



**GEO – MONTREAL CONFERENCE**



**The European Union Prospectus Directive - Practical Implications**

20 April 2004

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**Agenda**



- 1 Objectives
- 2 Background
- 3 Outline
- 4 Home Member State
- 5 Exemptions
- 6 Formal Prospectus
- 7 Points to Consider

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**Objectives**



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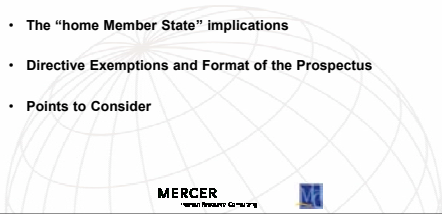
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## Today's Objectives

- Background on the European Union and the EU Financial Services Action Plan
- Outline of the "EU Prospectus Directive"
- The "home Member State" implications
- Directive Exemptions and Format of the Prospectus
- Points to Consider



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## Background




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## Background

- European Union (EU) currently comprises of 15 Member States:
 

- Austria	- Germany	- The Netherlands
- Belgium	- Greece	- Portugal
- Denmark	- Ireland	- Spain
- Finland	- Italy	- Sweden
- France	- Luxembourg	- United Kingdom
- 10 countries are scheduled to join the EU on 1 May 2004
 

- Czech Republic	- Lithuania
- Cyprus	- Malta
- Estonia	- Poland
- Hungary	- Slovenia
- Latvia	- Slovakia



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**Background**

- EU strives to establish integrated regulations for financial services
- “Financial Services Action Plan” developed to include the following:
  - Create a common prospectus for offers of securities within the EU and admissions to the EU regulated securities markets
  - Develop harmonised reporting requirements for companies listed on EU regulated markets
  - Adopt requirements for public disclosure of corporate information by companies trading on EU markets
  - Adopt new international accounting standards for EU companies

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**Until 30 June 2005**



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**From 1 July 2005**



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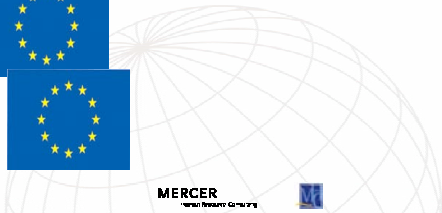
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## Outline

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## Outline of Directive

**Prospectus Directive published 31 December 2003**

**Aims to harmonise requirements for securities offerings across the EU and admissions to EU regulated markets**

**EU Member States must implement the Directive by 1 July 2005**

**Introduces "single passport" concept for public offers of securities**

**Consequences for Non EU registered companies**

**Public offerings to require approval of prospectus by "home Member State"**

**Home Member State determined by EU Member State of first public offering or by market listing location**



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## Purpose of the Directive

**Adoption will lead to a single set of requirements for:-**

- regulation of public offers of securities
- admission of securities for trading on EU regulated markets

**Directive may include equity securities offered under an employee stock plan**

**"Single Passport" concept provides that the home Member State regulates securities offerings throughout EU**

**Intention that no further approval should be required when extending offers into the EU once prospectus is approved by the home Member State regulator**



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## Home Member State




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## Home Member State

- Home Member State will govern requirements for all public offers made into the EU once the Directive has been adopted as part of national laws
- EU Companies – the home Member State is the EU Member State where the company is registered as a corporate entity
- Non EU Companies – When registered outside the EU, the Directive provides that the home Member State is determined according to the following:
  - Companies not admitted for trading in EU
  - Companies admitted for trading in EU



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## Home Member State

Companies Not Admitted for Trading in the EU

- Companies with no securities listed on an EU regulated market
- “Home Member State” will be where that company first makes a public offering after 31 December 2003
- What happens if company applies for admission of trading subsequent to its first offering under the Directive?

Companies Admitted for Trading in the EU

- Companies with securities listed on an EU regulated market
- “Home Member State” will be the EU Member State where securities are listed as at 31 December 2003
- If securities are listed on numerous EU regulated markets the company may chose “Home Member State” with effect from 1 July 2005



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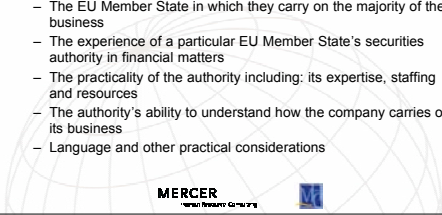
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## Home Member State



- It is essential for companies to consider carefully the effect a public offering into an EU Member State will have – whether that is a general public offering to third parties or one made to employees under an employees share plan
- In evaluating potential home Member States, companies should consider
  - The EU Member State in which they carry on the majority of their business
  - The experience of a particular EU Member State's securities authority in financial matters
  - The practicality of the authority including: its expertise, staffing and resources
  - The authority's ability to understand how the company carries out its business
  - Language and other practical considerations



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## Challenges: Company Structures



- Selection of an home Member State is *irrevocable*
- What happens:
  - if the company secondary lists on an EU regulated exchange after its first public offer?
  - if a new parent company is established for the company?
  - if the company is acquired by or merges with an entity with a different home Member State?



