

MEMO# 20479

October 12, 2006

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. [20479] October 12, 2006 TO: INTERNATIONAL MEMBERS No. 26-06 INTERNATIONAL OPERATIONS ADVISORY COMMITTEE No. 30-06 RE: 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. The ICI's comment letter on Part II of the report is attached. The 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 ICI's 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 shareholders. The letter expresses our concern that this may suggest that an IOE's duty to disclose material failures should be mandatory, rather than discretionary, and recommends that IOSCO revise the principle so that IOEs have the flexibility to determine when and how to publicly disclose such breaches or irregularities. Second, the 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, and offers several suggestions for technical corrections that would help alleviate this problem. ¹ 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 Robert C. Grohowski Senior Counsel - International Affairs 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 20479, or call the ICI Library at (202) 326-8304 and request the attachment for memo 20479.

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