

MEMO# 16896

December 18, 2003

DRAFT INSTITUTE COMMENT LETTER TO EU ADVISORY PANEL ON THE EXTENSION OF THE LAMFALUSSY PROCESS TO THE UCITS DIRECTIVE

ACTION REQUESTED [16896] December 18, 2003 TO: INTERNATIONAL COMMITTEE No. 83-03 RE: DRAFT INSTITUTE COMMENT LETTER TO EU ADVISORY PANEL ON THE EXTENSION OF THE LAMFALUSSY PROCESS TO THE UCITS DIRECTIVE Attached is a draft Institute comment letter to the Advisory Panel of Financial Services Experts (Advisory Panel) established by the Economic and Monetary Affairs Committee (EMAC) of the EU Parliament. The Advisory Panel is seeking informally comments on the Lamfalussy process to assist EMAC in drafting a report on the Directive to extend the Lamfalussy process to other sectors, including UCITS. As a general matter, the draft letter fully supports the proposal to extend the Lamfalussy process to the asset management sector, which could facilitate the convergence of the regulation and supervision of asset management activities across the European Union. The letter notes that, despite the UCITS Directive, selling the same mutual fund throughout the European Union remains exceedingly difficult. There are three principal problems in marketing UCITS in Europe: (1) the UCITS Directive is interpreted and implemented differently in Member States; (2) the marketing rules are left to individual Member States; and (3) because it has proven to be difficult to amend the Directive, the Directive does not have the flexibility to accommodate developments in the market and may impede innovation. The draft letter states that the Lamfalussy process would provide flexibility with respect to the technical aspects of the UCITS Directive, accommodate changes or developments in the market, and harmonize the regulatory approach of the Member States through Levels 3 and 4 in furtherance of the principles laid down in the Directive. The letter argues that extending the Lamfalussy process to the UCITS Directive would not fundamentally alter the basic principles of the UCITS Directive or the Parliament's role with respect to the UCITS Directive. In addition to the general comments, the letter includes comments with respect to the attention given to the asset management sector and the priority issues that should be addressed as soon as possible under the Lamfalussy process. Specifically, the letter urges that asset management issues not be overlooked or overshadowed by other priorities and that there be sufficient focus provided to asset management. With respect to the priority issues to be addressed through the Lamfalussy process, the letter recommends that the highest priority should be given to the harmonized implementation of the UCITS Directive. Moreover, the letter suggests that another high priority should be the development of a common approach by 2 Member States with respect to marketing rules for UCITS funds, including common standards for presenting fund performance. If you have any comments on the draft letter, please contact me by

Friday, January 2, 2004 at jchoi@ici.org or at (202) 326-5810. Jennifer S. Choi Associate Counsel Attachment (in .pdf format)

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