

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549



February 26, 1999

Diane G. Klinke
General Counsel
Municipal Securities Rulemaking Board
1150 18th Street N.W.
Suite 400
Washington, D.C. 20036

Re: Interests in Local Government Pools and Higher Education Trusts

Dear Ms. Klinke:

In your letter of June 2, 1998, you request the staff's view on: (1) whether interests in "local government pools" and "higher education trusts" as described in your letter are "municipal securities" as defined in Section 3(a)(29) of the Securities Exchange Act of 1934 ("Exchange Act"), and (2) whether a dealer participating in the sale of these interests would be participating in a "primary offering" and be subject to the requirements of Rule 15c2-12 under the Exchange Act.

We have not conducted an extensive review of programs involving interests in local government pools or higher education trusts. Based upon an analysis of programs that have been brought to our attention, however, we do believe that at least some interests in local government pools and higher education trusts may be, depending on the facts and circumstances, "municipal securities" for purposes of the Exchange Act.¹

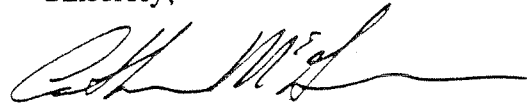
¹ We note that, in connection with the no-action relief sought by many higher education trusts, an opinion of counsel is required to the effect that the issuer is a State, an agency or instrumentality of a State, or a political subdivision thereof. See, e.g., Letters re: New York College Choice Tuition Savings Program (Sept. 10, 1998); New Hampshire Higher Education Savings Plan Trust (June 30, 1998).

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In response to your second question, we note that Rule 15c2-12(f)(7) under the Exchange Act defines a "primary offering" as including an offering of municipal securities directly or indirectly by or on behalf of an issuer of such securities. Based upon an analysis of programs that have been brought to our attention, it appears that interests in local government pools or higher education trusts generally are offered only by direct purchase from the issuer. Accordingly, we would view those interests as having been sold in a "primary offering" as that term is defined in Rule 15c2-12. If a dealer is acting as an "underwriter" (as defined in Rule 15c2-12(f)(8)) in connection with that primary offering, the dealer may be subject to the requirements of Rule 15c2-12.

If you have any additional questions regarding these matters, please do not hesitate to call me at (202) 942-0061.

Sincerely,



Catherine McGuire
Chief Counsel