

Response of the European Centre for Employee Ownership

FAO: The Committee of European Securities Regulators - Prospectus Directive consultation

1. Question marks remain after months of discussion among EU member states about the shape and remit of the Prospectus Directive in relation to employee equity pay plans. The underlying assumption must be that all-employee share plans (all-employee financial participation plans) should be exempt from the demands of the Prospectus Directive.
2. One issue, sparked by private advice from a UK Financial Services Authority official to a practitioner, is whether share **option** awards are considered a public offering in the UK at all and if not, whether they should be excluded from the Directive altogether. As option awards are typically made to groups of employees (therefore not easily transferable) and are not normally traded, this could appear to be the case. But not all EU member states agree.
3. Complete exclusion of stock option awards (as opposed to exemption) from the scope of the Directive would produce interesting complications for US, Swiss and other non-EU companies who wanted to use the UK as the home member state for broad-based stock option awards within European subsidiaries.
4. Centre director Fred Hackworth, advised by Doreen Lilienfeld of Shearman & Sterling LLP, told the CESR that if it concludes that stock option awards can, in certain circumstances, come within the remit of the Directive, then these option awards should be automatically exempted from the prospectus requirements.
5. Interest is high in the determination of the share schemes **documentation** companies will have to supply, assuming they are exempted from the Directive. We have mapped out a template for companies to use when delivering broad-based equity pay awards within the EU (see overleaf).
6. Ms Lilienfeld outlined to the CESR public hearing the concerns of US based companies wanting to put in new employee share plans, or to extend old ones, under the proposed new regime.
 - They are worried about costs and therefore seek a simple, concise document.
 - They do not want to have to publish the document in several languages
 - They want to be able to limit publication requirements largely to electronic format communication with employees.
7. US companies are used to awarding stock grants every year to employees in subsidiaries or branches worldwide and therefore need assurance that whatever they do during the intervening period – before the Directive legally had to be enforced – will not be penalised subsequently.

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8. These are European Centre's views about the extent of information companies should be asked to provide in the '*disclosure document*' to accompany new **exempted** equity awards to employees:

- *Name and address of issuer,*
- *Nature and number of the employee securities on offer*
- *Purpose of the plan and basis of employee participation (voluntary),*
- *Where to get further info about the plan*
- *Conditions (if any) – eg eligibility of employees, any investment cap on employees' participation, employees' right to receive dividends (or not)*

9. If the number of employees to be covered by the equity plan issue is less than 'X' then no documentation whatever should be required. If the total **amount** by monetary value of the proposed equity award to employees does not exceed 'Y' then no documentation whatever should be required from the issuing company. It is for the CESR to fix the values of 'X and Y', based on the results of the consultation process.

10. Whatever its final form, the document should be a lot less demanding than the Prospectus Directive itself, otherwise what's the point of having an exemption for employee share schemes?

Fred Hackworth
Director
European Centre for Employee (stock) Ownership

October 14 2004

2 Ridgmount Street
London WC1E 7AA
Tel + 44 207 436 9936
Email: fhackworth@hurlstons.com