

MEMO# 18241

November 23, 2004

DRAFT INSTITUTE COMMENT LETTER ON EU SHAREHOLDER RIGHTS

URGENT/ACTION REQUESTED [18241] November 23, 2004 TO: INTERNATIONAL COMMITTEE No. 53-04 RE: DRAFT INSTITUTE COMMENT LETTER ON EU SHAREHOLDER RIGHTS Attached is the Institute's draft comment letter in response to the EU Commission's consultation paper on improving shareholder rights. Comments on the consultation paper are due on December 16, 2004. A conference call will be scheduled for December 7, 2004 at 2:00 p.m. (Eastern Time) to discuss the draft comment letter. If you wish to participate on the call, please contact Shelley Haskell at (202) 326-5836 or at shaskell@ici.org by December 3, 2004. The draft comment letter is generally supportive of the Commission's proposals for a directive on shareholder rights. We will discuss the letter in detail on the conference call. One of the key issues on which the Commission seeks comment is how to determine, when securities are owned through intermediaries, the ultimate investor who would be the person or entity to whom the rights conferred in the directive would be owed. The EU Commission would define the ultimate investor as the last natural or legal person holding a securities account in the intermediary chain and who is not a securities intermediary admitted as a participant in the securities holding systems operated in Europe by Central Securities Depositories or International Central Securities Depositories. Under the Commission's proposed definition, for purposes of the Directive, US mutual funds would not be viewed as the ultimate investor of the securities that they own. Generally, the global custodians would be considered the ultimate investor. If US institutional investors are not deemed the ultimate owners of securities, the other benefits of the Commission's proposals to improve shareholder rights (e.g., information to shareholders before a general meeting, rights to vote in absentia, and right to receive results of votes and minutes after a general meeting) would not accrue to US institutional investors that hold EU-listed shares through a non-EU intermediary. We seek member input on whether we should object to the definition of ultimate investor. Or do members believe that their shareholder rights can be protected adequately through their global custodians through contract and thus US funds do not need to fall within the definition of ultimate investor? 2 The Commission also raises the issue of whether securities intermediaries identified as the ultimate investor should be required to disclose the identity of their clients at the request of the issuer if the issuer suspects that the ultimate investor holds the shares on behalf of others. Do members believe that shareholders should have the ability to remain anonymous and be able to opt out of being identified to issuers? Jennifer S. Choi Associate Counsel Attachment (in .pdf format)

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