

Maria Velentza
European Commission
Directorate-General Internal Market and Services
Unit G3 - Securities Markets
B - 1049 Bruxelles/Brussels
Belgium

Brussels, 10th March 2009

Dear Mrs Velentza,

DG MARKT: Consultation on the review of the Prospectus Directive

The CFA Institute Centre for Financial Market Integrity (the "Centre") is pleased to comment on the Commission's Consultation on the review of the Prospectus Directive (Directive 2003/71/EC) (the "Consultation"). The Centre, through the experience in international markets and different investment disciplines, represents the interests of investors and investment professionals to standard setters, regulatory authorities, and legislative bodies worldwide on issues that affect the practice of financial analysis, investment management, and the efficiency of global financial markets. CFA has more than 12 000 investment professionals as members throughout the European Union, spread across all 27 member states.

EXECUTIVE SUMMARY

The Consultation forms part of the broader *better regulation* objective, which aims at reducing enterprises administrative burden. Consequently the proposed changes represent simplifications for the issuers. However, according to the Commission those simplifications should not decrease the level of investor protection. The proposed changes are of a rather technical nature and could be described as fine tuning of the existing directive rather than a substantial modification. The Consultation addresses the following issues: definition of qualified investors, exemptions from the requirement to publish a prospectus, disclosure requirements, withdrawal right for investors and threshold for the denomination to freely choose the home state.

The Centre supports the Consultation's objective to abolish unnecessary administrative burdens to issuers. It is, however, vital that any changes made to the Prospectus Directive in this context do not jeopardize investor protections, including the need for timely, transparent, and accurate disclosures of relevant financial, operational, and governance information. The Centre supports most of the proposed simplifications of the Directive. With regard to the definition of qualified investor,

however, the Centre calls for equal treatment of all investors and hence dismisses the proposed change, which extends the definition of qualified investor.

Overall, we believe that the proposals set out herein will help to produce a more coherent proposal, and will add value to its provisions.

We attach our response that addresses the questions of the Consultation. Please do not hesitate to contact us, should you wish to discuss any of the points raised.

Yours faithfully,



Charles Cronin, CFA
Head, CFA Institute Centre,
Europe, Middle East and Africa
+44 (0)20 7531 0762
charles.cronin@cfainstitute.org



Martin Sjöberg
Manager, European Affairs
+32 (2) 401 68 28
martin.sjoberg@cfainstitute.org

The CFA Institute Centre¹ is part of CFA Institute². With headquarters in Charlottesville, VA, and regional offices in New York, Hong Kong, London and Brussels, CFA Institute is a global, not-for-profit professional association with over 93,000 investment analysts, portfolio managers, investment advisors, and other investment professionals in 134 countries, of whom nearly 83,000 are holders of the Chartered Financial Analyst® (CFA®) designation. The CFA Institute membership also includes 136 member societies in 57 countries and territories.

Our responses to the Consultation's questions are set out below.

Article 2(1)(e) - Definition of qualified investors

The Centre acknowledges that the different definitions of qualified investors in the Prospectus Directive and MiFID may cause an extra burden and costs to issuers. However, the Centre takes the view that wholesale investors have similar information needs as retail investors.

Just because investors can make larger investments does not imply that they are necessarily aware of all of the issues affecting specific securities. Given the larger investment amounts, it is imperative that they receive the same amount and types of information as smaller investors. Hence, the Centre calls for equal treatment of all investors. This would, in addition, eliminate the raised problems associated with different classifications of investors.

Article 3 - Exempt offers

The Centre supports the deletion of the last sentence of Article 3(2), which states that "the placement of securities through financial intermediaries shall be subject to publication of a prospectus [...]". It should be the sole responsibility of the issuer to publish a prospectus. Only one prospectus should be published even if the securities are sold to an intermediary, which temporarily holds them before selling them to the final investor. There is no need for different subsequent prospectus throughout the different stages of a placement of securities through financial intermediaries, whether it is a cascade scenario or not. Supplementing the same information several times is of no benefit to investors.

¹ The CFA Institute Centre develops, promulgates, and maintains the highest ethical standards for the investment community, including the CFA Institute Code of Ethics and Standards of Professional Conduct, Global Investment Performance Standards ("GIPS®"), and the Asset Manager Code of Professional Conduct ("AMC"). It represents the views of investment professionals and investors before standard setters, regulatory authorities, and legislative bodies worldwide on issues that affect the practice of financial analysis and investment management, education and licensing requirements for investment professionals, and the transparency and integrity of global financial markets.

² CFA Institute is best known for developing and administering the Chartered Financial Analyst curriculum and examinations and issuing the CFA Charter.

Article 4 - Exemptions for Employee Shares Schemes

Employee shares schemes are a special case. Even though disclosure and investor protection are needed as much for employees as for shareowners, the special nature of employee shares schemes makes exemption from the prospectus directive plausible. For one thing, employees of a listed company should have access to the publicly available financial reports and news released by the issuer. Consequently, the Centre therefore supports the exception from the Directive for employee shares schemes for also none listed companies.

Article 10 - Information

Article 10 of the Prospectus Directive requires issuers with listed securities to provide annually a document containing or referring to all information published in the 12 months preceding the issuance of the prospectus. The Centre supports the removal of this article as the disclosure of periodic and ongoing information is covered by the Transparency Directive. Any duplication of those requirements should be abolished.

Article 16 - Supplement to the prospectus

Article 16 of the directive states that every significant new factor which is capable of affecting the assessment of the securities and which arises or is noted between the time when the prospectus is approved and the final closing of the offer to the public or, shall be mentioned in a supplement to the prospectus. The Centre agrees that technical issues, such as, for instance, the definition of *significant new factor* should also in the future be addressed by the level 3 committee.

Investors who have already agreed to purchase or subscribe for the securities before the supplement is published shall have the right, exercisable within a time limit which shall not be shorter than two working days after the publication of the supplement, to withdraw their acceptances. Regarding the withdrawal period in Article 16(2), the Centre supports a harmonisation of this time limit to at least two days.

Modification of thresholds

According to article 2(1)(m)(ii), the issuer of non-equity securities can freely choose their *home Member State* provided the denomination is at least €1000 or equivalent in the currency in point. It is, however, not the denomination of a security which determines its risk. From this point of view, the Commission argues that the €1000 threshold to freely choose the home state for issues of non-equity securities is inappropriate. The Centre supports the deletion of the €1000 threshold.

Other issues identified

Rights issues

The bearer of a rights issue is a shareowner in the relevant company and therefore is already privy to company information. The Commission considers whether it is appropriate to exempt issuers of rights offerings from having to provide prospectuses. We have argued in the past, particularly in the United Kingdom that shareowners would benefit from a short, "Key Investor Information" document. This document would contain information about the offer; updates on trading and financial position; management discussion and analysis; the reasons for the issue; the underwriting group members and their commitment; and a reference to the full prospectus via a web link.

10th March 2009.