

MEMO# 17769

July 15, 2004

DRAFT INSTITUTE COMMENT LETTER TO CESR ON IMPLEMENTING MEASURES FOR EU TRANSPARENCY DIRECTIVE

ACTION REQUESTED [17769] July 15, 2004 TO: INTERNATIONAL COMMITTEE No. 40-04 RE: DRAFT INSTITUTE COMMENT LETTER TO CESR ON IMPLEMENTING MEASURES FOR EU TRANSPARENCY DIRECTIVE Attached for your review is a draft Institute comment letter to the Committee of European Securities Regulators (CESR) on the Call for Evidence on the Mandate for Technical Advice on Possible Implementing Measures Concerning the Transparency Directive. As you know, the EU Council of Economic and Finance Ministers reached political agreement on the Transparency Directive earlier this year and will formally adopt the Directive this fall.¹ On June 29, 2004, the EU Commission provided its first mandate to CESR for technical advice on possible Level 2 implementing measures of the Transparency Directive, a copy of which is attached. The mandate defines priority areas where implementing measures are needed. The draft Institute letter, as a preliminary matter, requests that CESR during the consultation process exchange ideas and discuss possible approaches that it may take in developing its technical advice to the Commission. The letter then comments on the specific items for which the Commission seeks CESR's technical advice, including the standard form for disclosure of major holdings and a calendar of trading days for purposes of major holdings notifications. The letter also suggests that CESR consider not requiring both the asset managers and their clients to make notifications to issuers because doing so would be burdensome and provide confusing information to the marketplace. The Institute suggests that only the entity that exercises the voting rights should have the obligation to make the notification to issuers. With respect to the exemption for management companies and investment firms from having to aggregate holdings at the parent company level, the draft letter requests that CESR focus on the degree of independence that the management companies/investment firms have from their parents with respect to exercising voting rights of their portfolio companies. The letter takes the view that the exemption should not be conditioned on independence of the subsidiaries generally because the Directive does not base the exemption on independence on all matters but on the exercise of voting rights. ¹ Memorandum to International Members No. 14-04 [17328] (Apr. 1, 2004). ² The letter also suggests that, when CESR provides technical advice to the Commission on a list of third countries that ensure the equivalence of the independence requirements laid down in the Directive in relation to management companies or investment firms, CESR focus on the US rules as US management companies and investment firms are significant investors of EU securities. The letter requests that CESR make a determination that the US rule assures equivalent independence with respect to a US management company/investment firm seeking to take

advantage of the disaggregation provisions of the Directive Comments to CESR on the mandate are due on July 29, 2004. Please provide any comments you have on the draft letter by Monday, July 26, 2004, by email at jchoi@ici.org or telephone at (202) 326-5810. Jennifer S. Choi Associate Counsel Attachments (in .pdf format)

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