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July 27, 2007

European Commission
Directorate-General for the Internal Market and Services
B-1049 Brussels
Belgium

Re: Third Consultation on Shareholders' Rights

Dear Sirs:

The Investment Company Institute (ICI)¹ supports the efforts of the European Commission to provide guidance to supplement the recently adopted Shareholders' Rights Directive. The Institute supported the development of the Directive and continues to fully support the Commission's efforts to improve and strengthen shareholders' rights and the ability of shareholders to vote cross-border.² We are pleased that the Commission is considering providing additional guidance in certain areas.

We support the Commission in recommending the translation of meeting documents into a language customary in the sphere of international finance. We support a recommendation that depositary agreements provide that depositaries may not vote the shares attached to depositary receipts without instructions or delegation from receipt holders. We also support Commission efforts to improve transparency when voting rights are exercised through a chain of intermediaries. We believe it is important to clarify that a management company is a "client" for purposes of the Directive and that management companies may split their votes. We support improved transparency in securities lending arrangements but do not support a recommendation that borrowed shares may not be voted without instructions from the lender. Our comments are set forth below.

¹ The Investment Company Institute is the national association of the U.S. investment company industry. The ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. ICI members include 8,766 open-end investment companies (mutual funds), 670 closed-end investment companies, 440 exchange-traded funds, and 4 sponsors of unit investment trusts. Mutual fund members of the ICI have total assets of approximately U.S. \$11.242 trillion (representing 98% of all assets of US mutual funds); these funds serve approximately 93.9 million shareholders in more than 53.8 million households.

² See ICI Letter to Commissioner Charlie McCreevy, European Commission (July 15, 2005), available at www.ici.org/statements/cmltr/2005/05_eu_voting_cvr.html (ICI comments on the Commission's second consultation on shareholders' rights); ICI Letter to Pierre Delsaux, European Commission (Dec. 15, 2004), available at www.ici.org/statements/cmltr/04_eu_shareholder_vote_com.html (ICI comments on the Commission's first consultation on shareholders' rights).

Language of Meeting Documents

In response to the Commission's second consultation on shareholders' rights ("Second Consultation"), the Institute supported a minimum standard requiring that notices convening a meeting and documents intended to be submitted at a company's general meeting be made available in a language customary in the sphere of international finance. This is increasingly important as shares of public companies become more widely held across national boundaries.

Accordingly, we support the Commission's current proposal to recommend that companies make available in a language customary in the sphere of international finance, in addition to the national language, the convocation, meeting agenda, and other documents to be submitted at the general meeting. Any translated meeting documents should be available at the same time as the meeting documents prepared in the national language.

Depositary Receipts

Also in response to the Second Consultation, the Institute strongly supported recognizing the holders of depositary receipts as holding the rights attached to the underlying shares and prohibiting EU listed companies from entering into depositary agreements that exclude or limit voting rights of depositary receipt holders. The Commission concluded that there was no need to formally grant receipt holders the voting rights on underlying shares but is currently considering whether depositaries should be able to exercise the voting rights of depositary receipt holders without express authority from the holder.

Consistent with our position during the Second Consultation on the voting rights of depositary receipt holders, we strongly support a recommendation that depositary agreements provide that the depositary may not vote shares without instructions from the depositary receipt holder unless the receipt holder has given the depositary the discretion to vote the shares without the holder's instructions.

Stock Lending

The Institute has actively supported the Commission's efforts at the EU level to clarify the rights and responsibilities of the lender and borrower of securities with respect to voting, including efforts to increase transparency such as including provisions in lending agreements regarding voting rights attached to loaned shares. In comments on the Second Consultation, the Institute specifically supported a proposal that would have required an intermediary that enters into an agreement in relation to shares that the intermediary holds on behalf of another person to inform that person of its intention to enter into such an agreement and the effects of the agreement with regard to voting rights.

We continue to strongly support Commission initiatives to address stock lending at the EU level. We believe that such measures strengthen and improve the efficient operation of a single market in the EU. We support the recommendation that securities lending agreements contain provisions that inform the parties of the effect of the agreement on the voting rights attached to the shares. We also support a recommendation that intermediaries inform persons on whose behalf shares are held that the intermediary may enter into a securities lending agreement and the effect of a securities lending agreement on the voting rights attached to the shares.

We do not, however, support a recommendation that borrowed shares may not be voted except upon instructions from the lender. This is not consistent with market practice and may adversely complicate securities lending arrangements for both lenders and borrowers. Parties should have the ability to negotiate the exercise of voting rights. We believe that under current market practice most lending agreements include a provision requiring the prompt return of borrowed shares upon request by the lender. We, therefore, would not object to a recommendation that agreements include such a provision.

Intermediaries and Management Companies

The Institute has vigorously supported initiatives to improve and protect the ability of beneficial owners to exercise voting rights when the owner holds shares through a chain of intermediaries. We strongly agree that Member States should ensure that intermediaries explain to clients how the client can give the intermediary voting instructions. We also agree that Member States should ensure that intermediaries vote shares in accordance with these instructions. We believe such a provision is vital to protecting a shareholder's right to vote. Financial intermediaries therefore should keep records of the instructions and confirm that the instructions have been carried out. These records should be maintained for more than one year following the vote. We believe that three years would be adequate. We support Commission efforts to encourage intermediaries to assess reasonable fees for proxy voting services, though ultimately these fees should be market-determined.

As part of these recommendations for intermediaries, the Commission also proposes defining a "client" as the natural or legal person on whose behalf another natural or legal person holds shares in the course of a business.³ During the Commission's consultations on the Directive, the Institute strongly advocated developing a definition of the person entitled to control the voting rights attached to shares of a company. The Institute sought to ensure that U.S. mutual funds would be entitled to control the voting rights of securities that they owned. As part of this consultation, the Commission asks whether it should issue a recommendation that management companies be specifically deemed a client.

³ This proposed definition is similar to the definition of "client" in the recently adopted Directive. See Directive of the European Parliament and of the Council on the exercise of certain rights of shareholders in listed companies (June 1, 2007) available at ec.europa.eu/internal_market/company/docs/shareholders/dir/draft_dir_en.pdf.

Management companies are defined as companies whose regular business is the management of collective investment schemes.

We strongly encourage the Commission to adopt a recommendation that explicitly recognizes management companies as clients within the proposed definition. The Institute believes this will help ensure that management companies are able to control the voting rights for shares they are responsible for voting. Expressly clarifying that management companies are clients will help ensure that intermediaries in the chain are not identified as clients in place of management companies.

Split Votes and Management Companies

Management companies often manage investments on behalf of different types of investors, or in portfolios with different investment objectives, resulting in split voting being a critical issue for them. The Commission is concerned that management companies will normally be unable to benefit from the Directive's rule that permits split voting by shareholders because management companies may not be the legally recognized shareholders for all shares under their management. The Commission seeks comment on whether a rule is needed to address split voting by management companies.

We strongly urge the Commission to adopt a recommendation that Member States ensure management companies may cast votes attaching to some shares differently from votes attaching to other shares. The ability to cast split votes is necessary so that management companies can serve institutional investors and investment funds. The Directive provides that shareholders shall be permitted to split their votes. A rule explicitly recognizing the right of management companies to split votes would uphold this right for management companies and allow them to serve their different investors.

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We would welcome the opportunity to speak with you in more detail about any of the information that we have provided in response to this consultation. If you have any questions, please contact me at 202-326-5813 or solson@ici.org.

Sincerely,

/s/ Susan M. Olson

Susan M. Olson