

MEMO# 16767

November 13, 2003

DRAFT INSTITUTE COMMENT LETTER TO THE COMMITTEE OF EUROPEAN SECURITIES REGULATORS REGARDING THE REGULATION OF UCITS

ACTION REQUESTED [16767] November 13, 2003 TO: INTERNATIONAL COMMITTEE No. 78-03 RE: DRAFT INSTITUTE COMMENT LETTER TO THE COMMITTEE OF EUROPEAN SECURITIES REGULATORS REGARDING THE REGULATION OF UCITS Attached is a draft Institute comment letter on the Consultation Paper on the Role of the Committee of European Securities Regulators ("CESR") in the Regulation and Supervision of UCITS and Asset Management Activities in the European Union ("Consultation Paper"). As you may know, CESR will have the responsibility for drafting implementing measures for the UCITS Directive once the Lamfalussy procedures have been extended to the Directive.¹ The Consultation Paper provides the background on the process by which CESR has become involved in the regulation and supervision of the asset management industry, CESR's suggestions on areas of work and related priorities, and an indication of the organization that CESR would like to put in place to address these issues. The draft letter comments on these three areas. Specifically, the draft letter fully supports CESR facilitating the convergence of the regulation and supervision of asset management activities across the European Union. The letter states that to have a truly pan-European UCITS market and asset management sector, it is important for the EU to implement a harmonized approach to regulation. With respect to the decision that asset management issues will be discussed within a larger committee addressing various securities matters, the letter urges that asset management issues not be overlooked or overshadowed by other priorities and that there be sufficient focus provided to asset management. Similarly, the letter states that pension matters are distinct from insurance matters and recommends that pension issues be addressed in a separate sector committee or jointly with the securities committee. In addition, the draft letter supports CESR's intention to take a global view of buy-side issues. The letter states that there are numerous securities and other issues (including pension matters) that affect asset management and that it is important for CESR to consider those issues ¹ The Final Report of the Committee of Wise Men (the Lamfalussy Committee) recommended a four-level approach for regulating securities markets. Under the Lamfalussy procedures, the European Securities Committee (ESC) and CESR would assist the Commission in implementing the regulatory approach under which directives and regulations containing framework principles would be adopted and the power to adopt implementing rules would be delegated to the Commission and the ESC. See Memorandum to International Committee No. 39-01 (13618) (June 11, 2001). ² as they relate to the asset management sector. Moreover, the letter argues that the Contact Committee's work should

not preclude the involvement of CESR on important issues that have not been fully resolved by the Committee (e.g., simplified prospectus). With respect to the priorities for CESR, the letter recommends that the highest priority should be given to the harmonized implementation of the UCITS Directive. Moreover, the letter suggests that another high priority should be for CESR to develop a common approach with respect to marketing rules for UCITS funds, including common standards for presenting fund performance. Finally, the letter generally supports the approach proposed by CESR in organizing its work on asset management issues. The letter, however, seeks clarification on the transparency of the work of the Expert Group and the Consultative Working Group that will be advising CESR. If you have any comments on the draft letter, please contact me by Thursday, November 20, 2003 at jchoi@ici.org or at (202) 326-5810. Jennifer S. Choi Associate Counsel Attachment (in .pdf format)

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