

The Association of Corporate Treasurers

Comments in Response to

Call for Evidence regarding Private Placement Regimes in the EU

Issued by The European Commission, Internal Markets and Services DG,

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June 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 Policy and Technical Committee.

General

The ACT welcomes the opportunity to contribute to this consultation. Although the document concentrates on the issue of equity securities we assume that the Commission considers the principles to be similarly applicable to debt capital market transactions.

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Response

It is not our intention to address each individual question raised in the document, rather to address the two primary concerns on which the call for evidence is based.

Is there a single market failure hampering the raising of capital via private placements across the EU?

The ACT's view is that having local markets for private placements does not hamper or restrict the raising of capital to an extent that warrants action to restructure and harmonize the private placement regimes of individual member states

In cases where local markets exist for private placements, with their own specific requirements, it might well be complicated for non local issuers and investors to participate because of lack of familiarity or access to those markets. However we would argue that those investors and issuers who wish to access individual markets should either invest the time and effort to become

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aware of local circumstances or confine themselves to issues available on regulated exchanges.

We would argue also that the choice between standardised regulated markets and the miscellaneous private markets provides flexibility and a richness of choice rather than being a problem. There is no reason to believe that both types of markets - public and private - cannot co-exist and offer a degree of choice.

As regards the concept of harmonisation we would need to see an impact assessment to be able to make a fully informed comment, but our perception is that it should be possible for individual local private placement markets to exist without any new measures. It may be that post Basel II and the CRD, regulated investors may be better able to invest in non rated debt instruments that are available by private placement and that this will stimulate the various markets. The only area where the Commission can reasonably consider intervention might be to ensure that no Member States have rules or legislation that is discriminatory as to the origin of issuers or investors from elsewhere in the EU.

Is additional regulation required either in respect of issuance procedures or investor protection?

The ACT's view is that there is no evidence that local market procedures are insufficient either for the process of issuance or relevant investor protection. Allied with any local regulatory environment are EU regulatory positions – the Prospectus (PD) and Transparency Directives and the Market in Financial Instruments Directive (MiFID).

Regulation often comes into play in order to protect the weak or ill informed and this is a justifiable reason for regulation. The consultation makes the point that there is no common definition of what is a private placement, where borderlines between private and public occur, nor what category of investor is eligible to operate in the private placement markets. Under MiFID, firms offering investment services are bound by certain duties of best execution, and appropriateness and suitability testing, which protect the retail investor from being mis-sold the wrong sorts of investments.

The levels of investor protections in private deals, the disclosure rules and so on also vary. However the definition of where the PD rules do start to apply and the distinction within them between retail and professional transactions are all very clear. Even if different countries end up with different definitions of who is sufficiently knowledgeable to participate in private placement markets, there do exist standard definitions of retail, professional and eligible investors for MiFID purposes.

We would also be concerned that the scope and scale of a harmonization process would be a substantial undertaking with, currently, no evidence of the requirement for or the potential success of such a venture.

Conclusion

Broadly the ACT does not feel that there is sufficient evidence that

1. the current operations of local private placement markets inhibits capital raising or capital flows with the EU;
2. that there is market failure in respect of either investor protection or issuer access; and

3. that there is a need for additional regulatory measures for local private placement markets.

The Association of Corporate Treasurers (ACT)

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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