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June 15, 2007

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

RE: Consultation on Possible Adjustments to the UCITS Directive

Dear Sirs:

The Investment Company Institute (ICI)<sup>1</sup> applauds the efforts of the European Commission to encourage a more efficient and integrated market for investment funds in Europe. We have followed the evolution of the Commission's thinking on improving the investment fund regulatory framework, and we largely support the proposals advanced in the Exposure Drafts published in March 2007. We would, however, encourage the Commission to adopt a full management company passport instead of the partial passport now contemplated. We also encourage the Commission to take a more expansive approach to asset pooling.

We welcome the opportunity to share our views, which are informed by the experiences of our members in organizing, advising, and distributing UCITS funds in Europe. Our responses to questions and issues raised by the Exposure Drafts are provided below.

*Fund Passport (Notification Procedure)*

The ICI fully supports the recommendation for a complete overhaul of the notification procedure for UCITS funds through a regulator-to-regulator filing that would replace the current system. As noted in the Exposure Draft, to succeed, the new regime must harmonize notification requirements and limit the waiting period before marketing of a UCITS in the host Member State may begin. Accordingly, we support the proposal to allow marketing in a host Member State three working days after the transmission of notification documents by the home regulator and strongly support harmonization of the content and format of the notification letter, including required descriptions of

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<sup>1</sup> 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. Institute members include 8,781 open-end investment companies (mutual funds), 665 closed-end investment companies, 428 exchange-traded funds, and 4 sponsors of unit investment trusts. Mutual fund members of the Institute have total assets of approximately \$10.917 trillion, representing 98 percent of all assets of U.S. mutual funds. These funds serve approximately 93.9 million shareholders in more than 53.8 million households.

local marketing information. We also agree that a UCITS fund should be obligated to provide only the key investor information document in an official language of the host Member State, with discretion to supply other documents such as the prospectus in a language customary in the sphere of international finance or in the local language of the host Member State, as is currently the case with the Prospectus Directive. These procedures represent significant advances in reducing the unnecessary delays and costs of current notification procedures.

We recommend that the Commission make clear in the revised directive that the authority of a host Member State to set marketing requirements for UCITS does not extend to imposing any amendments or additions on the key investor information of a UCITS included in a notification filing. Although this is supposed to be the case under the existing UCITS framework,<sup>2</sup> the proposed regulator-to-regulator notification procedure and harmonization of notification documents will reinforce this important principle.

### *Management Company Passport*

We support a full management company passport. A full passport, implemented with improved cooperation among regulators, would not compromise investor protection or the ability of regulators to supervise management companies, while allowing management companies the flexibility to organize their businesses most efficiently. The depositary and the fund will remain domiciled in the same jurisdiction, ensuring that the home Member State regulator of a UCITS can appropriately supervise the fund and protect investors. In addition, the proposed adjustments to enhance supervisory cooperation include mechanisms that will facilitate effective supervisory oversight in cross-border arrangements where a fund and its manager are located in different Member States.

We are concerned with the requirement in the partial passport proposal that performance of “core administrative services” occur in the fund’s domicile. Core administrative services are defined as (1) the verification of valuation and pricing and (2) the maintenance of shareholder registers. While core administrative functions may be performed through branching or delegation arrangements under the proposal, the functions may not be performed on a remote basis even though these services are primarily performed by computer and through electronic communications. We believe Member States may interpret the scope and definition of these services differently, possibly requiring management companies to retain significant operations in the fund’s domicile. This would be unnecessary for investor protection, could result in additional costs for investors, and would restrict managers’ ability to organize their businesses most efficiently. If the Commission determines not to pursue a full management company passport, it must ensure that the set of administrative functions to be performed in the fund domicile be kept to a strict minimum that is clearly defined.

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<sup>2</sup> See Interpretative Communication from the Commission COM(2007)112, Respective powers retained by the Home Member State and the Host Member State in the marketing of UCITS pursuant to Section VIII of the UCITS Directive (Mar. 2007), available at [ec.europa.eu/internal\\_market/securities/docs/ucits/com\\_2007\\_112/com\\_2007\\_112\\_en.pdf](http://ec.europa.eu/internal_market/securities/docs/ucits/com_2007_112/com_2007_112_en.pdf).

### *Fund Mergers*

The Commission has correctly identified the need for a framework for cross-border fund mergers in Europe. The proposals in the Exposure Draft are a significant first step, while recognizing the need for further work to address the tax implications of fund mergers. We support the proposal to require review of proposed UCITS mergers by only the disappearing fund's regulator and to limit review of complete merger documents to 15 working days. We believe that review by a single regulator could result in significant cost savings while still ensuring that investors receive important information concerning a fund merger. We also believe that the existence of a management company passport will be an important complement to any framework that facilitates cross-border mergers. We support the proposal to limit the maximum level of shareholder approval to no more than 75% of the votes present or represented at the general meeting, with the right to vote determined by Member State law.

