

Bank of Italy amends new post-issuance reporting obligations

November 3, 2016

New rules apply to placements and offers carried out since October 1, 2016, with reporting obligations starting as of January 1, 2017 for managers and offerors

On August 10, 2016, the Bank of Italy amended the new rules on reporting obligations regarding the issuance, offering and placement of financial instruments (“*disposizioni in materia di segnalazioni a carattere consuntivo relative all’emissione e all’offerta di strumenti finanziari*”), which were adopted on August 25, 2015 and entered into force on October 1, 2016 (the **Rules**), with certain obligations, however, being effective as of January 2017.

The Rules implement Article 129 of Legislative Decree No. 385 of September 1, 1993, as amended (the **Italian Banking Act**)¹, the application of which has been suspended for several years. The new regime requires entities that issue, offer or place certain financial instruments in Italy to file information regarding the issuer and the financial instruments with the Bank of Italy for statistical purposes, regardless of whether a prospectus is required under the Prospectus Directive² or whether the transaction is structured as a private placement or an offer to the public. The Rules, providing, *inter alia*, for reporting of information through electronic filing, simplify the regime originally in place, which required filing of paper forms with the Bank of Italy.

The Rules have been in force since October 1, 2016 with respect to financial instruments of issuers (i) with registered office in Italy, or (ii) belonging to a group whose parent company is a supervised entity with registered office in Italy. As a result of the amendments brought to the Rules in August 2016, reporting obligations for managers and offerors of financial instruments of non-Italian issuers apply from January 2017 (but also with respect to instruments placed or offered in the first quarter of 2016).

This memorandum provides a brief overview of the reporting obligations introduced by the Rules, as recently amended.

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The full text of the Rules and the amendments thereof can be accessed via this link:

<https://www.bancaditalia.it/compiti/vigilanza/normativa/archivio-norme/disposizioni/emissione-offerta-strumenti-finanziari/index.html?co>

¹ According to Article 129, in order to evaluate and monitor market and financial instruments’ trends, the Bank of Italy may require issuers and offerors to provide it with periodic reports, data and information on the financial instruments issued or offered in Italy or (in the case of an issuance or offering by an Italian entity) abroad, regardless of whether a prospectus is published in connection with such an issuance or offering.

² Directive 2003/71/EC, as amended.



1. Reporting obligations: scope of application and exemptions

1.1 Entities which are subject to the Rules

The Rules apply to:

- (a) issuers, including governmental entities, with registered office in Italy, in the case of issuance, offering or placement of financial instruments in Italy or abroad;
- (b) supervised parent companies³ with registered office in Italy, in the case of financial instruments (i) issued by a member of the group having its registered office outside of Italy, and (ii) offered or placed in Italy; and
- (c) entities that place in Italy financial instruments issued by entities with registered office outside of Italy (other than those referred to in (b) above) (the **Managers**)⁴. In the event that no Manager is involved in the placement, the following entities must comply with the reporting obligations: (i) the offeror (the **Offeror**), in the case of a public offering, or (ii) the issuer, in the case of a private placement or direct listing.

Reporting obligations entered into force on October 1, 2016 with respect to entities under (a) and (b)

³ According to Article 1.2, paragraph 7) of the Rules, “supervised parent companies” are defined as parent companies of (i) a banking group, (ii) a financial group, (iii) a group of Italian registered securities dealers (*società di intermediazione mobiliare* or SIM), or (iv) a group of asset management companies.

⁴ In the event that the placement is carried out by an underwriting syndicate, the main information on the financial instruments, available as of the issue date, shall be filed with the Bank of Italy by the manager responsible for the settlement of the financial instruments. In addition, each member of the syndicate shall inform the Bank of Italy of the amount of financial instruments individually placed in Italy. If all, or part, of the orders received by each member of the syndicate flow into a central book of orders, the reporting obligations set forth in the Rules shall be complied with by the lead manager, *i.e.*, the manager responsible for the settlement and delivery of the financial instruments.

above and to issuers under (c)(ii) above⁵. With respect to other entities under (c) above (*i.e.*, Managers and Offerors), the reporting obligations shall apply from January 1, 2017.

1.2 Exemptions

The Rules apply to a variety of financial instruments⁶, including (i) bonds and other debt securities; (ii) put and call options on debt securities; and (iii) derivatives that may be settled in cash.

