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Comment Letter on Changes to Singapore's Shareholder Reporting Rules, August 2002

July 30, 2002

Mr. Hong Tat Chee
Ministry of Finance
100 High Street
#06-03, The Treasury
Singapore 179434

Dear Mr. Chee:

The Investment Company Institute appreciates the opportunity to comment on the Draft Report of the Company Legislation and Regulatory Framework Committee. The Institute is the national association of the US mutual fund industry.[1] In addition to managing investment companies domiciled in the US, many of our members also provide investment management services to investment companies and pension funds domiciled outside the US.

We applaud the Committee's work and its decision to seek public comment before submitting its recommendations to the Singapore government. Our comments focus on one area of the Draft Report—the proposals contained in Recommendation 5.5 for Disclosure of Substantial Shareholdings. The Institute supports these proposals, which would: (1) require that changes in shareholdings be reported only when the shareholding exceeds discrete one percent thresholds above the initial five percent threshold, and (2) require that reports be filed within two market days rather than two calendar days.

Our comments on the substantial shareholding rules reflect the perspective of asset management firms. As discretionary investment managers of securities portfolios for investment companies, pension funds and other clients, members of the asset management industry have had extensive experience in complying with securities ownership reporting rules in countries in which they invest. World-wide mutual fund assets have grown from $2 trillion in 1990 to over $13 trillion at the end of 2001 and world-wide pension assets have grown to over $12 trillion. An increasing amount of assets are invested in equity securities subject to ownership reporting rules. For example, at the end of 2001, world-wide assets of equity and balanced mutual funds comprised $6.7 trillion, or more than half of total world-wide mutual fund assets. Given the growth of assets under management and of equity investing, it is not uncommon for institutional investment managers to make investments for their clients that cross securities ownership reporting thresholds.

The Institute and its members support the policies underlying the requirements to disclose significant ownership of issuers. Obligations to report ownership provide both issuers and the market with information about the accumulation of interest by investors in a particular issuer. We believe, however, that securities ownership reporting rules should be drafted to balance the need for the market to learn promptly of the accumulation of securities by those who may seek to influence control over an issuer with the goal of not imposing unnecessary burdens on institutional investors, such as mutual funds, pension funds and their managers, that have no such change of control purpose. On July 20, 2001 the Institute submitted a letter to Singapore's Ministry of Finance suggesting several ways in which the rules could be revised to strike an appropriate balance.

We are pleased that the Committee's proposals respond to our request. Below, we provide our comments on the two proposals. We also suggest one area in which the Committee might consider additional recommendations with respect to the substantial shareholding rules.

Reporting at One Percent Thresholds Above the Initial Five Percent Threshold

The Singapore Companies Act currently requires an investor holding voting shares of a listed Singapore company to disclose its holdings upon attaining five percent or more of the voting shares. Thereafter, the investor must make supplemental disclosures for every change of ownership. Our July 20, 2001 letter described the burdens this requirement entails, particularly for institutional investors. The proposed recommendation would amend the Companies Act to eliminate the requirement to report every transaction after crossing the five percent threshold. Rather, reporting of changes would be required when the shareholding exceeds discrete one percent thresholds above the minimum, e.g. when shareholding crosses six percent, seven percent, etc.

We strongly support this change. The change would be consistent with the approach taken in most other countries, which require additional disclosures only upon crossing subsequent thresholds or when holdings increase or decrease by a certain percentage.

There is one aspect of this proposal, however, which we respectfully suggest the Committee may want to reconsider. Recommendation 5.5 states that the reporting of changes should include details of all transactions (both purchases and sales) that took place between the last report and the current report. A requirement of this type is highly unusual[2] and it is unclear what the purpose of the requirement is. The Draft Report states that the disclosure of changes in substantial shareholdings of listed companies "becomes acute in creeping acquisitions and change of control of listed companies." We believe the proposed requirement to report shareholdings at discrete one percent thresholds, after crossing the initial five percent threshold, will serve to alert the market and issuer to any creeping acquisition or possible change of control. Accordingly, we question whether the requirement to disclose details of all transactions in the security between the current report and the last report is necessary to achieve the purposes of the rules—providing investors access to current movements in substantial shareholdings of listed companies. Institutional investors may, in the ordinary course, engage in a number of purchase and sale transactions in a security before crossing a subsequent threshold and thus the reporting of trade details can be burdensome, particularly if it has taken a long time to cross a subsequent threshold. Even with automation it is time consuming to extract and present the data. Instead of requiring that reports include trade details for all transactions between reports, we recommend that the Committee consider only requiring trade details for the trades that trigger the one percent change. Alternatively, we recommend that institutional investors not investing for a control purpose be required only to provide details of all transactions between reports on request.

