Tower Amendment, as discussed below. The municipal securities markets would be best served if all bonds were subject to the same improved disclosure regime.

IV. Repeal Tower Amendment

To improve the overall municipal securities disclosure regime, we believe it is critical that Congress impose certain disclosure requirements directly on municipal issuers. As noted above, many of the weaknesses of the current system are due to the restrictions in the Tower Amendment prohibiting the SEC or MSRB from imposing disclosure requirements directly on municipal issuers. The SEC has specifically stated that it requires expanded authority over the municipal securities market

to provide investors in municipal securities with access to full, accurate, and timely information comparable to that provided to investors in many other U.S. capital markets.[23]

We therefore urge the SEC to seek authority from Congress to address the concern regarding relevant and reliable disclosure that would empower the SEC to require municipal issuers to make publicly available, in a timely manner, municipal issuer offering documents, periodic reports, and any other information that the SEC deems necessary or appropriate in the public interest or for the protection of investors.[24] Investors, municipal analysts, investment advisers and the broker-dealers who effect transactions in municipal securities would all benefit significantly from access to current, high quality disclosure comparable to that which is available in other markets.

To make this standardized information accessible, municipal issuers should be required to make it available to investors, without charge, through an easily accessible venue (such as the MSRB's EMMA system). This also would ensure that valuable information is provided to investors in a timely manner – *i.e.,* immediately upon receipt and posting by the data repository – allowing them to perform their credit analysis, make informed investment decisions, and protect themselves from fraud.[25]

To enhance transparency for municipal securities, the SEC should seek authority to require municipal issuers to establish policies and procedures to ensure accurate and full disclosure in their offering documents and periodic reports. To create accountability for the quality of this information, municipal issuers should be required to certify the accuracy of their disclosures. Currently, even large issuers of municipal securities generally do not have policies and procedures to ensure accurate disclosure.[26]

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[23] *See supra* note 5. Chairman Schapiro specifically stated, "However, more needs to be done to put disclosure about municipal securities on par with disclosure about corporates. As a result, I also plan on working with Congress to request enhanced SEC authority with respect to municipal securities disclosure so that investors in munis have timely access to the full complement of information they deserve to know about their municipal securities investments." *See also, "Disclosure and Accounting Practices in the Municipal Securities Market,"* Securities and Exchange Commission, White Paper to Congress, July 2007.

[24] As a guide, we recommend the SEC consider the Institute's prior suggestions for enhanced disclosure. *See, e.g.,* September 2008 Letter, *supra* note 4. We also recommend that the SEC consider the industry guidelines for disclosure offered by the National Federation of Municipal Analysts and the Government Finance Officers Association in drafting new disclosure requirements for issuers.

[25] There also must be active enforcement of the disclosure obligations. We recognize that the SEC is implementing a new office in its Division of Enforcement to address municipal securities. We encourage the SEC to actively pursue violations of the securities laws in this area.

[26] The SEC lacks the authority to require issuers to establish policies or procedures or to provide certifications outside the resolution of an enforcement case – *i.e.*, when securities fraud has already been committed.

In addition, the SEC should urge Congress to specifically clarify the legal responsibilities of officials of municipal issuers for the disclosure documents that they authorize. Increasing the understanding and involvement of issuer officials in the disclosure process could assist in the process of developing and maintaining appropriate disclosure controls and procedures. Responsible officials of an issuer should know what is in their disclosure documents and should closely scrutinize all information disclosed.

Finally, the SEC should ask Congress to spell out the responsibilities of underwriters with respect to the offering statements in municipal offerings and the legal responsibilities of bond counsel and other participants in offerings, directing the SEC to act where appropriate. The process of developing offering documents differs with each offering, adding to the disparate picture of municipal securities disclosure. For example, sometimes issuers are represented by counsel; sometimes they use the underwriter's counsel. This relationship can play a significant role in the value and, ultimately, the utility of the disclosure. Moreover, participants involved in the offerings often are quick to disclaim responsibility for statements made in offering documents. Clarity on this point would therefore greatly facilitate the quality of the disclosure.

It is important to note that our call for reform to the obligations of municipal issuers is limited to disclosure, and would not include new registration requirements. In addition, while we are seeking a disclosure regime for municipal securities comparable to those available in many other U.S. capital markets, we are not seeking a regime exactly the same as that imposed, for example, on corporate issuers. If the Tower Amendment is repealed or modified, it will be necessary for the SEC to determine what information investors should receive. In doing so, the SEC could consider whether to tier the disclosure request or use the Rule 15c2-12 exemption thresholds as a guide to accommodate smaller issuers.[27]

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We look forward to working with the SEC as it continues to examine these critical issues. In the meantime, if you have any questions, please feel free to contact me directly at (202) 326-5815, or Heather Traeger at (202) 326-5920 or Ari Burstein at (202) 371-5408.

Sincerely,

/s/ Karrie McMillan

Karrie McMillan
General Counsel

[27] Because the municipal securities market is predominately comprised of small issuers, new regulation must consider the needs of these issuers to access capital at the lowest cost possible while providing the transparency and disclosure that investors need.

cc: The Honorable Mary L. Schapiro
The Honorable Kathleen L. Casey
The Honorable Elisse B. Walter
The Honorable Luis A. Aguilar
The Honorable Troy A. Paredes

James Brigagliano, Acting Director
Daniel Gallagher, Acting Director
Martha Mahan Haines, Chief, Office of Municipal Securities
Division of Trading and Markets

U.S. Securities and Exchange Commission