

August 25, 2004

**Via E-mail and International Airmail**

Mr. Pierre Delsaux  
Head of Unit  
DG MARKT G3  
European Commission  
B-1049  
Brussels, Belgium

Dear Mr. Delsaux:

The Investment Company Institute appreciates the opportunity to comment on the draft Commission Recommendation on Fostering an Appropriate Regime for the Remuneration of Directors (Draft Recommendation), which we understand that the Commission expects to adopt in early autumn 2004. The Institute is the national association of the US investment company industry.<sup>1</sup> Our members manage approximately 1,000 US funds (with over \$569 billion in assets) that have a global or international focus, and many of these global and international funds invest in Europe. Moreover, many of our members manage investment companies and pension funds outside the United States, including mutual funds domiciled in the European Union that are sold under the EU UCITS Directive. Our comments reflect their experiences both investing and managing assets in the European Union.

We believe that the Draft Recommendation would promote an appropriate regulatory framework for the remuneration of directors, and we fully support the Commission's work in this area. We also applaud the Commission for revising the Draft Recommendation to reflect comments received on the Commission's prior consultation paper and were particularly pleased to see that several concerns of the investment management industry have been addressed. We would like to highlight two areas in which we would encourage the Commission to go further.

First, the Commission has revised the recommendation with respect to the form through which Member States should respond to the Commission's recommendations. In the previous draft, the Commission intended to invite Member States to take necessary *regulatory* measures to ensure that listed companies comply with all of the Commission's provisions. In the current draft, the Commission has revised its recommendation and invites Member States to take

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<sup>1</sup> Our membership includes 8,605 open-end investment companies ("mutual funds"), 630 closed-end investment companies, 135 exchange-traded funds, and 5 sponsors of unit investment trusts. Our mutual fund members have assets in excess of \$7.49 trillion, accounting for approximately 95% of total industry assets. Individual owners represented by ICI member firms number 86.6 million as of mid 2003, representing 50.6 million households.

“appropriate measures.” As we mentioned in our letter of April 2004, we support encouraging Member States to incorporate the recommendation into their regulatory regimes.<sup>2</sup> We believe that, to promote a truly pan-European securities market, it is important for investors to be able to rely on a minimum level of transparency with respect to directors’ remuneration of EU-listed companies. The invitation in the prior draft did not *require* Member States to adopt regulatory measures to implement the Commission’s recommendation, and the new draft would not encourage Member States to take regulatory action. We are concerned that this change in the recommendation would make it less likely that Member States will incorporate the recommendation into their regulatory regime. We continue to believe that regulatory measures in all Member States are important in ensuring a minimal level of transparency in the area of directors’ remuneration.

Second, it is still unclear from the Draft Recommendation whether all the relevant information about the remuneration of directors (including the remuneration policy or significant changes to the policy) would be provided in connection with an annual meeting in all EU Member States.<sup>3</sup> We believe that it would be important for shareholders to receive this information shortly before the annual meeting of shareholders, especially if the remuneration policy is included as a separate item on the meeting agenda and the remuneration statement is submitted to shareholders for an advisory vote.

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We appreciate the opportunity to comment on the Draft Recommendation. If you have any questions on the matters discussed above, please contact me at (202) 326-5826 or at [podesta@ici.org](mailto:podesta@ici.org) or Jennifer S. Choi at (202) 326-5810 or at [jchoi@ici.org](mailto:jchoi@ici.org).

Sincerely,

Mary S. Podesta  
Senior Counsel

cc: Jean-Yves Muyelle  
Dominique Thienpont

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<sup>2</sup> Letter to Gianluigi Campogrande, European Commission, from Mary S. Podesta, Investment Company Institute, on April 12, 2004.

<sup>3</sup> The Draft Recommendation states that “where a resolution is tabled in accordance with article 6 paragraph 1 . . . an information notice in connection with the resolution should be made available to shareholders.” We assume that the Draft Recommendation is referring to resolutions tabled pursuant to article 7 paragraph 1 regarding the schemes under which directors are remunerated in shares, share options or any other right to acquire shares or to be remunerated on the basis of share price movements.

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Mr. Pierre Delsaux  
Head of Unit  
DG MARKT G3  
European Commission  
B-1049  
Brussels, Belgium

Dear Mr. Delsaux:

The Investment Company Institute appreciates the opportunity to comment on the Commission's draft Recommendation on Strengthening the Role of Independent Directors (Draft Recommendation), which we understand that the Commission expects to adopt in early autumn 2004. The Institute is the national association of the US investment company industry.<sup>1</sup> Our members manage approximately 1,000 US funds (with over \$569 billion in assets) that have a global or international focus, and many of these global and international funds invest in Europe. Moreover, many of our members manage investment companies and pension funds outside the United States, including mutual funds domiciled in the European Union that are sold under the EU UCITS Directive. Our comments reflect their experiences both investing and managing assets in the European Union.

We believe that the Commission's Draft Recommendation is a helpful document; it will strengthen the role of independent directors in protecting investors. As we noted in our May 2004 letter, a Commission recommendation regarding the responsibilities of independent directors will provide directors and issuers with useful tools to ensure the effectiveness of independent directors.<sup>2</sup>

The Institute also commends the Commission for revising the initial draft recommendation to reflect comments received on the Commission's prior consultation paper and were particularly pleased to see that several concerns of the investment management industry have been addressed. We would like to highlight two areas in which we would encourage the Commission to go further.

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<sup>2</sup> Letter to Pierre Delsaux, Head of Unit, DG MARKT G3, European Commission, from Mary S. Podesta, Investment Company Institute, on May 26, 2004.

First, in Article 4, the Commission states that “a number of independent non-executive or supervisory directors should be elected to the (supervisory) board of companies sufficient to ensure that any material conflict of interest involving directors will be properly dealt with.” Although we agree that this language is designed to ensure effective oversight of corporate management, we would encourage the Commission to recommend a majority of independent directors on the board. We believe that there is a danger that the current text would not provide Member States or companies with adequate guidance on the number of independent directors that should serve on the board to address adequately material conflicts of interest.

Second, the Commission has revised one of the criteria for determining a director’s independence. In the prior draft, the Commission included the criterion that, for a director to be considered independent, he or she may not have served on the board for more than 12 years. In the Draft Recommendation, a director would be considered independent if he or she did not serve more than three terms on the board. As we stated in our May 2004 letter, we do not believe that the length of service on a board in itself is indicative of a lack of independence; indeed, a long-serving independent director may know more about the company and be able to appreciate more readily conflicts of interest situations. We also thought that 12 years was an arbitrary number. We believe that service for more than three terms is equally arbitrary because, under the Draft Recommendation’s formulation, the length that a director can serve on a board as an independent director would depend on how a company defines the length of a “term.” For example, if a term was five years for one company and one year for another, a director could be considered independent for 15 years for the former company or 3 years for the latter company. We urge the Commission not to include such an arbitrary criterion for independence. We are not sure that such an arbitrary criterion for independence would produce the result that the Commission intends.

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We appreciate the opportunity to comment on the Commission’s Consultation Document on the responsibilities of independent directors. If we can provide any other information or if you would like to discuss further any issues, please contact me at [podesta@ici.org](mailto:podesta@ici.org) or at (202) 326-5826 or Jennifer Choi at [jchoi@ici.org](mailto:jchoi@ici.org) or at (202) 326-5810.

Sincerely,

Mary S. Podesta  
Senior Counsel

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Dominique Thienpont