

ICI President Presents Fund Industry View on Exchange-Traded Notes

ICI Challenges Tax Treatment of ETNs

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Contrary to Jeff Benjamin's assertions, mutual funds and other investment companies welcome competition based on investment prowess, shareholder service, and fees and expenses ("[ICI seeks a protected market for mutual funds](#)," InvestmentNews, Dec. 10).

What our industry doesn't welcome is competition from a narrow product engineered by lawyers and based on questionable tax advantages that we think are unwarranted, unintended and unfair. That is why we have challenged the tax treatment claimed by some producers of [exchange-traded notes](#).

Let me be perfectly clear: The Investment Company Institute would prefer a tax regime under which all investors enjoy deferral of taxes on capital gains until they realize those gains. To that end, we have worked hard in support of the [GROWTH Act](#), which would put the 29 million Americans who own long-term mutual funds in taxable accounts on the same footing as direct holders of stocks, bonds, real estate and other investments.

But we also accept the fact that tax treatment of investments is an important issue of national policy, which should be implemented on a fair and even-handed basis by Congress, the Department of the Treasury and the Internal Revenue Service.

Mr. Benjamin's analysis somehow overlooks the fact that these ETNs base their claim for favored tax treatment on their status as prepaid forward contracts. In addition to the risks of the underlying investment, these contracts carry some credit risk.

At a time when credit derivatives are roiling financial markets around the world, at the hazard of a global credit crunch, I find it ironic that InvestmentNews would champion a derivative with unrelated credit risk as a "better" vehicle than mutual funds for advisers to sell to their individual clients.

Fortunately, the Treasury Department and the IRS are closely studying these tax issues. Treasury has already indicated that the tax treatment claimed for one type of ETN is wrong, and we expect a similar conclusion on other forms of the product.

Put these ETNs on a proper footing in the tax code, and the mutual fund industry will say, "Let the competition begin."