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INSTITUTE DISCUSSIONS REGARDING EUROPEAN ISSUES

[13261] March 16, 2001 TO: INTERNATIONAL COMMITTEE No. 20-01 RE: INSTITUTE DISCUSSIONS REGARDING EUROPEAN ISSUES During the week of March 5, 2001, the Institute staff met with Institute member firms in the United Kingdom, European industry representatives, and European Union (EU) officials to discuss a variety of issues in Europe. The staff focused on problems that members face in marketing funds in Europe under the current UCITS Directive and on issues arising out of the UCITS proposals and the proposed directive on occupational pensions.1 This memorandum describes the Institute staff's discussions regarding two issues: practical impediments to marketing UCITS funds in Europe and the proposed directive on occupational pensions. The issues regarding the UCITS proposals were described in a separate memorandum to the International Committee.2 Impediments to a Pan-European Market for UCITS Funds Most of the members with whom the Institute staff spoke are of the view that marketing funds, although difficult and cumbersome, is manageable in most European countries. Members stated that cultural differences in various countries dictate a tailored approach to each country and that country-specific factors have to be taken into consideration in marketing a UCITS fund. Most members agree that registering UCITS funds in certain Southern European countries is more challenging than in the Northern European or Scandinavian countries. The most common complaints are the length of time it takes to register funds and the requests by host country regulators for additional documents, including translated copies of fund organizing documents.3 1 See Memorandum to International Committee No. 38-00 (Oct. 26, 2000) (describing the European Commission's proposal for a directive on occupational pensions). 2 See Memorandum to International Committee No. 19-01 (Mar. 13, 2001). 3 The UCITS II Proposal would provide for a simplified prospectus and would prohibit member states from requiring additional disclosure documents to be delivered with the prospectus. Investors may request additional information (e.g., a full prospectus with a copy of fund organizational documents), and host member states may be able to require that funds file these documents with their regulators. 2Members also noted that Italy requires a corresponding bank to act as an intermediary for the sale and redemption of fund shares. Spain also requires a paying agent located in the country. We understand that in Italy, for example, the corresponding bank acts as a tax- withholding agent for local investors. Another significant issue for members is discriminatory tax regulation. For example, Germany's tax regulations disadvantage foreign funds. We understand that the German government will be introducing legislation to eliminate this discriminatory treatment of non-German funds. Occupational Pensions Directive The Institute staff met with members of the European Commission and Parliament regarding the occupational pensions directive. We understand that there has been general support for the Commission's proposal. The proposal has been forwarded to the Council of Ministers and the Parliament for their

consideration. At the Council level, we understand that the Swedish Presidency of the EU currently is consulting with the member state representatives in order to reach political agreement on the main principles and to avoid disagreement at the Council level. The main principles that need to be agreed upon include the scope of the directive (i.e., the institutions that are covered by the directive), prudential requirements, investment rules, and cross-border provision of services. The Swedish Presidency hopes to reach agreement on these issues by the Council meeting on May 7, 2001. We understand that an agreement would be on general principles and the specific details would be left for subsequent presidencies to tackle. In the second half of 2001, the EU Presidency will be turned over to Belgium, which will likely view pensions as a priority but from a pillar one (i.e., public retirement system) perspective. Therefore, although Belgium will proceed with the occupational pensions directive, it will review the status of pillar one in the member states before making progress on the directive. In the Parliament, the most significant issue for members will be coverage of biometric risks (risks of longevity, disability, and premature death). Another issue will be investment restrictions with some countries seeking complete investment freedom and others seeking to permit member states to maintain asset allocation restrictions. There are two opposing views in the Parliament. One side believes that the directive affects only the second pillar pensions (i.e., occupational pensions) and should only address financial products. This faction takes the view that there should be no discussion about biometric risks or permissible investments. The other side believes that the second pillar is a substitute for the first pillar and therefore must consider the social implications of the pension system. This group believes that all three biometric risks must be covered. The staff had a discussion with the Parliamentary rapporteur of the directive, who appears to be seeking a balanced approach to both the investment restriction and biometric risk issues. It is unclear, however, how the balancing of opposing views on these issues would be structured and implemented. Possibilities include an amendment that would allow investment restrictions to be phased out over a period of time or an amendment to require that employees 3be provided an option to cover biometric risks. We have been advised that the rapporteur is circulating his draft report and an English version will likely be available for limited distribution next week. The draft Parliament report by the rapporteur is expected to be discussed at the meeting of the Economic and Monetary Affairs Committee of the Parliament on March 21, 2001. The companion tax proposal to the pensions directive is expected in April, and the Parliament hopes to complete its first reading of the directive by July. Finally, in the Institute staff's discussion with members, although most member firms have not yet had the opportunity to review the EU's proposal for an occupational pensions directive, they noted certain aspects of the retirement system in several individual European countries that also may be issues at the European level. Member firms stated that investment restrictions and restrictive fee structures would the most significant issues for the industry. European Union Members located in Europe are of the view that the Institute's information on the activities of the European Union in Brussels was valuable. Most members are following actively specific regulatory and legislative developments in individual countries and are not able to commit resources to obtaining information about the EU or lobbying on specific issues in the EU. Jennifer S. Choi Assistant Counsel