

Global Rewards Update: EUROPEAN UNION

November 2009

REVISED RELAXATION OF EUROPEAN UNION PROSPECTUS DIRECTIVE (EUPD) REQUIREMENTS

Note: This communication is an update to the European Union Global Rewards Update which was released in October 2009.

BACKGROUND

Since the publication of our last European Union update in October, there have been significant developments regarding the European Commission's proposal to amend the EUPD. The Council of the European Union has announced that the proposal to expand an EUPD exemption to all employers offering share plans to employees in the EU will now be limited to offers to employees of companies listed on markets outside the European Economic Area (EEA) which have standards "equivalent" to those which apply in the EU.

As discussed in our October update, 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.

There is currently 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.

Announcement by the Council of the European Union

The European Commission originally proposed to extend the employee share plans exemption referenced above to all companies, regardless of whether they were listed on an EU Regulated Market or not. In other words, all multinational employers would have been eligible to grant equity awards to their employees in the EU so long as they satisfied the limited information statement requirements referred to above.

However, after two subsequent announcements by the European Council, the employee share plans exemption will now only apply to companies with shares listed on an EU Regulated Market and to companies with shares listed on a market outside the EEA that the European Commission has decided has “equivalent” standards to an EU Regulated Market.

Consequently, in contrast to the European Commission’s original proposal, the employee share plans exemption will not be extended to:

- private companies,
- those companies listed in the EEA but not on a Regulated Market (such as those listed on AIM in the United Kingdom), nor
- those companies listed outside the EEA if the particular market does not have “equivalent” standards.

It was initially announced that the “equivalence” of markets outside the EEA would be determined by the competent authorities in each EU member state (e.g. the Financial Services Authority in the UK). However, the European Council has confirmed that the test for whether such a market has equivalent standards to those within the EU will be determined by the European Commission itself and will be applicable in each EEA jurisdiction. This should at least ensure a consistent approach and make it much easier to ascertain whether a particular market is regarded as “equivalent” for purposes of determining whether or not a company will be eligible for the EUPD exemption.

In order for a company with shares listed on a market outside the EEA to be considered “equivalent”, that market will have to meet certain criteria to be published by the European Commission. These criteria will aim to confirm that:

- the market is subject to effective supervision and enforcement on an ongoing basis;
- the market has clear and transparent rules regarding admission to trading so that the shares are capable of being traded in a fair, orderly and efficient manner and are freely negotiable;
- companies listed on that market are subject to ongoing information requirements to ensure investor protection; and
- market transparency is maintained to prevent market abuse in the form of insider dealing and market manipulation.

Although the equivalence criteria have not yet been published, it is worth noting that the EU has already started a similar process of evaluating US and Israeli market standards for the purpose of “passporting” Prospectuses approved in those two jurisdictions into the EU.

It is expected that formal adoption of this amendment to the EUPD by the European Parliament may take at least a year and the proposal may change again prior to adoption. We will provide further guidance once the timeline for amendment is announced.

ACTION

- Pending formal adoption of the EUPD amendment, companies that are not listed on an EU Regulated Market should keep their proposals to offer share plans to their employees in the EU in the future under review.

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.

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