

MEMO# 25428

August 22, 2011

ICI Letter on Regulatory Action on Short Selling in the European Union

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TO: EQUITY MARKETS ADVISORY COMMITTEE No. 55-11
SEC RULES MEMBERS No. 104-11
INTERNATIONAL MEMBERS No. 37-11
INTERNATIONAL INVESTING SUBCOMMITTEE No. 15-11
ETF (EXCHANGE-TRADED FUNDS) COMMITTEE No. 38-11
ETF ADVISORY COMMITTEE No. 59-11
CLOSED-END INVESTMENT COMPANY MEMBERS No. 67-11 RE: ICI LETTER ON REGULATORY ACTION ON SHORT SELLING IN THE EUROPEAN UNION

ICI has filed a letter with the European Securities and Markets Authority's ("ESMA") responding to the decision by several European regulatory authorities to impose or extend existing short selling bans. While the letter strongly supports regulatory action to address abusive and manipulative short selling, it does not support a ban or substantial restrictions on short selling as the means to address regulators' concerns.

The letter notes that short selling is an integral part of an efficient and effective trading environment and legitimate and lawful short selling therefore must be allowed to continue. At the same time, the letter recognizes regulators' concerns about the impact on investor confidence of recent market events and notes that short selling, as with any other type of trading, should be subject to appropriate controls to minimize the potential risks it could have on the orderly and efficient functioning and stability of the financial markets.

The letter states that, as experienced in the United States in response to the market events in 2008, it is unclear from available empirical data whether a short selling ban addresses abusive or manipulative behavior, increases investor confidence or alleviates market volatility. In addition, the unintended consequences of a ban on short selling are uncertain. For these reasons, the letter states that a ban on short selling is not warranted at this time. The letter, however, strongly supports action against abusive and manipulative behavior relating to short selling and states that regulators should continue to examine regulatory tools, such as short selling anti-fraud rules and rules inhibiting abusive "naked" short selling, to address potentially abusive or manipulative behavior.

Finally, the letter states that as regulators examine their current, and consider future,

initiatives relating to short sales, there should be coordination among regulators to ensure sensible cross-border regulations in this area. The letter notes that varying regulations in different jurisdictions result in inconsistent rules and uncertainty for investors.

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[Attachment](#)

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