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## Challenges: Lack of Guidance from EU



- The Directive is unclear on many key points, including—
  - Method of calculating Euro 2,500,000 exclusion to determine whether the Directive is triggered
    - calculation of 12-month measuring period
    - which offers are taken into account—offers to EU employees only?
    - what forms of awards are measured?
  - Procedure for selection of a home Member State
  - Selection of home Member State where simultaneous grants in multiple EU Member States



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## What are Non-EU Companies Doing?



- Companies are monitoring award amounts against the Euro 2,500,000 exclusion to plan grant in one EU Member State when threshold exceeded
  - Avoiding simultaneous grants in multiple EU Member States
  - Avoiding inadvertent selection in making a one-off offer into an EU Member State
- UK is emerging as preferred home Member State
- Luxembourg, Ireland, Netherlands are often considered
- UK Financial Services Authority has suggested method of documenting selection of UK as home Member State
  - Companies are taking these steps
- Euro 2,500,000 exclusion limit calculated as within last 12 months prior to award date
- Awards to employees in EU taken into account for this purpose

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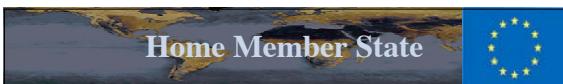
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## Home Member State



**EXAMPLE:**

- Assume Canadian Company A ("A") makes an employee share offer into the UK, Luxembourg, Poland and Spain on 1 June 2004; the offer totals Euro 1 million. A has previously made offers into the EU on 1 January 2004 totalling Euro 2.2 million. Due to the Euro 2.5 million exemption, no home Member State will be triggered.
- On 10 August 2004, A makes an offer under its French approved stock plan totalling Euro 500,000. As it exceeds the Euro 2.5 million limit at this date it may trigger the home Member State. However no prospectus is actually required under existing French securities law.

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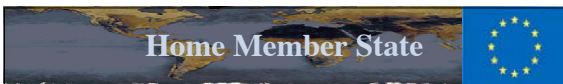
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## Home Member State



**EXAMPLE, continued:**

- On 1 November 2004 A completes acquisitions of new subsidiaries in Finland and Belgium. It extends the employee share plan to employees of those subsidiaries. Under existing Belgium law a prospectus is required – will the Belgium regulator in the future argue that it should be the home Member State being the first EU Member State where a prospectus is required? Alternatively can A actually argue that the UK is its home Member State as that is the EU Member State where most of its business outside of Canada is carried on and all its employee share plans for the EU are administered from the UK?

**Where does this leave Company A?**

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## Directive Exemptions





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## Scope of EU Prospectus Directive

**Offers of securities to the public**

- **"securities"**

"shares in companies and other securities equivalent to shares in companies, bonds and other forms of securitized debt which are negotiable on the capital market and any other securities normally dealt in giving the right to acquire any such transferable securities by subscription or exchange or giving rise to a cash settlement excluding instruments of payment [and excluding certain money market instruments]"
- **"to the public"**

"offer of securities to the public" means a communication to persons in any form and by any means, presenting sufficient information on the terms of the offer and the securities to be offered, so as to enable an investor to decide to purchase or subscribe to these securities. This definition shall also be applicable to the placing of securities through financial intermediaries



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## Exclusions from Directive

- **The main relevant exclusion is for:-**
  - securities included in an offer where the total consideration of the offer is less than Euro 2,500,000, which limit shall be calculated over a period of 12 months
- **Where this exclusion applies the offer falls outside the Directive and Member States' laws may then apply**



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**Exemptions from Formal Prospectus Requirement**

- offer solely to qualified investors *and/or*
- offer addressed to fewer than 100 natural or legal persons per Member State, other than qualified investors *and/or*
- offer addressed to investors who acquire securities for a total consideration of at least Euro 50,000 per investor, for each separate offer *and/or*
- offer whose denomination per unit amounts to at least Euro 50,000 *and/or*
- offer with a total consideration of less than Euro 100,000, which limit is calculated over a period of 12 months
- Mix and match

