

MEMO# 25297

June 23, 2011

ICI Letter on SEC Short Sale Reporting Study

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TO: CLOSED-END INVESTMENT COMPANY MEMBERS No. 49-11
ETF (EXCHANGE-TRADED FUNDS) COMMITTEE No. 25-11
ETF ADVISORY COMMITTEE No. 43-11
DERIVATIVES MARKETS ADVISORY COMMITTEE No. 23-11
EQUITY MARKETS ADVISORY COMMITTEE No. 39-11
SEC RULES MEMBERS No. 77-11 RE: ICI LETTER ON SEC SHORT SALE REPORTING STUDY

Last month, the SEC issued a request for comment regarding studies required by the Dodd-Frank Act relating to the reporting of short sales. Specifically, the SEC 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 trades of their shares marked “long,” “short,” “market maker short,” “buy,” or “buy-to-cover,” and reported as such in real time through the consolidated tape. ICI has filed a comment letter with the SEC on the studies, which is attached and summarized below.

Impact on Funds of Short Sale Position Reporting

The 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 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 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 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 letter states that if the SEC ultimately determines that public disclosure of investment manager short sale positions is necessary, it is best achieved by 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 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, which could present possibilities for misinterpretation of the data by investors.

The 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 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 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 work closely with foreign regulators to create consistent and sensible cross-border regulations in this area.

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[Attachment](#)

abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.