

EU Prospectus Directive: Update on the  
Issues with Speakers from EU  
Commission, UK FSA and Cisco Systems,  
Inc.

June 29, 2007

8:45 a.m. - 9:45 a.m.

Moderator: **Valerie Diamond**,  
Baker & McKenzie LLP (US)

Speaker: **Alexy Armitage**,  
Consultant

Speaker: **Nancy Kobs**,  
Cisco Systems, Inc. (US)

Speaker: **Ruth Walters**,  
EU Commission Internal Ma (Belgium)

Speaker: **Adetutu Odutola**,  
The Financial Services Authority (UK)



## Agenda – Updates on Directive

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- European Commission and FSA
- Employee Share Awards Subject to Directive?
- Exemptions/Exclusions Available?
- Current Prospectus/Passporting Considerations?
- What does the Future Hold? Will There Ever be Harmony?

## The European Commission and the FSA

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- Why are we here?
  - What we can offer
  - What we can't promise
- Continuing work on the Prospectus regime
  - Enforcement by the Commission
    - Ensure effective 'passport' for prospectuses
    - Unlawful additional requirements
  - Legal clarification and guidance
  - Role of CESR
  - CESR FAQs

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## Update on Forms of Awards Subject to the Directive

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- CESR Q&As July 18, 2006
  - No public offer of securities if grantee is not given the choice to accept or reject
  - If grantee is given the choice to accept or reject and the offer is for zero consideration, exemption for offers of less than 2.5 million Euro under Article 1,2.(h) and Euro 100,000 exemption applies

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## Equity Awards Subject to Directive?

| Conflicting Interpretations among Member States |   |                                      |
|---|---|--------------------------------------|
|   | Options   | RSUs                                 |
| <b>Austria</b>                                  | NO – however, for options filing under local regime may be required | NO                                   |
| <b>Belgium</b>                                  | NO  | NO                                   |
| <b>Czech Republic</b>                           | NO – provide vesting at 6+ months                                   | PROBABLY NOT                         |
| <b>Finland</b>                                  | NO, but recommend confirming  | No, but recommend confirming         |
| <b>France</b>                                   | NO  | NO                                   |
| <b>Germany</b>                                  | YES – at vesting  | NO – if offered for no consideration |
| <b>Hungary</b>                                  | NO  | YES                                  |

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## Equity Awards Subject to Directive?

| Conflicting Interpretations among Member States |  |  |
|---|--|--|
|   | Options  | RSUs   |
| <b>Ireland</b>                                  | NO if non-transferable   | NO – excluded under Euro 2.5 million exclusion as offer for zero consideration |
| <b>Italy</b>                                    | YES – grant of options is a simultaneous offer of underlying shares that are freely transferable. Cashless restriction may avoid need to file a prospectus | NO   |
| <b>Luxembourg</b>                               | NO for non-negotiable options  | NO   |
| <b>Netherlands</b>                              | PROBABLY NOT, but confirm on case-by-case basis  | PROBABLY NOT, but confirm on case-by-case basis                                |

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## Equity Awards Subject to Directive?

| Conflicting Interpretations among Member States |                              |                              |
|---|------------------------------|------------------------------|
|   | Options                      | RSUs                         |
| Poland  | YES                          | NO                           |
| Portugal  | NO, follow CESR's View       | PROBABLY NOT                 |
| Slovak Republic                                 | NO, follow CESR's View       | PROBABLY NOT                 |
| Romania   | NO, but recommend confirming | NO, but recommend confirming |

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## Equity Awards Subject to Directive?

| Conflicting Interpretations among Member States |         |  |  |
|---|---------|--|--|
|   | Options | RSUs   | ESPP   |
| Spain   | NO      | NO   | NO   |
| UK  | NO      | NO – provided RSUs offered for no cash consideration | Very narrow and exception for ESPP on case-by-case basis |

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## **Any Movement on Which Employee Share Awards are Subject to Directive?**

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- Comments of Ruth Walters
- Comments of Adetutu Odutola
- Additional Comments from Panel



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## **Availability of Exclusions and Exemptions**

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- Divergent Views on Euro 2.5 million Exclusion
- Divergent Views on Exemption for Offers to Fewer than 100



