

MEMO# 11927

June 5, 2000

EUROPEAN COMMISSION APPROVES AMENDED PROPOSALS TO UCITS DIRECTIVE

1 See Memorandum to International Committee No. 30-98 (Sept. 16, 1998) (European Commission's original proposals to the UCITS Directive). 2 See Memorandum to International Committee No. 8-00 (Mar. 10, 2000) (European Parliament adopts its version of the proposals to the UCITS Directive); Memorandum to International Committee No. 5-00 (Feb. 7, 2000) (Committee on Economic and Monetary Affairs of European Parliament recommends amendments to the UCITS proposals). [11927] June 5, 2000 TO: INTERNATIONAL COMMITTEE No. 19-00 RE: EUROPEAN COMMISSION APPROVES AMENDED PROPOSALS TO UCITS DIRECTIVE

Attached are two amended proposals to the UCITS Directive approved by the European Commission on May 30, 2000.¹ The first proposal (Proposal I) would provide a UCITS with greater flexibility in the type of investments it may make. The second proposal (Proposal II) would provide a "passport" for management companies to operate throughout the European Union (EU). The amended proposals incorporate many of the changes suggested by the European Parliament.² These proposals now will be discussed by the Council of Ministers and sent to the European Parliament for a second reading. Some of the significant changes are highlighted below.

Proposal I Fund of Funds. The Commission's amended proposal would allow fund of funds and permit investments by UCITS in other UCITS and non-UCITS funds. The Commission adopted the Parliament's recommendation to limit UCITS investments in other non-UCITS funds to 30% of the assets of a UCITS. Moreover, consistent with the Parliament's suggestions, the Commission's amended proposal would impose certain qualitative and quantitative conditions on fund of funds arrangements. The Commission's text, however, does not contain the requirements of the Parliament regarding "the role and the liability of the depositary" and that the rules "laid down by this Directive are respected." The Commission omitted these provisions because it believes that they would prohibit "investments in almost all non European funds which would be even narrower than the currently allowed 5% investment in those funds."

Index Funds. The Commission's amended proposal would lower the maximum limit for investment in shares issued by the same body to replicate a securities index from 35% to 20%, as recommended by the Parliament.

Investments in Derivatives. In response to the Parliament, the Commission's amended proposal would permit a UCITS to invest, as part of its general investment policy or for hedging purposes, in financial derivative instruments, including OTC derivatives. The Commission's amended text, however, would impose additional requirements for investments in OTC instruments.

Subsidiaries. The Commission's amended proposal would eliminate the limitation for UCITS in establishing subsidiaries incorporated outside the EU.

Proposal II Capital Requirements. In response to the Parliament's recommendation to increase the initial capital required for a management company from the Commission's original requirement of EUR 50,000 to EUR 150,000, the Commission's amended proposal would raise the initial capital requirement to EUR 125,000. Delegation. The Commission's amended proposal would leave to the discretion of the member states whether to allow management companies to delegate certain functions to third parties. If a member state permits delegation, the Directive would require the competent authorities to ensure that the mandate satisfies certain conditions. Unlike the Parliament's proposal, the Commission's amended text contemplates delegation of not only specific investment decisions in accordance with investment- allocation criteria determined by the management company but other functions described in Annex II, such as investment management, marketing, and administration. Moreover, the Commission's proposal would no longer require prior approval of the delegation by the competent authorities but would require prior notification. The Commission's proposal would continue to prohibit delegation to a parent company. Simplified Prospectus. The Commission's proposal would clarify that the provision in the Directive for the simplified prospectus provides for maximum harmonization and prohibits member states from requiring documents or items in addition to those required in the Directive. Therefore, a simplified prospectus could be used in all member states without alteration except for translation. Jennifer S. Choi Assistant Counsel Attachment