

The Association of Corporate Treasurers

Comments in response to

***The Committee of European Securities Regulators
'Call for Evidence on the Supervisory Functioning
of the Prospectus Directive and Regulation',
November 2006***

January 2007

The Association of Corporate Treasurers (ACT)

The ACT is a professional body for those working in corporate treasury, risk and corporate finance. Further information is provided at the end of these comments and on our website www.treasurers.org.

Contact details are also at the end of these comments.

We have canvassed the opinion of our members through our monthly publication to members and others and our Policy and Technical Committee.

General

The ACT welcomes the opportunity to comment on this matter. Our comments reflect the considerations of an issuer, although the issuer view must itself take account of the investor perspective and the overall functioning of the market.

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Response

In general there is a consensus that the introduction and implementation of the Prospectus Directive (PD) has been a significant improvement on previous arrangements and there have been considerable benefits for all market participants. However it is also true to comment that some constraints remain on increasing the efficiencies that could be generated via the Directive.

We would like to highlight those constraints felt to be of direct relevance by our members.

- ⇒ Perhaps the most critical impact has been on the cross-border *retail* market for securities which has been impeded by differing interpretations of the detailed information required for an offering to be included in a prospectus prior to offer
- ⇒ There are a number of areas where regulatory authorities have retained local constraints which would appear to be unnecessary in scope and spirit in relation to the 'Passporting' element of the PD. For example, a number of Member states have additional publication requirements in addition to the formal publication required under the PD in the issuer's home Member State. These states require additional notices to be placed in the local press (in the local language) detailing the date and place of the original publication. These constraints – and others such as filing the final terms of transactions - are unhelpful hindrances to an efficient market
- ⇒ There are also difficulties associated with negative tax disclosure – some regulators have asked for them, some not, both in different jurisdictions and even in the same jurisdiction for different types of issuer (financial institution compared with corporate)
- ⇒ Non-EU domiciled issuers have also noted that choosing a jurisdiction for initial registration is made more complex by the inconsistent approach of regulatory authorities
- ⇒ Uncertainties have also appeared in the treatment of Hybrid securities and the required information and procedures to be followed in differing jurisdictions

In summary, there is clear support for the principles of the Prospectus Directive but some dissatisfaction with local review and interpretation of elements of the Directive. The ACT would be pleased to discuss our comments with you and furnish examples of those areas in which we feel further progress on full implementation could be made.

The Association of Corporate Treasurers

The ACT is the international body for finance professionals working in treasury, risk and corporate finance. Through the ACT we come together as practitioners, technical experts and educators in a range of disciplines that underpin the financial security and prosperity of an organisation.

The ACT defines and promotes best practice in treasury and makes representations to government, regulators and standard setters.

We are also the world's leading examining body for treasury, providing benchmark qualifications and continuing development through training, conferences, publications, including *The Treasurer* magazine and the annual *Treasurer's Handbook*, and online.

Our 3,600 members work widely in companies of all sizes through industry, commerce, financial institutions and professional service firms.

Our guidelines on policy and technical matters are available at <http://www.treasurers.org/technical/resources/manifestosept2006.pdf>.

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