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## Divergent Views on Euro 2.5 Million Exclusion

- Article 1,2. (h) of the PD excludes from the Directive “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 12 months.”
- Meaning of “*consideration*” — are services consideration?
  - CESR Q&As: services do not constitute consideration, unless shares offered in place of a quantifiable financial benefit

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## Divergent Views on Euro 2.5 Million Exclusion

| Geographical Scope?            |                  | Country Limitations |  |
|--------------------------------|------------------|---------------------|--|
| France<br>Netherlands<br>Spain | per Member State | Germany             | Banks and issuers whose securities are admitted to trading on an EU regulated market |
| Others                         | EU-wide          | Sweden              | Euro 1,000,000   |
| CESR Q&As<br>July 2006         | EU-wide          |                     |  |

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## Divergent Views of Offers to Fewer than 100 Exemption

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| “Small Offering Exemption” |   |
|----------------------------|---|
| Austria                    | 100 person exemption not available if offer to >100 employees in <u>any</u> Member State                            |
| Czech Republic<br>Hungary  | Had taken similar position to Austria; now looks only to the number of employees offered securities in that country |

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## Any View on Changes to Application of Exclusion and Exemptions?

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- Comments of Ruth Walters
- Comments of Adetutu Odutola
- Additional Comments from Panel

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## Current Prospectus/Passporting Considerations?

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- Generally, filings that have been completed so far are for employee stock purchase plans, not all of which are Code section 423 plans
- Countries where prospectus filings have been made for employee stock plans
  - Belgium
  - France
  - Germany
  - Luxembourg
  - Netherlands
  - UK

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## Current Prospectus/Passporting Considerations?

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- Additional Country Specific Requirements Continue to Exist
  - Publication of Advertisement
  - Special Brokerage Arrangements
  - Reporting or Special Fees
  - Tax Disclosure

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## Additional Reporting Obligations

|                |   |
|----------------|---|
| <b>Belgium</b> | Total shares purchaed over 12 month period of prospectus      |
| <b>Hungary</b> | 10K,10Q and 8K filed on regular basis                         |
| <b>Italy</b>   | Annual report of total purchasers and shares (options?, ESPP) |
| <b>Poland</b>  | Sales report within 14 days of end of subscription period     |

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## Cisco's Equity Plans

- **Approximately 59,000 employees world-wide**
- **Mobile Employee Population**
  - 326 Expatriates
  - 1,655 Permanent Transfers
- **U.S. Plans implemented globally (SIP, ESPP)**
  - Options - 91 countries (broad-based)
  - RSUs - 17 countries
  - ESPP - 70 countries (broad-based)
- **122 acquisitions to-date – 114 active stock plans**
- **Basic terms & conditions**
  - Options: 9 year term, 5 years vesting
  - RSUs: 5 years annual vesting
  - ESPP: 6 months offering/purchase periods, 10% max contributions, 15% discount, look-back

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## Cisco's Offerings – Options, RSUs, ESPP *Non-U.S. Countries*

|                        |                    |              |              |                       |
|------------------------|--------------------|--------------|--------------|-----------------------|
| Algeria                | Denmark            | Italy        | Nigeria      | South Africa          |
| Argentina*             | Dominican Republic | Japan*       | Norway       | Spain                 |
| Australia*             | Ecuador            | Jordan       | Pakistan     | Sri Lanka             |
| Austria                | Egypt              | Kazakhstan   | Panama       | Sweden                |
| Azerbaijan             | El Salvador        | Kenya        | Peru         | Switzerland           |
| Belgium*               | Estonia            | Korea*       | Philippines  | Taiwan                |
| Bosnia and Herzegovina | Finland            | Kuwait       | Poland       | Thailand              |
| Brazil*                | France*            | Latvia       | Portugal     | Tunisia               |
| Bulgaria               | Germany*           | Lebanon      | Puerto Rico  | Turkey                |
| Cameroon               | Ghana              | Lithuania    | Qatar        | UK*                   |
| Canada*                | Greece             | Luxembourg   | Romania      | Ukraine               |
| Chile                  | Hong Kong*         | Macedonia    | Russia*      | United Arab Emirates* |
| China*                 | Hungary            | Malaysia     | Saudi Arabia | Uruguay               |
| Colombia               | Iceland            | Mauritius    | Scotland     | Uzbekistan            |
| Costa Rica             | India*             | Mexico*      | Senegal      | Venezuela             |
| Croatia                | Indonesia          | Morocco      | Singapore    | Vietnam               |
| Cyprus                 | Ireland            | Netherlands* | Slovakia     | Yugoslavia /Serbia    |
| Czech Republic         | Israel             | New Zealand  | Slovenia     | Zimbabwe              |

