

MEMO# 13219

March 2, 2001

NATIONAL AMBASSADORS AGREE ON TEXT OF UCITS II PROPOSAL

[13219] March 2, 2001 TO: INTERNATIONAL COMMITTEE No. 18-01 RE: NATIONAL AMBASSADORS AGREE ON TEXT OF UCITS II PROPOSAL At the March 1, 2001 meeting, the national ambassadors (COREPER) reached agreement on the text of a proposal to amend the UCITS Directive to create a passport for management companies to operate throughout the European Union (UCITS II Proposal). With respect to delegation, the agreed upon text modifies an earlier version to accommodate Irish concerns. The text of the UCITS II Proposal that was agreed to by the COREPER will be forwarded to the Council of the European Union for a vote on March 12, 2001. It is expected that the Council will adopt the text without further debate and will make publicly available its official text in the next few months. The UCITS II Proposal then will be forwarded to the Parliament for a second reading in the fall of 2001. We briefly describe below what we understand to be the text of the UCITS II Proposal that was agreed to by the COREPER.

Capital Requirements The COREPER agreed to the capital requirements that we reported were being proposed by the Swedish Presidency of the European Union.¹ A management company would be required to have (1) initial capital of EUR 125,000 and (2) ongoing capital of .02% of the amount of the value of the portfolios of the management company that exceeds EUR 250,000,000.² The ongoing capital must not, in any case, be less than 13 weeks of expenditures (as currently provided for in the Capital Adequacy Directive). Separately, an investment company UCITS fund that has not designated a management company would be required to have initial capital of EUR 300,000. A management company would be permitted to substitute 50% of the ongoing capital with insurance. The UK's amendment permitting investor compensation schemes (in addition 1 See Memorandum to International Committee No. 11-01 (Feb. 16, 2001) (EU Council refers UCITS II Proposal back to the national ambassadors). 2 The maximum initial and ongoing capital would be EUR 10,000,000. 2to insurance) to substitute for the ongoing capital requirements was not agreed to by the COREPER.

Delegation The COREPER agreed to modify the provision on delegation relating to a "letter box entity" to address concerns raised by the Irish delegation. The COREPER amended the language of the text to state that "[i]n no case shall the management company's and the depositary's liability be affected by the fact that the management company delegated any functions to third parties nor shall the management company delegate its functions to an extent that it becomes a letter box entity." For an investment company UCITS fund that has not designated a management company authorized pursuant to the UCITS Directive, the investment company itself would be required to comply with the conditions for delegation.³ * * * Please let us know if you have any concerns about the proposal. If you have any comments or questions regarding the proposal, please contact me at (202) 326-5810 or at jchoi@ici.org. Jennifer S. Choi Assistant Counsel

³ An investment company would have to comply with the delegation provisions either directly or through the management company that was designated by the

investment company.

Copyright © by the 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.