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Kathryn B. McGrath
Director, Division of Investment Management

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Good morning. I'm delighted to be here today, and to have the opportunity to talk about something that is high on the agenda at the Commission and its Division of Investment Management. Before I begin, I want to remind you that I am speaking today only for myself, and my views are not necessarily shared by the Commission, its members or other staff members.

I'm grateful for Matt Fink's kind and brief introduction. I've learned, in the past year, that the less said about Kathie McGrath, the better -- at least at investment company industry conferences.

I've just returned from a meeting with mutual fund regulators from the European Community, and several countries that don't belong to the Community like Switzerland, Sweden, Canada and Japan. This is an annual event, started after the IOS scandal, as a way of establishing and maintaining informal contacts and providing mutual assistance among those of us responsible for protecting mutual fund investors around the world. We give each other updates on industry and regulatory developments in our respective jurisdictions, raise problems or concerns that we have, and get the benefit of learning how these have been handled by our colleagues in other countries or how they would suggest that the matters be handled.

Most of the participants are from member states of the European Community. This year, we were fortunate to be joined,

for the first time, by Mr. Motoharu Fujikura, who is the Directc of the Investment Trust and Management Office of the Securities Bureau of the Ministry of Finance of Japan.

For the past few years, much of the discussion at our meetings have focused on the content, interpretation and implementation of the EC Directive covering Undertakings for Collective Investment in Transferable Securities--commonly callec "UCITS", which went into effect in October of this year. I was interested to learn that the U.S. isn't the only country where regulators and legislators sometimes have trouble getting rules and laws out on time. Although each EC member state was required to have new laws and rules in place by last October implementing the UCITS directive, only five met the deadline. Two EC members have an extension of time, and the remaining five reported progress and hope to have their new laws on the books soon.

The UCITS Directive was adopted in December, 1985, just four years ago. It represents a major step toward the creation of a common market for investment company products in Europe and provides a model that we and other countries throughout the world can look to as we seek ways to open the international securities markets to free and fair competition, without sacrificing the important goal of maintaining investor protection.

The UCITS Directive sets forth certain fundamental elements of regulation that each member country must have in its laws and rules to regulate UCITS that are established in that country. Any UCITS complying with those requirements in its home country is then eligible for an EC passport, entitling it to be sold to investors in any country throughout the Community.

Not all investment companies or pooled investment vehicles are covered by the Directive. Instead, it is limited to what is the rough equivalent of a U.S. open-end, diversified management investment company that invests in exchange-listed or NASDAQ securities. Money market funds aren't covered, nor are closed-end funds. EC member states are free to allow these products to be sold within their own borders, and can regulate them however they please. Non-conforming products, of course, can't get a European Community Passport.

Most of the regulatory requirements that the EC Directive mandates be applied to UCITS would be familiar to you. You find the same sorts of things in our Investment Company and Investment Advisers Acts, Subchapter M of the Tax Code and in the disclosure and reporting provisions of the Securities Act and the Securities Exchange Act.

There are some major differences, however. One key difference is a requirement that the manager of a UCITS have

sufficient financial resources to conduct its business effectively and meet its liabilities. To authorize the UCITS, regulators in its home country also have to "approve" the management company, the fund's rules, including its instruments of incorporation, and its choice of a depository for fund assets. The Directive expressly provides that approval shall not be given "if the directors of the management company, the investment company or the depository are not of sufficiently good repute or lack the experience required for the performance of their duties." In addition to passing upon the competence and qualifications of fund managers, under the UCITS directive regulators also must approve any subsequent change in the management company or the depository and any change in the fund's rules or articles of incorporation.

Our system, in contrast, allows virtually anyone who can come up with the $150 fee to register as an investment adviser and then, if they can come up with an additional $100,000 in seed money, they can start a mutual fund, provided they don't have a history of adjudicated securities law violations. Of course, under the U.S. regulatory scheme, investment company directors, particularly the independent directors, play a significant role in safeguarding the interests of investors in areas where the UCITS Directive consigns responsibility to regulators.

The EC Directive also requires that the UCITS not only be set up but also have its head office in its home member state. This, I think, reflects a concern that the home country regulators have a real regulatory handle on any UCITS to which they grant a European Community Passport. They don't want anyone qualifying with just a mail drop in the so-called home country. I think Luxembourg did a nice job implementing this requirement in its 1988 law and rules, which require, among other things, that a UCITS established there must use a Luxembourg bank as its depository and that the UCITS must have its central administration in Luxembourg, meaning that its records and accounts must be kept in Luxembourg, its net asset value computed there and that its shareholder correspondence be conducted from there. The depository bank is permitted to use subcustodians, including ones in other countries, but the principal Luxembourg depository bank remains responsible for the safekeeping of the UCIT's assets, and must know and exercise great care in selecting subcustodians.

