

**MEMO# 18874**

May 24, 2005

## **EU CONSULTATION PAPER ON SHAREHOLDER RIGHTS**

©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. ACTION REQUESTED [18874] May 24, 2005 TO: INTERNATIONAL COMMITTEE No. 11-05 RE: EU CONSULTATION PAPER ON SHAREHOLDER RIGHTS The EU Commission has issued a second consultation paper on shareholders' rights and cross-border voting, a copy of which is attached. The Commission's consultation paper seeks comments on specific measures that may be proposed by the Commission, especially with respect to cross-border voting. This memorandum briefly describes the Commission's proposals. Before proposing various minimum standards, the Commission first discusses the scope of the measures that the Commission will ultimately take with respect to shareholder rights and then discusses a fundamental change of the Commission's approach to the directive. First, the Commission intends to propose a directive on shareholder rights that would apply primarily to listed companies. The Commission, however, does not intend to apply the directive to listed collective investment undertakings that fall within the scope of the UCITS Directive or represent an equivalent undertaking. The Commission seeks comment whether the EU level measure should only apply to listed companies and should exclude UCITS. Second, in an earlier consultation, the Commission considered introducing the concept of the "ultimate investor" who would be entitled to control the voting rights attached to its shares of a company. The purpose of introducing the concept was to provide the rights and benefits of shareholders to the ultimate investor that may hold the shares through a chain of intermediaries and may not legally be the shareholder of record. In this consultation paper, the Commission changes its approach. This consultation paper states that work on the definition of the ultimate investor should be pursued at a later time, unless commenters overwhelmingly believe otherwise. The Commission also seeks comment on various minimum standards that it intends to propose with respect to: • Stock lending; • Depositary receipts; 2 • Pre-general meeting communications (including notice periods, content of notices, dissemination and language of meeting notices and materials); • Shareblocking; • Shareholder rights in relation to the general meeting (including electronic participation at general meetings, right to ask questions, right to add items to the agenda and table resolutions, voting by mail, and proxy voting); • Intermediaries in the cross-border voting process; and • Communication after the general meeting. The proposal addresses a number of obstacles to cross-border voting identified as priorities by the Institute and its members. Among other things, it would (1) provide minimum notice periods for shareholder meetings, (2) eliminate shareblocking, (3) allow proxy voting and voting by correspondence (particularly by electronic means), and (4) permit intermediaries to cast split votes. The Institute intends to submit comments on the Commission's

consultation paper. Responses to the consultation paper must be submitted to the Commission no later than July 15, 2005. If you have specific concerns with the consultation paper that you would like the Institute to address, please contact me at (202) 326-5826 or [podesta@ici.org](mailto:podesta@ici.org) by June 15, 2005. Mary S. Podesta Senior Counsel Attachment (in .pdf format)

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