

MEMO# 19023

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ICI LETTER ON 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. [19023] July 18, 2005 TO: INTERNATIONAL MEMBERS No. 22-05 INTERNATIONAL INVESTING SUBCOMMITTEE No. 6-05 RE: ICI LETTER ON EU CONSULTATION PAPER ON SHAREHOLDER RIGHTS The Institute has filed a comment letter with the European Commission on its second consultation paper on shareholder rights and cross-border voting.¹ The most significant aspects of the comment letter are summarized below and a copy of the letter is attached. Persons Entitled to Control Voting Rights The letter strongly supports, and urges the Commission to revisit, the adoption of a formal definition of a person entitled to control the voting rights attached to the shares of a company in which he/she has invested. The letter states that while the proposed definition of the “ultimate investor” in the consultation paper could be a good first step in strengthening rights for shareholders, it requires further scrutiny in order to ensure that it would accomplish the goals of providing voting rights to all types of shareholders. The letter urges the Commission to continue to examine other ways to define the “ultimate investor” to ensure that they receive control of the voting rights to which they are entitled. Shareblocking The letter strongly supports the Commission’s proposal to abolish provisions making the right to vote in a General Meeting conditional, or allowing the right to vote to be made conditional, on the immobilization of the corresponding shares for any period of time prior to a meeting. The letter also strongly supports the Commission’s proposal to require a record date system where the right to vote at a General Meeting will be made conditional upon qualifying as a shareholder on a given date prior to the relevant meeting. Voting In Absentia The letter supports the proposed minimum standards that would ensure that shareholders of listed companies have the possibility to vote by correspondence and that Member States remove existing requirements, and not impose new requirements, on companies ¹ See Memorandum to International Members No. 17-05, dated May 24, 2005 [18885]. ² that would hinder or prohibit voting by electronic means at General Meetings. Similarly, the letter supports the proposed minimum standards to further facilitate the use of proxy voting across Member States. Stock Lending The letter supports the proposed minimum standards that would require stock lending agreements to contain provisions regarding the voting rights attached to transferred shares. The letter also supports requiring an intermediary that enters into a stock lending agreement in relation to shares which the intermediary holds on behalf of another person to inform that person of its intention to enter into such an agreement and the effects of the agreement with regard to the voting rights attaching to the relevant shares. Depositary Receipts The letter strongly supports explicitly recognizing holders of depositary receipts as holding the rights attached to the underlying shares and prohibiting EU-listed companies from entering into depositary

agreements that specifically exclude or limit voting rights of depositary receipt holders. The letter therefore supports the proposed minimum standard that holders of depositary receipts will alone have the right to determine how the voting rights attached to underlying shares represented by depositary receipts are exercised. Communication of Information Regarding General Meetings The letter supports the Commission's proposals on communicating information regarding General Meetings that seek to ensure that shareholders, no matter where they are based, are in a position to make informed decisions. Most significantly, the letter supports the establishment of notice periods for convening a General Meeting; proposed minimum standards relating to the contents of the notice of the General Meeting; and the establishment of minimum standards that would require Member States to ensure that issuers post on their websites information regarding shareholders' rights in relation to the General Meeting. Shareholders' Rights in General Meetings The letter supports the establishment of minimum standards relating to shareholder rights with respect to participation in the General Meeting, most significantly, proposed minimum standards on the way shareholder questions should be filed and dealt with at General Meetings. The letter also supports proposing some form of minimum standards relating to the maximum shareholding threshold that Member States could impose for shareholders to table resolutions and place items on the General Meeting agenda. Ari Burstein Associate Counsel Attachment (in .pdf format) Note: Not all recipients receive the attachment. To obtain a copy of the attachment, please visit our members website (<http://members.ici.org>) and search for memo 19023, or call the ICI Library at (202) 326-8304 and request the attachment for memo 19023.

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