

MEMO# 3563

March 6, 1992

NEW ITALIAN SECURITIES LEGISLATION

March 6, 1992 TO: INTERNATIONAL MEMBERS NO. 4-92 INVESTMENT ADVISER MEMBERS
NO. 9-92 RE: NEW ITALIAN SECURITIES LEGISLATION

Counsel to the Institute has provided information about Italian legislation with important implications for members seeking to provide investment services in Italy. The following discussion highlights some of the features of the new law and its possible impact on U.S. investment advisers and funds. Interpretations of the new law remain unsettled. Members doing business in Italy might wish to consult their own counsel to determine the applicability of the law in specific circumstances. As of January 5, 1992, an entity that provides any of a broad range of investment services in Italy or cross-border into Italy must do so through an Italian company or limited partnership that has been authorized as a SIM ("societa di intermediazione mobiliare") by the Italian regulatory authority, Commissione Nazionale per le Societa e la Borsa (CONSOB). Services must be conducted through a SIM if they are provided on a "professional" basis to the "public", terms that are broadly defined. The penalty for breach of the SIM law is a criminal fine and the possibility that all contracts resulting from the unauthorized business will be voidable. Some of the ways in which U.S. money managers may be affected by the SIM law include:

A. Sale of Investment Company Securities in Italy Any entity involved in the promotion and marketing of investment company securities in Italy is subject to the SIM legislation. The fund itself must be authorized under other provisions of Italian Law, such as Law No. 77 (1983), that set out the requirements that any mutual fund, foreign or domestic, must meet before it is sold in Italy. One aspect of the new law is important for U.S. money managers that have established qualified UCITS (Undertakings for Collective Investment in Transferable Securities) in any EC member country. There appears to be a conflict between the new - 1 - law and the UCITS Directive, which was implemented in Italy on February 14, 1992. The UCITS Directive provides that UCITS qualified in any EC member nation may be marketed freely throughout the EC. To the extent that the new SIM law requires sponsors of non-Italian UCITS to be established and registered in Italy, an amendment may be necessary to conform the law to the Directive. However, an amendment to the SIM law to eliminate this conflict would have no effect on the marketing of foreign funds other than those qualified as UCITS in an EC member state.

B. Investment Advisory Services The SIM law requires that any foreign money manager seeking to provide investment advice in Italy establish a separate Italian subsidiary that is an authorized SIM. This aspect of the legislation would conflict with the EC's proposed Investment Services Directive. That Directive would allow investment management firms qualified in one EC member country to provide services throughout the EC. Again, the SIM law may have to be amended to deal with this apparent conflict upon adoption of the Directive; however, non-EC investment management firms likely would remain subject to the law.

C. Purchase of Italian Securities Dealing in securities

in Italy clearly is subject to the new law. CONSOB's initial interpretation was that a foreign party that purchases or sells securities through a broker-dealer that is an authorized SIM would not itself be subject to the law's requirements. It now appears that CONSOB takes the position that any "professional" that initiates securities transactions with an Italian party, even an authorized SIM, would be subject to the law. CONSOB's argument would be that the foreign party is soliciting business in Italy with the public (which apparently is interpreted to include a single Italian party) and is doing so on a professional basis. The Institute's counsel believes that this interpretation could subject a foreign fund or adviser to liability under the SIM law if it initiates a purchase or sale of Italian securities. Unless revised or modified, this application of the law could severely inhibit foreign participation in the Italian market. Not surprisingly, the new law is controversial within the European Community. For example, the UK claims that the law is inconsistent with the Treaty of Rome, which provides for freedom of establishment and freedom to provide cross-border services within the EC. We are informed that the European Commission intends to take action against the law through the European Court of Justice. We emphasize that the full extent and effects of the law - 2 - are as yet unclear. The Italian Foreign Minister has indicated - 3 - that the law may be amended to allow the promotion of some investment services in Italy without establishment and authorization as a SIM, but the content and status of such an amendment are uncertain. Members wishing further information about this legislation should contact the undersigned at (202)955-8419 for a copy of the memoranda received from the Institute's counsel. We will keep you informed of further developments. Angela C. Goelzer Assistant Counsel - International

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