

MEMO# 21110

May 3, 2007

European Commission Seeks Input on Private Placement Regime for the EU

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TO: INTERNATIONAL OPERATIONS ADVISORY COMMITTEE No. 8-07 RE: EUROPEAN COMMISSION SEEKS INPUT ON PRIVATE PLACEMENT REGIME FOR THE EU

On April 20, 2007, the European Commission's Internal Market and Services Directorate General published a call for evidence regarding the necessity and feasibility of a private placement regime in the European Union ("EU"). [\[1\]](#) The Commission intends to issue a report on options for a private placement regime by the end of the year. Responses are due by June 29, 2007.

The Commission seeks responses relating to the following:

1. support for the argument that a national private placement regime in the EU is needed and would facilitate cross-border investment;
2. the essential elements of a private placement regime; and
3. views on the extent to which existing EU law (e.g., the Prospectus Directive, MiFID, or the Transparency Directive) contains elements that are relevant to a private placement regime and how the elements contribute or could be adjusted to accommodate a national private placement regime.

Necessity for EU Private Placement Regime

The Commission is seeking information on the economic relevance of current Member State private placement regimes, including market size and the financial products affected by the regimes. The Commission wishes to evaluate the potential size of an integrated market.

In addition, the Commission wants to understand the differences among Member State regimes and how such differences impede legitimate cross-border investment.

Essential Elements of a Private Placement Regime

The Commission is seeking comment on how the term “private placement” should be defined and distinguished from a public offering and whether a private placement regime should be developed for all securities or only for particular securities (e.g., closed-end funds or non-harmonized open-end funds). The Commission also seeks comment on how to define an “eligible investor,” whether there should be qualification requirements for issuers (e.g., domiciled in the EU or all countries) and whether there should be investor protection rules (e.g., require minimum information or rely on sophistication of investor, any notification procedures). The Commission wishes to be sensitive to the interests of issuers for an effective private placement regime while also considering the elements of current Member State private placement regimes that may be important (e.g., filing with an authority so it can monitor the activity).

Existing EU law

Finally, the Commission is seeking views on whether existing EU Directives could be modified to accommodate a private placement regime or whether new rules would be required. In addition, the Commission seeks opinions as to whether there are elements in existing law that would be appropriate for a private placement regime such as existing investor appropriateness tests (e.g., MiFID’s “eligible counterparty” or “professional investor” definitions, the Prospectus Directive’s definition of “qualified investor”).

Response Period

The Institute expects to submit a response to this call for evidence by June 29, 2007. If you have specific concerns that you would like the Institute to address, please contact me at 202-326-5813 (solson@ici.org) or Glen Guymon at 202-326-5837(gguymon@ici.org). We will be scheduling a conference call with members in May to discuss the call for evidence. The date of the call and the dial-in information will be circulated later.

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endnotes

[1] European Commission, Internal Market and Services Directorate General, Call for Evidence Regarding Private Placement Regimes in the EU (April 2007), available at http://ec.europa.eu/internal_market/securities/ucits/index_en.htm#call.

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