

**MEMO# 26400**

August 20, 2012

# **ICI Letter on SEC Order Relating to Exchange Market Maker Incentive Programs**

[26400]

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TO: CLOSED-END INVESTMENT COMPANY MEMBERS No. 54-12  
ETF (EXCHANGE-TRADED FUNDS) COMMITTEE No. 29-12  
ETF ADVISORY COMMITTEE No. 30-12  
EQUITY MARKETS ADVISORY COMMITTEE No. 18-12  
SEC RULES MEMBERS No. 76-12 RE: ICI LETTER ON SEC ORDER RELATING TO EXCHANGE MARKET MAKER INCENTIVE PROGRAMS

ICI has filed a letter with the SEC on an order instituting proceedings to determine whether to approve or disapprove NASDAQ's and NYSE Arca's proposed market maker incentive programs, specifically the NASDAQ Market Quality Program and NYSE Arca Fixed Incentive Program.

The letter supports the overall goal of the Programs - to incentivize market makers to make high-quality, liquid markets in ETFs. The letter, however, recognizes that the Programs represent a departure from current rules precluding market makers from accepting payment from an issuer of a security for acting as a market maker. The letter therefore reiterates many of the comments and recommendations made in ICI's previous letters on the Programs. [\[1\]](#) The letter notes that the majority of ICI members believe that the SEC should approve the Programs on a pilot basis if the Programs are modified to reflect these recommendations but that some ICI members continue to oppose the Programs and believe the SEC should not approve the proposals.

## **ICI Recommendations**

The letter notes that while there are a number of similarities between the Programs, there also are a number of important differences in the manner in which the Programs will operate that can raise potential conflicts of interest between a market maker and an issuer. To address these concerns, the letter reiterates the recommendations contained in ICI's previous letters and states that the SEC should approve the Programs only if the changes set forth in the recommendations are implemented. Most significantly, these

recommendations relate to the eligibility criteria and market maker performance standards under the NYSE Arca Fixed Incentive Program.

## **Implementing the Programs on a Pilot Basis**

The letter strongly supports the establishment of the Programs on a pilot basis. The letter states that it is critical that NASDAQ and NYSE Arca, as well as the SEC, have an opportunity to evaluate the impact of the Programs on the quality of markets in ETFs prior to considering their permanent approval, both with respect to ETFs participating in the Programs and ETFs that choose not to participate.

Ari Burstein  
Senior Counsel - Securities Regulation

[Attachment](#)

### **endnotes**

[1] The letters can be found on ICI's website at <http://www.ici.org/pdf/26142.pdf> and <http://www.ici.org/pdf/26227.pdf>.

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