We agree that all costs associated with a merger must be clearly disclosed to shareholders, but do not agree that no costs should be charged to unitholders under any circumstance. As the IOSCO Report on Regulatory Issues arising from CIS Mergers recognizes, many prominent jurisdictions do not require the manager or promoter to assume the costs of a fund merger.<sup>3</sup> The Exposure Draft asserts that most, if not all, mergers are commercially driven, and costs should be born by management or the fund promoter. But, as recognized by the Commission's work and staff reports, investors, too, are expected to benefit from fund mergers through cost savings and improved competitiveness in the fund market.<sup>4</sup> Accordingly, it may be appropriate for investors to bear costs related to the preparation and completion of a merger. Along with clear disclosure regarding the details of a merger, an investor's right to exit the merging or dissolving fund without having to bear redemption or any other type of charge should alleviate investor protection concerns.

### *Pooling*

We support the proposal to allow UCITS master-feeder structures. We, do not, however, understand the basis for the requirement that a master fund must have at least two feeder funds. This would unnecessarily preclude a master-feeder structure that is launched with one feeder fund and then adds others over time. We also encourage the Commission to reconsider its rejection of the option that would permit more liberal entity pooling. As noted in the Exposure Draft, the entity pooling proposal could create benefits for fund promoters and lead to greater choice for investors. The regulatory and

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<sup>3</sup> See IOSCO Technical Committee, An Examination of the Regulatory Issues Arising from CIS Mergers (Nov. 2004) at Annex A, ¶7, available at [www.iosco.org/library/pubdocs/pdf/IOSCOPD179.pdf](http://www.iosco.org/library/pubdocs/pdf/IOSCOPD179.pdf).

<sup>4</sup> See Commission Staff Working Document Accompanying the White Paper on Enhancing the Single Market Framework for Investment Funds (Nov. 2006) (the "Impact Assessment") at p. 59, available at [ec.europa.eu/internal\\_market/securities/docs/ucits/whitepaper/impact\\_assessment\\_en.pdf](http://ec.europa.eu/internal_market/securities/docs/ucits/whitepaper/impact_assessment_en.pdf).

practical concerns identified in the Exposure Draft are no greater than those that already exist with fund of fund structures and should be equally manageable for both industry and regulators.<sup>5</sup>

*Simplified Prospectus – Investor Disclosure Regime*

We strongly support efforts to improve and streamline investor disclosure and to replace the current simplified prospectus with “key investor information.” ICI research in the United States has found that most fund shareholders do not consult fund prospectuses because they find them too long and difficult to understand. Shareholders look for concise investment information and prefer graphics and charts to narrative descriptions. This preference for graphic presentations is especially strong among shareholders who generally do not read (or read very little of) the prospectuses they receive.<sup>6</sup>

We believe that key investor information should be presented in a single document to be most useful for investors and to function efficiently with the proposed notification procedures. Requirements concerning the content and format of the key investor information document should be harmonized to ensure comparability of required UCITS disclosures. This would aid investors when choosing among funds and would help prevent the national gold-plating and divergent implementation that has plagued the simplified prospectus. We have shared our views regarding the content of a key investor information document with CESR.<sup>7</sup> We encourage the Commission to move quickly to develop the content and format of the new disclosure to facilitate implementation of other proposed changes to the UCITS Directive.

In developing the required disclosure, we urge the Commission to consider the special circumstances presented by different distribution channels (e.g., retail or institutional), different methods of purchase (e.g., solicited or advised sales, periodic purchase plans, unsolicited sales, and direct sales) and how this should impact the type of information required to be delivered as well as the mode and timing of delivery. For example, disclosure requirements for institutional sales should be much more flexible than those applicable to retail sales. We also encourage the Commission to recognize that providing investors with an option for electronic delivery of information would be advantageous to both funds and investors.

When considering point-of-sale disclosure requirements, we encourage the Commission to carefully consider the consequences when significant disclosure and point of sale responsibilities are

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<sup>5</sup> See Impact Assessment at 70 (noting that it is possible to mitigate the identified drawbacks of entity pooling and suggesting a broad entity pooling approach as a first option).

<sup>6</sup> See Investment Company Institute, *Understanding Investor Preferences for Mutual Fund Information* (Aug. 2006), available at [www.ici.org/pdf/rpt\\_06\\_inv\\_prefs\\_full.pdf](http://www.ici.org/pdf/rpt_06_inv_prefs_full.pdf).

<sup>7</sup> See Letter to Fabrice Demarigny, Committee of European Securities Regulators from Susan M. Olson, Senior Counsel, International Affairs, Investment Company Institute (May 22, 2007), available at [www.ici.org/statements/cmltr/07\\_cesr\\_ucits\\_com.html](http://www.ici.org/statements/cmltr/07_cesr_ucits_com.html).

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imposed on the sale of funds but not on other investment products. Disclosure requirements should not function to discourage intermediaries from selling funds in favor of products that are less transparent and subject to less stringent regulation.

*Supervisory Cooperation*

We fully support efforts to facilitate and strengthen supervisory cooperation among Member State regulators. Supervisory cooperation is a key characteristic of a strong and effective single market regime for UCITS and essential to the success of other modifications to the UCITS Directive.

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We would welcome the opportunity to speak with you in more detail about any of the proposals in the consultation. If you have any questions, please contact me at +1 202-326-5813 or [solson@ici.org](mailto:solson@ici.org).

Sincerely,

/s/ Susan M. Olson

Susan M. Olson  
Senior Counsel, International Affairs