MEMO# 20721

December 22, 2006

IOSCO Issues Consultation Report on Soft Commissions

 [20721] December 22, 2006 TO: EQUITY MARKETS ADVISORY COMMITTEE No. 28-06 INTERNATIONAL COMMITTEE No. 31-06 INVESTMENT ADVISERS COMMITTEE No. 8-06 SEC RULES COMMITTEE No. 56-06 RE: IOSCO ISSUES CONSULTATION REPORT ON SOFT COMMISSIONS The Technical Committee of the International Organization of Securities Commissions (IOSCO) has issued a Consultation Report on Soft Commission Arrangements (the "Report").1 The Report does not attempt to develop general principles regarding soft commission arrangements, recognizing that the relevant law in many jurisdictions is changing. Instead, the Report identifies conflicts of interest created by soft commission arrangements and presents the results of a survey of the soft commission regulatory regimes of 19 IOSCO member organizations that participate in IOSCO's Standing Committee on Investment Management. The Technical Committee has invited comments on the Report, which must be submitted by March 15, 2007. The Report defines a soft commission arrangement as one in which a collective investment fund operator receives a benefit in connection with a fund's payment of commissions on fund portfolio securities transactions. Although the majority of jurisdictions surveyed specifically limit by law or regulation the benefits that may be obtained with soft commissions, seven of the jurisdictions surveyed do not have any specific limitations, so long as arrangements generally follow fiduciary principles. The Report explicitly recognizes that each IOSCO member must choose its own approach to limiting the benefits that fund operators may receive from soft commission arrangements. The primary conflict of interest identified in the Report is the possible incentive for a fund operator to generate portfolio securities transactions for a fund to increase soft commission benefits to the operator. The Report also notes that soft commission arrangements may provide incentives for fund operators to direct fund brokerage based on the benefits provided to the operators instead of the 1 Consultation Report - Soft Commissions, Report of the Technical Committee of IOSCO (Nov. 2006), available at http://www.iosco.org/library/pubdocs/pdf/IOSCOPD227.pdf. 2 most favorable execution for the fund. The Report recognizes that soft commission arrangements can provide benefits to fund investors provided that conflicts of interest are adequately addressed. The Technical Committee's request for comment centers on the Report's discussion of conflicts of interest. Specifically, the Report poses the following questions: 1. What are the conflicts of interest associated with soft commission arrangements? 2. How do you manage those conflicts of interest? 3. Do you agree with the Technical Committee's analysis of those conflicts in this paper? The Technical Committee also asked for comment on whether any other aspects of soft commission arrangements should be addressed in the paper. We will discuss the Consultation Report at our next International Committee meeting

on January 29, 2007. Please contact me directly at 202.326.5837 or gguymon@ici.org if you would like to discuss these issues before the meeting. Glen S. Guymon Assistant Counsel - International Affairs

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