

Global Rewards Update: EUROPEAN UNION

October 2009

PROPOSED RELAXATION OF EUROPEAN UNION PROSPECTUS DIRECTIVE (EUPD) REQUIREMENTS

BACKGROUND

Currently, the EUPD requires companies wishing to offer shares to the European Union public to publish a Prospectus. Where a Prospectus is required, the filing must contain extensive information, including details of the company's financial accounts and future prospects, and the rights attaching to the shares. While there are a number of exemptions to this publication requirement, the requirement to publish a full Prospectus generally extends to equity awards offered by employers to their employees.

At present, there is a limited exemption for employee share plans. Companies proposing to offer securities to their employees are not required to publish a Prospectus if they satisfy the following requirements:

- they have securities admitted to trading on an "EU Regulated Market", such as the Official List of the London Stock Exchange, or any of the other main European exchange(s); and
- they produce an "information statement" containing information on the number and nature of the securities, as well as the reason for and details surrounding the offer.

This information statement is a relatively short document and, therefore, is much simpler and less onerous than producing a full Prospectus.

The employee share plans exemption described above has placed the employees of companies

with securities listed outside an EU Regulated Market (e.g. New York Stock Exchange-listed companies and Alternative Investment Market (AIM)-listed companies in the UK), as well as all unlisted private companies, at a disadvantage to their EU-listed competitors. Those companies who do not qualify for the current EUPD employee share plans exemption must either attempt to qualify for one of the other available exemptions or go through the expensive, and often impractical, task of publishing a full Prospectus. To that end, those employers who do not expend the time and resources to publish a full Prospectus, and who also do not fall within one of the EUPD's exemptions, will be prohibited from offering their own shares to their employees in the EU.

As a result of these burdensome requirements, and since many multinational employers will not qualify for this or any other exemption, many non-EU listed companies have simply not offered certain types of share plans to their European employees.

CHANGES PROPOSED BY THE EUROPEAN COMMISSION

The European Commission ("the Commission") has published a proposal to amend the EUPD which, if implemented, will make it significantly easier for companies with shares not currently listed in the EU to offer employee share plans to their European employees.

After extensive consultation, the Commission has proposed extending the current employee share plans exemption to all companies, regardless of whether they are listed on an EU Regulated Market or not. In other words, all multinational employers will now be eligible to grant equity awards to their employees in the EU so long as they satisfy the limited "information statement" requirements referenced above.

The Commission states in its proposal that "the requirement to produce a full Prospectus [where employers offer shares to their EU employees] is not an effective means of informing employees about the risks and benefits of this very particular kind of offer and imposes excessive costs on employers that are not justified in terms of investor protection." The full proposal can be located at 2009/0132(COD).

It is expected that formal adoption by the European Parliament, via an amendment to the EUPD, may take at least a year or longer, though we will provide further guidance once the timeline for amendment is announced.

ACTION

- While formal adoption of this proposal may take some time, companies that are not listed on an EU regulated market may reconsider offering share plans to their employees in the EU in the future, if they do not already do so.

- Employers considering a new share plan in the EU should review the different plan design options available in each EU jurisdiction.

People to Contact

For assistance in this matter or any other issue related to the operation of your global rewards plans, please contact your local Deloitte global rewards consulting services advisor or email us at: globalequity@deloitte.com and a global rewards consultant will contact you.

[Home](#) | [Security](#) | [Legal](#) | [Privacy](#)

1633 Broadway
New York, NY 10019 – 6754
United States

© 2009 Deloitte Touche Tohmatsu.

Deloitte refers to one or more Deloitte Touche Tohmatsu, a Swiss Verein, and its network of member firms, each of which is a legally separate and independent entity. Please see www.deloitte.com/about for a detailed description of the legal structure of Deloitte Touche Tohmatsu and its member firms.

 **Deloitte RSS feeds**