On the other hand, forward pricing is not required of a UCITS, and there don't appear to be express prohibitions against self-dealing comparable to our Section 17 -- which, as you know, outlaws practically everything unless the SEC, by rule or order, says O.K. And they don't have fee table or yield calculation requirements -- yet. But I can report a great deal of interest

on the part of the Europeans in getting copies of the rules we have in place in these areas!

The EC Directive reserves to the UCITS' home country regulation of the entity itself, including the form and content of the prospectus, provided the minimum standards of the Directive are met. Marketing or sales practice regulation is left to each individual host country, where the UCITS is to be sold. Member states are free, of course, to apply stricter regulations if they wish to their own UCITS, but they can't impose them on an authorized UCITS coming from another member state. And at least at the staff level, the EC has made plain that it will not tolerate discrimination against UCITS from other member countries in the guise of host country marketing restrictions. In other words, all marketing restrictions have to apply to the host country's own domestic companies and can't be such that they are impossible for a foreign firm to meet.

The implementation of this Directive in the European Community raises important possibilities for the U.S. investment company industry. First, if a money manager can set up a fund in a member country and qualify as a UCITS, the entire European Community is available as a market -- all twelve countries, not just one. Second, the Directive opens up the possibility that the U.S. can negotiate a treaty with the European Community as a whole, to provide for mutual recognition of each other's

regulatory systems, at least for certain classes of investment companies, that would permit sales back and forth across the Atlantic. For the past few years, the European Federation of Investment Funds and Companies has been meeting twice a year and talking about this very thing with the U.S. Investment Company Institute.

There are problems to be overcome. Perhaps the most significant obstacle that would make it difficult to sell U.S. funds in Europe are U.S. tax requirements -- the required distribution of fund earnings to shareholders, the withholding tax and the estate tax that can be imposed on a foreigner who dies while owning shares in a U.S. mutual fund. I hope that the SEC will not be a major obstacle. I know that our Chairman, Richard Breeden, is very interested in taking steps to further the ability of our investment company and investment management industry to market its products and services throughout the world. And I, as one member of the SEC's staff and speaking only for myself, can tell you that my yearly meetings with my counterparts from the European Community have convinced me of this: Sure, there are differences between our regulations and those in Europe. There are differences in the ways our funds are structured and governed. In a few respects, our requirements are stricter, but in as many situations the regulations in Europe are tougher and perhaps more protective of investors that what we require. But throughout the European Community, the system of

regulation for UCITS is pretty good, and the regulators are a savvy group of people who very much have investor protection in mind. I think the differences between our regulatory systems can be worked out, with a little give and take on both sides.

As a legal matter, I think a treaty, confirmed by the U.S. Senate, would nicely take care of Section 7(d) of the Investment Company Act and Section 6(c) probably gives us all the flexibility we need to work out any other 1940 Act issues. The tax issues, of course, will have to be decided by Congress and the Treasury Department.

My major concerns, at the moment, are two. First, will the cost of compliance with our system of regulation -- the two 1940 Acts, 1933 Act registration of mutual fund shares, 1934 Act reporting and proxy rules, registration and regulation by the 50 individual states, and the corporate structure for funds on which so many of our regulatory requirements are based -- will all of this, taken together, make the cost of compliance for U.S. companies such that our products will not be competitive overseas? Second, will the members of the European Community be willing to accept our regulatory system, without more, as adequate to protect their investors?

I believe that we should be moving on two tracks. First, efforts to explore the possibility of a mutual recognition treaty

with the entire European Community should be continued. But at the same time I think we need to seriously reexamine our own regulatory system and mutual fund governance structure to see if it should be revamped to bring it more in line with the way collective investment vehicles are operated in the rest of the world. If the costs of our system are too high, keeping it in place may ultimately drive the money management business offshore. Recently, my husband and I went shopping for a large farm tractor. We went to dealers for at least 10 different brands. Much to my shock, we couldn't find one that was made in the U.S. I found that terribly upsetting, in part because the prices of those tractors were sky-high, reflecting the lower value of the dollar as against many other currencies. I would hate to see us get into the position where that happens in the fund industry.

Based on what I have learned about the regulation of mutual funds or their equivalents in other parts of the world, I am convinced that we have a good regulatory system. It does seem to protect investors quite nicely. But it certainly isn't the only system that works well. It is just different, and there's no reason why it can't be changed.

We also need to find out from European Community staff and member state regulators those areas in which they believe our regulations may fall short, and see if we can take steps to

tighten up our requirements, at least as to those funds we would hope to qualify for sale in Europe. In this area, I think the "vetting" or regulatory approval of fund managers' financial capacity, experience and training and "good repute" is likely to be an important issue. The IOS debacle has not been forgotten in Europe, nor have they forgotten that the chief culprits were Americans. Mutual funds have experienced spectacular growth and popularity among individual investors in much of Europe, just as has happened in the U.S. This, of course, has led the EC to take a conservative approach in the UCITS Directive. They don't want the reciprocity afforded by the Directive to lead to investor losses, and they certainly don't want to risk importing potential problems from the U.S. I think we can convince them that this won't happen, but we may need to tighten our controls in a few areas.

