1401 H Street, NW, Washington, DC 20005-2148, USA
202/326-5800 www.ici.org

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Via Email (greet.tjonck@cbfa.be; geert.temmerman@diplobel.fed.be)

Ms. Greet T'Jonck
Deputy Director, Collective Management of Savings Products,
Centre of Expertise for Asset Management, Belgian Banking, Finance and Insurance Commission
Rue du Congrès 12-14
1000 Brussels

Mr. Geert Temmerman
Financial Services Attaché, Belgian Permanent Representation to the EU
Rue de la Loi 61-63
1040 Brussels

Dear Ms. T'Jonck and Mr. Temmerman:

The Investment Company Institute[1] has followed the work of the Commission of the European Communities, the European Parliament, and the Belgian Presidency of the Council of the European Union on the proposed Directive on Alternative Investment Fund Managers (the "Directive"). We have been in a continuing dialogue with the Commission, Parliament and the Council since the Directive was introduced in 2009.

As we have previously noted, we generally support these efforts to create a harmonized regime in the European Union ("EU") that will protect against the potential risks associated with certain types of alternative investment funds. Nonetheless, based on our review of the revised compromise proposal by the Presidency, dated October 4, 2010, we have significant concerns with the text of Article 6, paragraph 8 and its impact on certain investment advisory arrangements between EU managers and US investment companies registered under the Investment Company Act of 1940 and the Securities Act of 1933 ("US RICs").[2] We believe this text may inadvertently capture certain portfolio management arrangements with US RICs which were not intended to be within the scope of the Directive.

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[1] The Investment Company Institute is the national association of U.S. investment companies, including mutual funds, closed-end funds, exchange-traded funds (ETFs), and unit investment trusts (UITs). ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. Members of ICI manage total assets of $11.51 trillion and serve over 90 million shareholders.

[2] US RICs are comparable to the EU's UCITS, which the Directive expressly excludes from the definition of AIF. Like UCITS, US RICs are highly regulated investment vehicles. They disclose substantial information regarding their activities to regulators, investors and the market at large. US laws impose stringent requirements on all US RICs. These requirements, which are designed to protect investors and mitigate risks, are in some respects even more detailed than those applicable to UCITS. They address, among other matters, custody, leverage, and transactions with affiliates, valuation,

Under paragraph 8 of Article 6, investment firms authorized under MiFID can only provide "investment services in respect of AIF, if and to the extent the units or shares thereof can be marketed in accordance with the Directive." Our specific concern is that this paragraph would preclude US RICs from obtaining investment services from an EU investment manager through "delegation" or other arrangements, to the detriment of US RICs, investors and EU managers. As explained in previous correspondence, certain provisions of the Directive are incompatible with the US laws applicable to US RICs.[3] To address this issue, we recommend that these arrangements not be subject to the Directive.

It is not uncommon for US RICs to seek out EU manager expertise. We had understood that European firms would continue to be able to provide individual portfolio management services under their MiFID license and would not be required to apply any provisions of the Directive in respect of delegated services provided to a US RIC. Article 6, paragraph 8 now places those arrangements in jeopardy. We believe such a result is not necessary and we respectfully submit that it will benefit neither investors nor the EU and could have substantial adverse consequences for investors, US RICs and managers.

The implications for US RICs and EU investment advisers are not small. As of June 30, 2010, $1.359 trillion out of $10.362 trillion in open-end assets or 13.1% was advised by European owned investment advisers.[4] Therefore, the potential adverse impact of paragraph 8 is of genuine concern to US RICs, their investors and EU managers. Our member funds are not alone. Other non-EU investment funds that obtain investment management services through delegation arrangements with EU managers are likely to face similar problems.

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corporate governance, compliance policies and procedures, and the content of prospectuses, reports and other disclosure documents provided to prospective and current investors. In addition, the US Securities and Exchange Commission ("SEC") has comprehensive authority to oversee, inspect and, if necessary, bring enforcement actions concerning the activities of US RICs. To enhance its oversight, the SEC also has entered into formal memoranda of understanding with numerous foreign jurisdictions, including many EU Member States, concerning the exchange of information related to the enforcement of US and foreign securities laws.

[3] *See, e.g.,* Letters from Paul Stevens to Emil Paulis dated January 8, 2010 and July 27, 2009, available at http://www.ici.org/pdf/24086.pdf and http://www.ici.org/pdf/23659.pdf. We note that Chapter VII of the October 4, 2010 revised compromise proposal by the Presidency does include an "equivalency" mechanism in certain cases for third country managers and funds when provisions of the Directive may be incompatible with third country laws applicable to the third country manager or fund. *See e.g.*, Article 37, paragraph 8. We do not, however, think such a process should be imposed in the context of delegated arrangements. We believe these arrangements are adequately addressed under MiFID, and in addition, for US RICs that are not marketed in the EU, under US law.

[4] These figures are understated, in that they do not include US RIC assets that are sub-advised by investment managers with a European parent company. ICI does not track this information. In addition, this number does not reflect US RIC assets that are managed by EU managers generally; however informal information indicates this number is in the hundreds of billions of dollars.

We respectfully recommend that these delegation arrangements should not be subject to the Directive. These arrangements would be covered by MiFID and therefore would not be outside the scope of EU regulation. Accordingly, we believe that an exclusion from the Directive would be consistent with the stated objectives of the proposed Directive – *i.e.*, assuring appropriate regulation and oversight to entities that could pose significant risks. We believe these arrangements are adequately addressed under MiFID and, in the case of US RICs that are not marketed in the EU, US law. Excluding these arrangements from the scope of the Directive also would ensure that US RICs and their investors continue to have access to EU managers and the important expertise they offer.

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We are sensitive to the complexity of the issues and we appreciate the hard work of the Commission, the Parliament and the Council on this Directive. We are grateful for the opportunity to convey our views for your consideration. Should you wish to discuss our comments, or if we can be of any further assistance, please do not hesitate to contact me at solson@ici.org or 202-326-5813.

Sincerely,

Susan M. Olson
Senior Counsel – International Affairs

cc: Mr. Ugo Bassi, Head of Unit, Asset Management
European Commission, Directorate General Internal Market and Services

Ethiopis Tafara, Director
Office of International Affairs, US Securities and Exchange Commission

David Vaughan, Attorney – Fellow
Division of Investment Management, US Securities and Exchange Commission

Catherine Reynolds
US Department of Treasury

Mathew Haarsager
US Mission to the European Union