

MEMO# 15214

September 30, 2002

INSTITUTE COMMENT LETTER TO IOSCO ON RESPONSIBILITIES AND DISCLOSURE BY COLLECTIVE INVESTMENT SCHEMES AS SHAREHOLDERS

[15214] September 30, 2002 TO: INTERNATIONAL COMMITTEE No. 71-02 RE: INSTITUTE COMMENT LETTER TO IOSCO ON RESPONSIBILITIES AND DISCLOSURE BY COLLECTIVE INVESTMENT SCHEMES AS SHAREHOLDERS As you know, the International Organization of Securities Commissions (IOSCO) has requested comment on “Collective Investment Schemes as Shareholders: Responsibilities and Disclosure,” a report prepared by Standing Committee 5 – Investment Management of IOSCO’s Technical Committee. The report discusses a number of regulatory and disclosure issues relating to the exercise of voting rights by collective investment schemes (CIS) and their investment managers. Specifically, the report reviews industry and regulatory responses to three questions posed by the Committee and presents the Committee’s views on what the appropriate regulatory responses to these questions should be. On September 27, 2002, the Institute submitted a comment letter (a copy of which is attached) to IOSCO, which is substantially similar to the draft comment letter circulated to members.¹ The Institute’s letter is generally supportive of the Committee’s report. In the letter, the Institute stated that investment advisers have an obligation to treat voting and other shareholder rights attached to a fund’s portfolio securities as an important asset of the fund and to exercise those rights in the best interest of the fund. The Institute emphasized that investment advisers must carefully consider the costs and benefits associated with exercising the voting rights of a particular portfolio company in recognition of the fact that responsibilities with respect to voting rights are only a part of the overall fiduciary duties that are owed to the fund. To ensure that any action taken with respect to voting rights is in the best interest of the fund, the Institute recommended that collective investment schemes be given flexibility to determine which entity or person should execute the voting responsibility. In addition, the Institute supported disclosure of fund voting policies and procedures, which investors might find helpful, and supported giving collective investment schemes discretion to disclose how they voted on particular portfolio securities. Jennifer S. Choi Associate Counsel Attachment (in .pdf format) 1 See Memorandum to International Committee No. 67-02 (Sept. 9, 2002).