

MEMO# 25290

June 20, 2011

Draft ICI Letter on SEC Short Sale Reporting Study

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TO: CLOSED-END INVESTMENT COMPANY COMMITTEE No. 33-11
ETF (EXCHANGE-TRADED FUNDS) COMMITTEE No. 23-11
ETF ADVISORY COMMITTEE No. 41-11
DERIVATIVES MARKETS ADVISORY COMMITTEE No. 22-11
EQUITY MARKETS ADVISORY COMMITTEE No. 37-11
SEC RULES COMMITTEE No. 63-11 RE: DRAFT ICI LETTER ON SEC SHORT SALE REPORTING STUDY

As we previously informed you, the SEC has issued a request for comment regarding studies required by the Dodd-Frank Act relating to the reporting of short sales. Specifically, under Section 417(a)(2) of the Dodd-Frank Act, the SEC's Division of Risk, Strategy, and Financial Innovation is required to conduct studies of the feasibility, benefits, and costs of (1) requiring reporting in real time, publicly or, in the alternative, only to the SEC and FINRA, of short sale positions in publicly listed securities, and (2) conducting a voluntary pilot program in which public companies could agree to have sales of their shares marked "long," "short," or "market maker short," and purchases of their shares marked "buy" or "buy-to-cover," and reported as such in real time through the consolidated tape.

Attached is the draft ICI letter on the studies. Comments are due to the SEC no later than this Thursday, June 23. If you have any comments on the draft letter, please contact Ari Burstein by email at aburstein@ici.org or by phone at 202-371-5408 by COB Wednesday, June 22.

Impact on Funds of Short Sale Position Reporting

The draft letter focuses on the impact of requiring the reporting of short sale positions in real time and to the public, particularly at the individual investment manager level. The draft letter states that while increasing transparency of information regarding short sales is a desirable goal, the potential negative consequences of requiring reporting of investment managers' short sale positions in real time and to the public would outweigh the benefits of such increased reporting.

The draft letter recommends that if the SEC determines that further reporting of short sale positions is necessary, and it determines that such information should be reported at the investment manager level, it is essential that reporting be required to be made solely to regulators and not to the public. The draft letter notes that making public the information filed by investment managers in real time may lead to frontrunning of fund trades, may confuse investors and other market participants about investment managers' intentions and could result in increased shorting of certain stocks as other market participants imitate firms' publicized short positions. In addition, such a reporting regime could create new opportunities for unfair or otherwise abusive market practices and impair overall investor confidence in the markets.

The draft letter states that if the SEC ultimately determines that public disclosure of investment manager short sale positions is necessary, there is no reason for treating short sale position reporting differently than long position reporting. Therefore, if a public disclosure regime is to be established, it is best achieved by the SEC requiring disclosure of short positions on a periodic, but sufficiently delayed, basis, mirroring the reporting timelines that exist for long positions. Specifically, there could be a standard quarterly reporting requirement for all short positions that are above a de minimis threshold similar to the current Form 13F reporting requirements.

Real Time Transaction Reporting on the Consolidated Tape

The draft letter states that many of the concerns discussed above with respect to the reporting of short sale positions are equally applicable to marking the consolidated tape, particularly reporting of marked trades in real time. Additional concerns are raised if the information reported on the consolidated tape is not accurate and error-free. The letter notes that if the consolidated tape marks were not completely reliable, this could present possibilities for misinterpretation of the data by investors that could take away from any benefits presented by short sale marking.

The draft letter notes that the study also only addresses the feasibility, benefits and costs of conducting a voluntary, pilot program to marking the consolidated tape. The letter states that while the ICI does not object to conducting the program on a pilot basis, we question the benefits of conducting a pilot program purely on a voluntary basis and the usefulness of any data derived from such a pilot. The letter states that a pilot must include a range of issuers, including large, medium, and small cap issuers, chosen by the SEC to maximize the production of useful, empirical data.

Create Consistency with Short Sale Reporting in Other Jurisdictions

The draft letter notes that regulators in several foreign jurisdictions have adopted rules requiring disclosure of short sales and short positions and that, at the moment, these rules are not consistent. The letter recommends that as the SEC examines its current, and considers further, initiatives relating to short sales in the United States, it to work closely with foreign regulators to create consistent and sensible cross-border regulations in this area.

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[Attachment](#)

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