Reporting within Two Market Days

We also strongly support the proposal to lengthen the time for filing required reports under the rules from two calendar days to two market days. Although two market days is a relatively short time, this change will make the rules more workable for foreign investors that file substantial shareholding reports from locations outside Singapore.

In recommending that reports be filed within two market days (as is the case in Canada and Australia), rather than five to seven days as required in several other markets, the Committee stated that with the current availability of electronic means of disclosure there was no reason to extend the filing deadline beyond two market days. We interpret this statement to mean that investors filing substantial shareholding reports will be able to make required filings by fax or e-mail. If that is not the case, we request that the Committee clarify the type of electronic means of disclosure to which the Draft Report refers.

Suggestion to Consider Tailoring the Reporting Rules for Institutional Investors

In identifying the administrative difficulties that the current rules place on institutional investors, our letter of July 20, 2001 recommended that Singapore tailor the reporting rules for institutional investors, such as investment companies, pension funds, and their managers to avoid undue burdens on these investors. We pointed out that mutual funds and other institutional investors typically do not invest for the purpose of obtaining control of a company but, rather, invest for their clients in portfolios of securities designed to obtain agreed upon investment objectives.

The Draft Report acknowledges that most international fund managers do not acquire listed securities for purposes of control, but states that the Committee cannot eliminate instances or occasions in which control may in fact be exercised by these investors. The proposals in the Draft Report do not make any distinctions between institutional investors and other investors. That is, the proposed changes would be available to all investors.

We continue to believe that it may be desirable for Singapore to consider ways in which to tailor the rules for institutional investors (domestic and foreign) and believe such tailored rules can be drafted to address the Committee's concern. Quite simply, tailored relief for institutional investors from certain provisions of the reporting rules could be conditioned on the investment manager not investing for a change of control purpose. In particular, we believe it would be appropriate to consider providing relief for such institutional investors so that affiliated or related investment management companies would not have to aggregate holdings in determining their interest in a security if the affiliated or related investment management companies exercise voting rights and investment decisions separately, as suggested in our July 20, 2001 letter.

We recognize, however, that the Committee may believe that developing tailored rules for institutional investors is beyond the focus of the Company Legislation and Regulatory Framework Draft Report. In that case, we suggest the Committee consider adding to its recommendations a proposal to authorize the Registry of Companies and Businesses, the Monetary Authority of Singapore, or other appropriate Singapore regulator to modify the reporting requirements in the future as appropriate for institutional investors not investing for a change of control purpose. Expressly empowering a regulatory authority to consider appropriate modifications would provide flexibility for Singapore to administer the rules in a manner that achieves their purpose without imposing undue burdens on institutional investors not investing for a control purpose. This would permit revisions to be made after experience with the changes the Draft Report recommends, appropriate consideration by the regulator and opportunity for public comment, without having to amend the Companies Act again.

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We strongly support the proposals contained in Recommendation 5.5 and appreciate the opportunity to comment on the Draft Report. If you have any questions or would like additional information on any of the matters discussed in our letter, please contact me at 202 326-5826 or at podesta@ici.org.

Sincerely,

Mary S. Podesta
Senior Counsel

ENDNOTES

[1] The Institute's membership includes 8,928 open-end investment companies ("mutual funds"), 499 closed-end investment companies and 6 sponsors of unit investment trusts. Its mutual fund members have assets of about $6.898 trillion, accounting for approximately 95 percent of total industry assets, and over 88.6 million individual shareholders.

[2] To our knowledge, only one other country requires that reports include trade details for all transactions between two reporting thresholds.