

MEMO# 20432

October 3, 2006

Draft Institute Letter on IOSCO's Report on the Role of Independent Oversight in Fund Governance

©2006 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 [20432] October 3, 2006 TO: INTERNATIONAL COMMITTEE No. 26-06 INTERNATIONAL OPERATIONS ADVISORY COMMITTEE No. 29-06 RE: DRAFT INSTITUTE LETTER ON IOSCO'S REPORT ON THE ROLE OF INDEPENDENT OVERSIGHT IN FUND GOVERNANCE As you know, the Technical Committee of the International Organization of Securities Commissions (IOSCO) published a report in July on the governance of collective investment schemes (CIS) around the world.¹ Part I of the report contains an examination of the oversight functions in the various forms of CIS used around the world, and Part II provides a more specific analysis of the concept of independence and the independent review and oversight mechanisms utilized in CIS structures. Part II of the report was later republished as a consultation document, with a deadline for comments of October 15, 2006. Attached for your review is a draft ICI comment letter on Part II of the report. We plan to discuss the draft at the International Committee meeting on October 10, 2006. If you are not planning to attend the October 10th International Committee meeting, please provide any comments to me (rcg@ici.org or 202-371-5430) or Glen Guymon (gguymon@ici.org or 202-326- 5837) by Monday, October 9, 2006. The draft letter generally supports IOSCO's work in this area, and strongly supports the consultation report's clear recognition of both the importance of independent oversight and the need for significant flexibility to adapt regulatory requirements on independent oversight to different CIS models. Despite that general support, however, the draft letter expresses three main concerns. First, the letter discusses a recommendation in the report that independent oversight entities (IOEs) should have a duty of reporting material compliance failures or irregularities to the regulatory authorities or CIS.² See Memoranda No. 20158, dated July 7, 2006, and No. 20238, dated August 2, 2006. The report is available on IOSCO's web site at <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD219.pdf> (Part I) and <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD220.pdf> (Part II).² shareholders. The letter expresses our concern that this principle in the report and the accompanying explanation suggests that an IOE's duty to disclose material failures should be mandatory, rather than discretionary. The letter recommends that IOSCO revise this principle so that IOEs have the flexibility to determine when and how to publicly disclose such breaches or irregularities. Second, the draft letter expresses a concern that the report in some respects may not fully recognize the important role played by internal CIS compliance mechanisms, such as the use of compliance officers and written compliance programs. Third, the letter expresses a concern that the report in certain respects sets forth unrealistic standards or is

overly prescriptive. The letter offers several suggestions for technical corrections that would help alleviate this problem. We look forward to discussing the draft with you at the October 10th International Committee meeting. Robert C. Grohowski Senior Counsel - International Affairs Attachment (in .pdf format)

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