

MEMO# 24198

March 26, 2010

SEC Staff Evaluating the Use of Derivatives by Funds

[24198]

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TO: ETF (EXCHANGE-TRADED FUNDS) COMMITTEE No. 6-10
ETF ADVISORY COMMITTEE No. 9-10
SEC RULES MEMBERS No. 26-10
EQUITY MARKETS ADVISORY COMMITTEE No. 10-10
CLOSED-END INVESTMENT COMPANY MEMBERS No. 16-10
SMALL FUNDS MEMBERS No. 20-10 RE: SEC STAFF EVALUATING THE USE OF
DERIVATIVES BY FUNDS

On March 25, 2010, the U.S. Securities and Exchange Commission issued a press release [\[1\]](#) stating that the SEC staff is conducting a review to evaluate the use of derivatives by mutual funds, exchange-traded funds (ETFs), and other investment companies. The Release describes a number of issues that the staff intends to explore relating to the use of derivatives by funds, and states that as part of the review the staff will seek to determine what, if any, changes in Commission rules or guidance may be warranted. The Release further states that, pending the completion of the review, the staff will defer consideration of exemptive requests under the Investment Company Act of 1940 to permit ETFs that would make significant investments in derivatives.

The ICI issued the following statement in response to the Release:

The ICI strongly supports the SEC staff review of the use of derivatives by mutual funds and exchange-traded funds (ETFs). It has been more than 30 years since the Commission last offered guidance on funds' use of derivatives; mutual funds, ETFs and their shareholders would benefit from updated guidance in this area. We are disappointed, however, that the staff has deferred consideration of

certain pending and new applications for ETFs until it has finished its review. The deferral will disadvantage these applicants relative to other funds that may currently use similar strategies.

Mara Shreck
Associate Counsel

endnotes

[1] See *SEC Staff Evaluating the Use of Derivatives by Funds*, SEC Press Release No. 2010-45 (March 25, 2010) (the “Release”), available at <http://www.sec.gov/news/press/2010/2010-45.htm>.

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