Negotiating with the European Community will not necessarily be easy to accomplish. The EC will first want to receive a mandate to do so from its member states. The mere fact that the U.S. government calls up and says "let's talk" isn't enough. Hopefully, the European Federation will be able to take care of this problem. Second, while the EC does have jurisdiction to enter into treaties between the community as a whole and non-member states in the UCITs area, such a treaty may well require the approval of all twelve member countries. The EC staff has indicated that they would want, before spending the time and

resources on such negotiations, to have some reason to believe there is a reasonable likelihood that such approval would be forthcoming. And the EC would be looking for some concrete possibility of economic benefits from any treaty to its own members. They aren't interested in a one-way street.

Last but not least, we are not the only ones interested in doing this. It appears to me from last week's meeting that Switzerland also wants to get in line, and I think the Japanese do as well. We will have competition just getting to the negotiating table. But if the business communities on both sides of the Atlantic see mutual benefits to cross-border sales, I think the regulators will not prove to be immovable obstacles.

The situation in Japan is quite a bit different. First, there are substantial regulatory barriers restricting entry to the investment company business. There are only 15 firms today that are licensed as investment trust management companies, although the Ministry of Finance is promising to grant such licenses to 4 foreign firms in 1990. Hopefully, one will be a U.S. money manager.

In the past, the grant of investment trust management licenses have been based on the following known conditions: First, the applicant has to demonstrate that it is qualified to manage securities investment trusts. Second, the applicant must

demonstrate that it has the financial wherewithal and good prospects to make a success of its business. The point of this, according to the Japanese, is to ensure that the company will stay in the business for the long haul, and not quit the business and leave investors in the lurch. Third, the Ministry of Finance has to determine that the applicant's "business as a management company is necessary and appropriate in the light of the existing conditions of the securities investment trust business and the securities market." Obviously, in deciding whether an applicant meets these conditions, the Ministry of Finance has a lot of discretion. Japan also does not permit securities firms to have investment trust management licenses; the two functions were split in the early 1960's, apparently in an effort to reduce the probability of conflicts of interest.

Interestingly, Japan does allow foreign funds to be sold there, but they can't be yen denominated and so it is tough to sell to individuals, which is where the big market opportunity lies. I am told that this restriction is intended to avoid misleading the investor into thinking that he or she is purchasing a Japanese managed and regulated product. Direct marketing is also forbidden, and so a foreign fund needs to find a Japanese securities firm that is willing to distribute its shares. As a result, I would surmise that most foreign fund shares sold in Japan go to institutional investors. Japan also restricts the amount of Japanese equity securities in which a

foreign fund can invest. Apparently this is because the Ministry of Finance has felt there is no need for this service: they already have enough of their own providers of Japanese portfolio funds.

Some U.S. fund managers have entered the Japanese market, using funds set up in Luxembourg or the Netherlands Antilles to avoid the unattractive features of U.S. taxation, usually as a joint venture with a Japanese firm that will help handle the selling. But, I am told, sales and profits haven't yet amounted to anything worth writing home about.

Japan is another market that I would like to see opened up on a mutually advantageous basis. Right now, I think we give Japanese money managers fairly easy access to our markets. They can register as investment advisers, even if they have no place of business in the U.S., simply by naming an agent in the U.S. and consenting to service of process through that agent. As registered investment advisers, Japanese firms --or firms from any other country, for that matter-- are free to engage in all aspects of the money management business, including managing pension plan money with the special status accorded registered investment advisers under ERISA, and can set up and run investment companies if they wish. Section 7(d) of the Investment Company Act, of course, blocks sales of interests in a Japanese fund itself in the U.S.

I can see no regulatory reason why there need to be barriers between the U.S. and Japan. Taxation is a problem, as is the case in Europe. I would hope, however, that anything done with Japan would result in a real two-way street. This may require overcoming cultural barriers that are more troublesome than all the laws put together. Right now, I am afraid, we have given more access to Japan than we have gotten in return. I'd like to see that situation change before we give away anything more.

In closing, I want you all to know that I am delighted that the ICI has taken the initiative and is pursuing opening up the international markets. The SEC wants to be a help, not a hindrance. Our tractors may no longer be the best in the world, but I believe our mutual fund industry is the very best there is, and I for one would like to help it become possible for you to export that product.

Right now, we could use the industry's help. We do talk to foreign government officials about these matters. They expect to -- and must -- negotiate with the U.S. government. What we need, to negotiate right and to do it well, is information. We simply don't have good information on what U.S. investment management businesses have, and haven't, been able to do in the international markets. We don't know who is out there trying to get into foreign markets, and what barriers these firms have

encountered. We have some anecdotal evidence, but lack concrete facts. We need to hear from you to understand what the problems are and what you need changed, here and abroad, in order to compete. Let us hear from you.

Thank you for your attention.