

MEMO# 16332

July 22, 2003

DRAFT INSTITUTE COMMENT LETTER ON THE EU COMMISSION'S ACTION PLAN ON MODERNIZING COMPANY LAW AND ENHANCING CORPORATE GOVERNANCE

ACTION REQUESTED [16332] July 22, 2003 TO: INTERNATIONAL COMMITTEE No. 45-03 RE: DRAFT INSTITUTE COMMENT LETTER ON THE EU COMMISSION'S ACTION PLAN ON MODERNIZING COMPANY LAW AND ENHANCING CORPORATE GOVERNANCE Attached is a draft Institute comment letter on the EU Commission Action Plan on "Modernising Company Law and Enhancing Corporate Governance in the European Union" (Action Plan).¹ The letter generally supports the Commission's priorities in improving shareholder rights in the European Union but also expresses concerns regarding certain aspects of the proposals. The letter generally states that, to attract global investors to a European securities market, it is important to create a framework that (1) enables and facilitates the ability of investors (both domestic and foreign) to exercise their rights as shareholders, (2) protects the rights of minority investors, and (3) dismantles national barriers or impediments that prevent the effective exercise of those rights. Specifically, the letter supports the Commission's efforts to facilitate access to information by shareholders, to enhance the exercise of shareholder rights, and to undertake a study on the consequences of promoting the one share/one vote principle. The Institute, however, cautions the Commission against requiring issuers to conduct general meetings via electronic means and states that permitting the use of electronic medium by issuers would be the preferable approach. The letter also urges the Commission to solve the problems related to cross-border voting before undertaking to study the need to require disclosure of information about the role played by institutional investors. The Institute argues that obtaining the ability to exercise rights as shareholders without significant burdens is a prerequisite for Europe-wide rules to encourage institutional investors to exercise their franchise. The Institute's letter also supports the Commission's goal of bolstering the role of independent directors in listed companies but requests that the Commission take care in developing the minimum standards of independence. The letter argues that it is not the

¹ See Memorandum to International Members No. 19-03 (16124) (May 29, 2003).
² number of boards on which a person serves but the person's relationship with the company and/or its related persons that may impair a person's independence on the board. Please provide any comments you may have on the draft letter to me by Wednesday, August 6, at jchoi@ici.org or at (202) 326-5810. Jennifer S. Choi Associate Counsel Attachment (in .pdf format)

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