

**MEMO# 16297**

July 16, 2003

# **INSTITUTE RECOMMENDS THAT EUROPEAN UNION INCLUDE TAILORED BENEFICIAL OWNERSHIP REPORTING RULES FOR ASSET MANAGERS**

[16297] July 16, 2003 TO: INTERNATIONAL COMMITTEE No. 44-03 RE: INSTITUTE RECOMMENDS THAT EUROPEAN UNION INCLUDE TAILORED BENEFICIAL OWNERSHIP REPORTING RULES FOR ASSET MANAGERS As you know, the EU Commission has proposed a new directive that would, among other things, lower the threshold (from 10% to 5%) at which investors must report beneficial ownership of securities.<sup>1</sup> Moreover, the Directive would permit Member States to impose lower thresholds, as is currently the case in the United Kingdom (3% threshold for non-EU money managers) and Italy (2%) and shorter disclosure deadlines or other rules stricter than those required under the proposed Directive. The Commission did not tailor the rules for investment companies or asset managers despite the Institute's comments to the Commission on previous consultations.<sup>2</sup> In meetings with the Institute, the Commission, however, has indicated that it would not oppose tailored rules for asset managers. Recently, the Institute submitted a letter and a supporting statement to the EU Council of Ministers (copies of which are attached) and a similar letter and statement to the rapporteur of the Committee of the European Parliament that is responsible for the Directive recommending that the Directive include tailored rules for asset managers. The Institute argued that the Directive should provide for tailored rules to avoid imposing unnecessary compliance burdens on investment managers that manage assets for third parties and that do not invest for change of control purposes. The Institute stated that tailored rules for investment managers would improve, rather than detract from, the quality of information about the ownership of securities available to the public by eliminating a large volume of filings that are uninformative or potentially misleading. In the letter and supporting statement, the Institute supported the imposition of a uniform new rule requiring asset managers to report initially at the 5% level and report any 1% changes on an annual basis, in exchange for certainty that Member States could not impose stricter reporting thresholds or more frequent disclosures. Specifically, the Institute recommended that the European Union permit institutional investors to disclose major shareholdings within five business days of reaching the initial 5% threshold (as would be required of all investors). After reaching the initial threshold, institutional investors should be 1 See Memorandum to International Members No. 12-03 (15830) (Apr. 8, 2003). 2 See Memorandum to International Members No. 17-02 (14875) (July 8, 2002). 2 permitted to disclose within ten business days of the end of the calendar year if there has been a 1% change in their holdings as of the end of the year unless their holdings exceed 10% at any time during the year. If the holdings of the institutional investor exceed the 10% threshold

at any time, the institutional investor would be required to disclose within five business days of the acquisition. In addition, the Institute recommended that the Directive include a provision that would not allow Member States to impose more frequent disclosures on institutional investors than those specified under the Directive. Jennifer S. Choi Associate Counsel Attachment no. 1 (in .pdf format)

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