

MEMO# 18963

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KOREAN FSS STAFF CLARIFIES STANDARD IN 5% OWNERSHIP REPORTING RULE

©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. [18963] June 22, 2005 TO: INTERNATIONAL COMMITTEE No. 13-05 INTERNATIONAL INVESTING SUBCOMMITTEE No. 2-05 INTERNATIONAL OPERATIONS ADVISORY COMMITTEE No. 12-05 RE: KOREAN FSS STAFF CLARIFIES STANDARD IN 5% OWNERSHIP REPORTING RULE Korean securities regulators recently amended the rules requiring disclosure of major shareholdings in Korea. Under the amended rule, which took effect on March 29, 2005, an investor that acquires 5% or more of a publicly traded company's total outstanding shares, or changes ownership by 1% or more thereafter, must disclose that fact within five days of the transaction. Under the amended rule, investors are required to disclose the specific purpose of the investment, certifying that it is either "for investment only" or that it is for the purpose of "exercising influence on management." At recent International Committee and subcommittee meetings, members expressed concerns that the phrase "exercising influence on management" could be broadly construed to include actions such as the routine voting of shares or routine contact with a portfolio company's management, making it difficult or impossible to certify that the investment was being made for investment purposes only. We sought clarification on this point from the representative office of the Financial Supervisory Service (FSS) in Washington, D.C., headed by Yoon Kon Choi. Mr. Choi clarified that the FSS does not consider the routine exercise of shareholder rights to be "exercising influence over management." Instead, the FSS considers investors to be "exercising influence over management" if they make a shareholder proposal or request a shareholder meeting to take a corporate action set forth in Presidential Decree 86-7. The types of corporate actions set forth in that Decree include selecting, suspending or firing directors or auditors, changing the company's capital structure, declaring a dividend, or merging or splitting the company. Mr. Choi also provided a copy of an FSS press release from March 31, 2005 on the amendments to the 5% ownership reporting rule, a copy of which is attached. Robert C. Grohowski Associate Counsel Attachment (in .pdf format)