

MEMO# 13162

February 16, 2001

EU COUNCIL REFERS UCITS PROPOSAL BACK TO THE NATIONAL AMBASSADORS

[13162] February 16, 2001 TO: INTERNATIONAL COMMITTEE No. 11-01 RE: EU COUNCIL REFERS UCITS PROPOSAL BACK TO THE NATIONAL AMBASSADORS At the February 12, 2001 meeting, the Council of the European Union did not reach agreement on the text of a proposal (UCITS II Proposal) to amend the UCITS Directive to create a passport for management companies to operate throughout the European Union. The Council has referred the proposal to the national ambassadors (COREPER) to resolve a number of outstanding issues, including capital requirements, delegation to third parties, and the European passport for management companies.¹ The Council has requested that the COREPER reach agreement on the outstanding issues by March 1, 2001. We briefly describe below what we understand the latest text of the UCITS II Proposal to be and the discussions at the Council meeting.

Capital Requirements The Swedish Presidency's most recent UCITS II Proposal would require a management company to have EUR 125,000 as initial capital and (2) .02% of the amount of the value of the portfolios of the management company that exceeds EUR 250,000,000 as ongoing capital.² The ongoing capital must not, in any case, be less than 13 weeks of expenditures (as currently provided for in the Capital Adequacy Directive). For purposes of calculating the ongoing capital requirement, the following portfolios would be included: (1) unit trusts/common funds managed by a management company, including portfolios for which it has delegated the management function but excluding portfolios that it is managing under delegation; (2) investment companies for which a management company is the designated management company; and (3) other collective investment undertakings managed by a management company, including portfolios for which

¹ See Memorandum to International Committee No. 10-01 (Feb. 9, 2001) (describing the outstanding issues on the UCITS II Proposal for which the COREPER met to discuss in preparation for the February Council meeting).

² The maximum initial and ongoing capital would be EUR 10,000,000. It has delegated the management functions but excluding portfolios that it is managing under delegation.

³ The proposal also includes a provision that would allow management companies to substitute 50% of the ongoing capital with insurance. We understand that, at the February 12 Council meeting, the UK representative presented an amendment to this guarantee provision to allow investor compensation schemes (in addition to insurance) to substitute for the ongoing capital requirements. Separately, the latest text would require investment company UCITS funds that have not designated a management company to have an initial capital of EUR 300,000. Finally, there appears to have been some discussion and support at the Council meeting from a number of member states to review the capital requirements three or four years after the Directive comes into effect. A "regulatory committee" made up of experts from member states with input from the Commission would be responsible for the review.

Delegation The latest text includes (in bracketed form) compromise language on

delegation. The language would prohibit a management company from delegating “all or a major part of its functions, such that it avoids compliance with effective supervision as regards capital adequacy, prudential or other supervisory requirements as set out in this Directive.” We understand that the member state representatives reacted positively to this compromise text on delegation although several member state representatives would not agree to specific language in the absence of an overall agreement on the UCITS II Proposal. EU Passport for Management Companies At the Council meeting, the British representative reiterated the UK’s position that the UCITS II Proposal does not provide a European passport for management companies to manage contractual UCITS funds. For this reason, the UK is of the view that the passport created by the UCITS II Proposal is limited and does not justify the additional regulatory requirements, especially with respect to capital. This position, however, has not gained much support from other countries and may remain a significant stumbling block for an overall agreement. * * * Please let us know if you have any concerns about the proposal. If you have any comments or questions regarding the proposal, please contact me at (202) 326-5810 or at jchoi@ici.org. Jennifer S. Choi Assistant Counsel 3 We understand that Denmark has reintroduced the concept that only harmonized funds (UCITS) should be included for purposes of calculating ongoing capital requirements.

Copyright © by the 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.