

MEMO# 19235

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UK FSA ISSUES CONSULTATION PAPER ON SOFT DOLLAR DISCLOSURE TO RETAIL FUND INVESTORS

©2005 Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice. [19235] October 7, 2005 TO: EQUITY MARKETS ADVISORY COMMITTEE No. 37-05 INTERNATIONAL COMMITTEE No. 22-05 INVESTMENT ADVISERS COMMITTEE No. 10-05 SEC RULES COMMITTEE No. 53-05 RE: UK FSA ISSUES CONSULTATION PAPER ON SOFT DOLLAR DISCLOSURE TO RETAIL FUND INVESTORS Last week, the U.K. Financial Services Authority (FSA) published a consultation paper on the disclosure of bundled brokerage and soft dollar arrangements to retail fund investors. The consultation period is three months; comments are due on January 6th. The paper and related documents can be found on the FSA's web site at http://www.fsa.gov.uk/pages/Library/Policy/CP/2005/05_13.shtml. The FSA notes that it has endorsed a disclosure-based approach for institutional clients of investment managers, because they are considered to have the necessary market knowledge to understand the information and the commercial influence to influence the manager.¹ It also stated, however, that most investors in retail funds are unlikely to understand information of this nature disclosed about their fund, or to have any means of influencing the investment manager's behavior if they are unhappy with it. The consultation paper seeks comment on the viability of disclosure to retail investors in this context. The FSA alternatively suggests that rules could require an individual or a body to act as a representative of retail investors by considering soft dollar disclosures on their behalf and interacting with the manager where necessary. The consultation paper seeks input on the concept of soft dollar disclosure to such an "investor representative" and input on who might serve as the representative in various organizational structures for funds.² 1 In July 2005, the FSA adopted soft dollar and bundled brokerage rules that apply to investment managers' relationships with institutional clients and executing brokers. See FSA Policy Statement 05-09 (July 2005), available at http://www.fsa.gov.uk/pubs/policy/ps05_09.pdf. 2 Retail funds in the U.K. utilize a number of different fund structures. For investment trusts, the investor representative might be the independent directors. For contractual funds, it might be the depository (which provides a trustee function). For corporate funds, it might be the authorized corporate director, although the FSA specifically asks for comment on the role independent directors might play in the governance of a corporate fund (called an ICVC). 2 If you have particular concerns about the paper that you would like the Institute to consider raising with the FSA, please contact me at 202/371-5430 or rcg@ici.org or Ari Burstein at 202/371-5408 or aburstein@ici.org. Robert C. Grohowski Senior Counsel - International Affairs

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