

MEMO# 19013

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DRAFT ICI LETTER ON EU CONSULTATION PAPER ON SHAREHOLDER RIGHTS

©2005 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. [19013] July 12, 2005 TO: INTERNATIONAL COMMITTEE No. 14-05 INTERNATIONAL INVESTING SUBCOMMITTEE No. 4-05 RE: DRAFT ICI LETTER ON EU CONSULTATION PAPER ON SHAREHOLDER RIGHTS As we previously informed you,¹ the European Commission has published for comment its second consultation paper on shareholder rights and cross-border voting. The Institute has prepared a draft comment letter on the consultation paper. The most significant aspects of the draft letter are summarized below and a copy of the draft letter is attached. Comments on the consultation paper are due to the Commission no later than July 15, 2005. If you have any comments on the draft letter, please contact the undersigned by phone at 202-371-5408 or by e-mail at aburstein@ici.org no later than July 14.

Persons Entitled to Control Voting Rights The draft letter strongly supports the introduction of a legal entitlement for the “ultimate investor” to control the voting rights attached to the shares in which he/she has invested. The draft letter states that while the proposal in the consultation paper to define the “ultimate investor” as “the legal or natural person that holds a securities account for its own account” could be a good first step in strengthening rights for shareholders, the Commission should continue to examine other ways to ensure that the “ultimate investor” receives control of the voting rights to which he/she is entitled.

Shareblocking The draft letter strongly supports the Commission’s proposal to abolish provisions making the right to vote in a General Meeting conditional, or allowing the right to vote to be made conditional, on the immobilization of the corresponding shares for any period of time prior to a meeting. The draft letter also strongly supports the Commission’s proposal to require a record date system where the right to vote at a General Meeting will be made conditional upon qualifying as a shareholder on a given date prior to the relevant meeting. ¹ Memorandum to International Members No. 17-05 [18885], dated May 24, 2005.

² **Voting In Absentia** The draft letter supports the proposed minimum standards that would ensure that shareholders of listed companies have the possibility to vote by correspondence and that Member States remove existing requirements, and not impose new requirements, on companies that would hinder or prohibit voting by electronic means at General Meetings. Similarly, the draft letter supports the proposed minimum standards to further facilitate the use of proxy voting across Member States.

Depositary Receipts The draft letter strongly supports explicitly recognizing holders of depositary receipts as holding the rights attached to the underlying shares and prohibiting EU-listed companies from entering into depositary agreements that specifically exclude or limit voting rights of depositary receipt holders. The draft letter therefore supports the proposed minimum standard that holders of depositary receipts will alone have the right to determine how the

voting rights attached to underlying shares represented by depositary receipts are exercised. Communication of Information of General Meetings The draft letter supports the Commission's proposals on communicating information on General Meetings that seek to ensure that shareholders, no matter where they are based, are in a position to make informed decisions. Most significantly, the draft letter supports the establishment of notice periods for convening a General Meeting; proposed minimum standards relating to the contents of the notice of the General Meeting; and the establishment of minimum standards that would require Member States to ensure that issuers post on their websites information regarding shareholders' rights in relation to voting and with regard to the General Meeting. Shareholders' Rights in General Meetings The draft letter supports the establishment of minimum standards relating to shareholder rights with respect to participation in the General Meeting, most significantly, proposed minimum standards on the way shareholder questions should be filed and dealt with at General Meetings and on the maximum shareholding threshold that Member States could impose for shareholders to table resolutions and place items on the General Meeting agenda. The draft letter recommends, however, that this threshold be based on the "voting share capital" of the issuer as opposed to the issuer's "share capital" to avoid having non-voting shares interfere with the application of the standard. Ari Burstein Associate Counsel Attachment (in .pdf format)