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**Exemptions from Formal Prospectus Requirement**

- Securities offered, allotted or to be allotted to existing or former directors or employees
  - by their employer or an affiliated undertaking
    - securities already admitted to trading on a regulated market
  - provided that a document is made available containing information on the number and nature of the securities and the reasons for and details of the offer

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**Practical Issues: Planning**

- In order to avoid individual Member States' laws, seek to bring employee share offering within scope of Directive
- Alternatively, to avoid EU law if in some only of EU Member States, examine escaping scope and satisfying local law
- In order to avoid requirement to produce document "containing information on the number and nature of the securities and the reasons for and detail of the offer" seek to use the exemptions by reference to type of offer, e.g.
  - offer to fewer than 100 natural persons per Member State
  - offers to senior executives in financial sector, using "qualified investor" exemption
- In order to avoid requirement for formal prospectus, use the Article 4 employee exemptions
- "Choose" correct home Member State

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## Formal Prospectus






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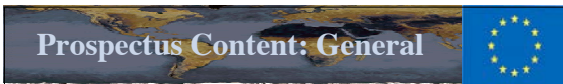
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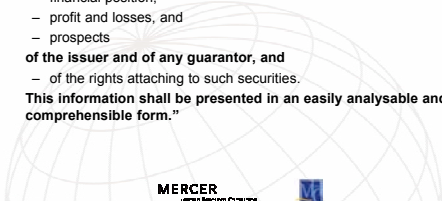
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## Prospectus Content: General

- **“All information which, according to the particular nature of the issuer and of the securities offered to the public or admitted to trading on a regulated market, is necessary to enable investors to make an informed assessment of**
  - the assets and liabilities,
  - financial position,
  - profit and losses, and
  - prospects**of the issuer and of any guarantor, and**
  - of the rights attaching to such securities.**This information shall be presented in an easily analysable and comprehensible form.”**





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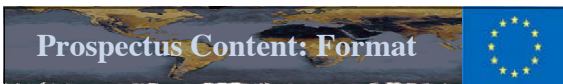
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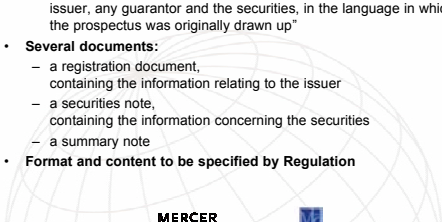
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## Prospectus Content: Format

- **Single document or several documents**
- **In any event, must contain a summary:**
  - Which “shall in a brief manner and in nontechnical language, convey the essential characteristics and risks associated with the issuer, any guarantor and the securities, in the language in which the prospectus was originally drawn up”
- **Several documents:**
  - a registration document, containing the information relating to the issuer
  - a securities note, containing the information concerning the securities
  - a summary note
- **Format and content to be specified by Regulation**





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**Practical Issues: Publication**

- **Article 14 – Publication of the prospectus**
  - in one or more newspapers widely circulated in the Member States in which the offer to the public is made or the admission to trading is sought **or**
  - in a printed form to be made available, free of charge, to the public at the offices of the market on which the securities are being admitted to trading, **or** at the registered office of the issuer **and** at the offices of the financial intermediaries placing or selling the securities, including paying agents **or**
  - in an electronic form on the issuer's website **and**, if applicable, on the website of the financial intermediaries placing or selling the securities, including paying agents **or**
  - in an electronic form on the website of the regulated market where the admission to trading is sought **or**
  - in electronic form on the website of the competent authority of the home Member State if the said authority as decided to offer this service

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**Points to Remember**



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**Points to Remember**

- Due to the provisions governing determination of home Member State, non EU companies **MUST** plan their EU offerings with the Directive in mind
- Consider the most relevant EU Member State for your company's home Member State
- Development of a strategy for Non EU registered companies to deal with the Directive
- Ongoing assessment of Directive ambit taking into account Guidance to be released during 2004
- From July 2005 consider the impact of the revised "employee share offerings" exemption

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Questions



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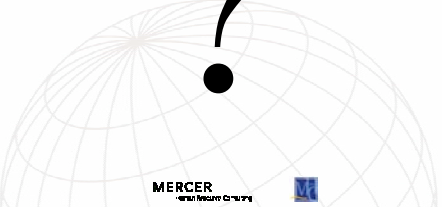

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Questions



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Thank You

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