

MEMO# 14432

February 11, 2002

POTENTIAL UNCERTAINTY FOR CROSS-BORDER SALES OF UCITS FUNDS OPERATING UNDER REVISED DIRECTIVE BEFORE IMPLEMENTATION DEADLINE

[14432] February 11, 2002 TO: INTERNATIONAL COMMITTEE No. 13-02 RE: POTENTIAL UNCERTAINTY FOR CROSS-BORDER SALES OF UCITS FUNDS OPERATING UNDER REVISED DIRECTIVE BEFORE IMPLEMENTATION DEADLINE As you know, the European Union (EU) has adopted amendments to the UCITS Directive. The amended Directive will become effective when the European Commission publishes the final text in the Official Journal of the European Communities, which is now expected sometime this month. Member states of the EU have 18 months from the date of publication to implement the amended Directive into their national legislation. Several member states, including Luxembourg, already have been working on their national laws and will be ready to adopt legislation implementing the amended UCITS Directive before the 18-month deadline. We understand that, until the deadline for implementation of the new UCITS Directive (mid-2003), it is possible that host member states that have not implemented the new Directive will not accept a UCITS fund or management company operating under the new UCITS Directive from another member state. Under EU law, member states are not legally obligated to accept a European passport issued in accordance with a directive before the deadline for implementation. Whether any host member state would reject a UCITS passport created under the new Directive during the implementation period is not clear. The Commission has been asked to review the legal issue and is working to find a practical solution with the competent authorities of the member states. In the meantime, it may be advisable to consult with the authorities of the host member states into which UCITS funds or management services are expected to be marketed cross border regarding their approach to the European passport under the new UCITS Directive before the implementation deadline. After the implementation period expires, all member states will be obligated to accept a UCITS passport from another member state. Jennifer S. Choi Associate Counsel