

**MEMO# 25200**

May 19, 2011

## **SEC Short Sale Reporting Study; Call Scheduled May 24**

[25200]

May 19, 2011

TO: EQUITY MARKETS ADVISORY COMMITTEE No. 24-11  
ETF (EXCHANGE-TRADED FUNDS) COMMITTEE No. 15-11  
ETF ADVISORY COMMITTEE No. 34-11  
CLOSED-END INVESTMENT COMPANY COMMITTEE No. 29-11  
SEC RULES COMMITTEE No. 51-11  
DERIVATIVES MARKETS ADVISORY COMMITTEE RE: SEC SHORT SALE REPORTING STUDY;  
CALL SCHEDULED MAY 24

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. [\[1\]](#)

We have scheduled a conference call for Tuesday, May 24 at 2 pm Eastern to discuss the studies and the ICI's comment letter. The dial-in number for the call will be 866-541-3298 and the pass code for the call will be 6501781. If you would like to participate, please contact Gwen Kelly ([gwen.kelly@ici.org](mailto:gwen.kelly@ici.org) or (202) 326-5818). If you cannot participate, please provide comments to Ari Burstein ([aburstein@ici.org](mailto:aburstein@ici.org) or (202) 371-5408).

In general, the Release requests comment on the existing uses of short selling in securities markets and the adequacy of currently available information regarding short sales. The Release also requests comment on the likely effect of possible future reporting regimes on the securities markets. The SEC is required to submit a report on the results of the studies to Congress no later than July 21, 2011. Comments on the studies are due to the SEC no later than June 23, 2011.

# Uses of Short Selling and Adequacy of Current Information

The Release asks a series of general questions regarding short selling. Most significantly, the Release requests comment on how currently available data is used by issuers, market participants, and others today and whether costs or other factors limit access to currently available data. In addition, the Release requests comment on the ways and the extent to which, if any, short selling has been associated with abusive market practices and whether greater transparency of short positions or short sale transactions would help to better deter or prevent such abuses.

The Release also discusses the use by market makers of short selling. Specifically, the Release asks whether there are ways in which short sales by market makers and other market participants performing similar roles or functions (but that are not subject to some or all of the requirements applicable to market makers) could be viewed as problematic.

## Position Reporting

The Release asks a series of questions on possible short selling position reporting. Most significantly, the Release asks: whether real time reporting of the short positions of all investors, intermediaries, and market participants is feasible, and if so, in what ways would it be beneficial; whether real time data on short positions would affect the behavior of short sellers and other investors; whether real time data on short positions would affect liquidity, volatility, price efficiency, competition, and capital formation; who would be likely to use real time short position data; and would real time data on short positions help or hinder long-term investors in making “efficient investments.”

The Release also asks about possible reasons for treating short sale position reporting differently than long position reporting, whether “real time” reporting would be necessary to achieve the benefits of reporting or whether “prompt” updating for material changes in the short position is sufficient, and how “position” should be defined to help ensure any short sale position reports would be useful in detecting and deterring abusive short sale practices. [\[2\]](#) Finally, the Release asks about the feasibility, benefits, and costs of real time short position reporting to regulators only, and not to the public or, alternatively, what the benefits and costs would be if real time reporting information were to be made public on a delayed basis.

## Transaction Reporting

The Release asks a series of questions, similar to the questions asked relating to position reporting, regarding the feasibility, benefits, and costs of the consolidated tape collecting and disseminating certain transaction marks. Specifically, the Release asks for comment on: the benefits, costs, or unintended consequences that would flow from adding transaction marks to the consolidated tape; who would use these marks; and whether the consolidated tape data would be too voluminous to be used directly by interested market participants.; Similarly, the Release asks whether the consolidated tape marks would help or hinder long-term investors in making “efficient investments” or whether such marks themselves would present opportunities for alleged unfair or otherwise abusive market practices, such as bear raids or short squeezes.

The Release also asks about the benefits and costs of conducting a pilot for the consolidated tape marking as well as the benefits and costs of the voluntary component of the pilot. Finally, the Release asks to what extent consolidated tape marks would be a substitute or compliment to real time short position reporting and how the benefits and costs of any consolidated tape marks would be impacted if real time position reporting existed.

Ari Burstein  
Senior Counsel - Securities Regulation

**endnotes**

[1] The request for comment can be found on the SEC's website at <http://www.sec.gov/rules/other/2011/34-64383.pdf> ("Release").

[2] The Release notes that while Section 417(a)(2)(A) of the Dodd-Frank Act requires a study of short "position" reporting, the term "position" is not defined in the Securities Exchange Act or in Section 417 of the Dodd-Frank Act. Section 417 of the Dodd-Frank Act also does not specify a particular level of aggregation and netting, address whose short sale positions would be reported, or indicate whether derivatives or other ways to obtain economic exposure to a stock are covered.

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