Blue = SIP and ESPP offered; Red = SIP offered only; \* = RSUs offered  
Shaded in Yellow = EU Prospectus Passport

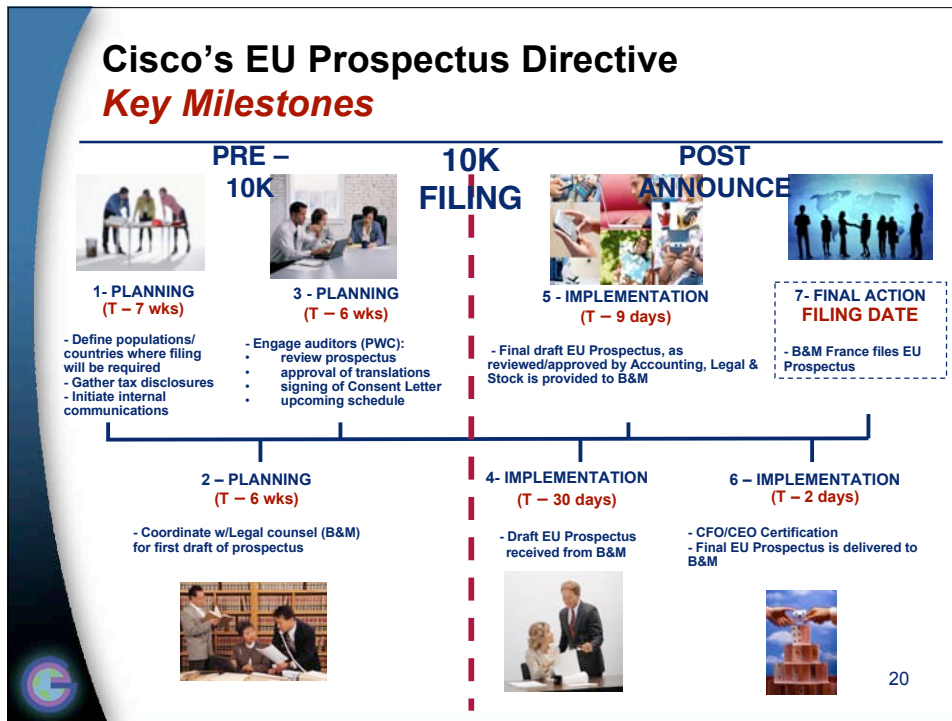
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## Cisco's Prospectus Filing

- **Plans Covered** – ESPP, 2005 SIP
- **Home Member State** – France
- **Passport Countries** – Austria, Belgium, Denmark, Germany, Italy, Netherlands, Poland, Spain & UK
- **Translations** – All except Netherlands & UK
- **Publish Ads** – Germany
- **Special Broker** – Poland

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## Cisco's EU Prospectus Directive Key Milestones



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## What does the future hold? Will we ever have harmony?

- Will any changes occur prior to the general review of the Directive in 2008?
- Will All forms of Employee Share Awards Ever be Considered Outside the Directive?
- Will Non-EU Listed Issuers ever be able to rely on Employee Share Exemption?

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## **What does the future hold? Will we ever have harmony?**

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- Is the Commission aware of stifling effect of Directive on non-EU listed companies employee share offerings in the EU? Is it concerned that EU employees are left out?
- Will the form of prospectus filed for an employee share offering ever be consistent among member states?
- Will there ever be an abbreviated form of prospectus? What will that look like? How long before that occurs?

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## **Questions?**

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THANK YOU FOR YOUR PARTICIPATION

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