The Rules shall not apply to, amongst others:

- (i) equity securities and securities similar to equity securities issued by companies, partnerships and other entities, and share deposit certificates;
- (ii) financial instruments issued (a) or guaranteed by the Italian government or an EU member state; (b) by international organizations in which one or more EU member states are part; (c) by the European Central Bank or the central banks of the EU member states; and (d) by non-EU member states;
- (iii) financial instruments issued under a reverse enquiry regime (*i.e.*, instruments issued upon request of the purchaser which can be subsequently sold only to the issuer or a designated entity); and
- (iv) non-structured financial instruments with an original maturity of 12 months or less⁷.

⁵ In the FAQs published on its website, the Bank of Italy specified that the reporting obligations apply with regard to financial instruments having a settlement or issue date on or after October 1, 2016 (even if the placement occurred before such date). The FAQs can be accessed via this link:

https://www.bancaditalia.it/statistiche/servizi/isin-anagrafe-titoli/isin/FAQ_129_EN.pdf?language_id=1

⁶ Article 1.2 of the Rules defines “financial instruments” by reference to Article 1, paragraph 2, letters a) and b) of Legislative Decree No. 58 of February 24, 1998, as amended.

⁷ Pursuant to Article 2.2 of the Rules, the reporting obligations set forth therein do not also apply to: (i) STEP securities (Short Term European Paper); (ii) certificates of deposit; (iii) financial instruments resulting from the stripping of other debt instruments; (iv) financial instruments which (a) cannot be traded on the capital

1.3 Information to be filed with the Bank of Italy

The Rules require the relevant entities to file the following information with the Bank of Italy:

- (i) general information (“qualitative information”) on the financial instruments, the issuer, any guarantor and the parent company (if any) (including ISIN number, currency and type of financial instruments, and listing venue)⁸;
- (ii) “qualitative” information on (a) other terms of the issuance (including yield and expected maturity), and (b) structured financial instruments (including type of exercise and leverage)⁹; and
- (iii) “quantitative” information on the financial instruments (including number of outstanding certificates, trading price, amount placed or subscribed, coupon and early redemption amount)¹⁰.

The relevant information must be provided to the Bank of Italy¹¹ through the regulatory authority’s electronic platform “Infostat”, using a new online procedure, the Front End 129 (FE129)¹².

markets because they are non-transferable, either in full or in part, and (b) are offered, assigned or to be assigned to current or former directors or employees – by the issuer or one of its affiliates; and (v) put and call options on financial instruments exempted from the application of the Rules that must be physically settled (for example stock options that require the physical delivery of the underlying shares).

⁸ For further information, see section 1 of annex A attached to the Rules.

⁹ For further information, see sections 2 and 3 of annex A attached to the Rules.

¹⁰ For further information, see section 4 of annex A attached to the Rules. Please note that, as a result of the amendments brought to the Rules in August 2016, Managers and Offerors are not required to report information regarding the amount of early redemptions.

¹¹ Filing of the relevant information may be outsourced, but the entity subject to the reporting obligations remains responsible for the accuracy of the information provided to the Bank of Italy and for ensuring compliance with the relevant deadlines.

¹² On September 15, 2016, the Bank of Italy issued the Operating Manual, a guide which helps users to provide

1.4 Timing for the filing of the relevant information with the Bank of Italy

In accordance with the Rules:

- A. the general information referred to in section 1.3, paragraph (i) above must be filed with the Bank of Italy:
 - (a) if filed by entities under (a) and (b) of section 1.1 above or issuers under (c)(ii) of section 1.1 above, no later than the business day following the filing of the prospectus with the competent authority or, if no filing is required, no later than the settlement or the issue date, or
 - (b) if filed by Managers or Offerors, within 20 calendar days after (x) the filing of the prospectus with the competent authority or, if no filing is required, (y) the settlement or the issue date;
- B. the information referred to in section 1.3, paragraph (ii) above must be filed with the Bank of Italy within 20 calendar days after (x) the filing of the prospectus with the competent authority or, if no filing is required, (y) the settlement or the issue date; and
- C. the information on the financial instruments referred to in section 1.3, paragraph (iii) above must be filed with the Bank of Italy at different times, depending on the nature of the relevant financial instrument¹³. In particular, in the case of covered warrants, certificates, exchange traded commodities (the ETCs) and exchange traded notes (the ETNs), information on the number of outstanding certificates and the trading price

the relevant information through FE129. For more information on the procedures to be followed for the filing of the relevant information with the Bank of Italy, please see Article 3 of the Rules and the following link: <https://www.bancaditalia.it/statistiche/servizi/isin-anagrafe-titoli/index.html?com.dotmarketing.htmlpage.language=1>

¹³ For further information, see Article 3, paragraph b) of the Rules.

must be provided with the Bank of Italy on a three-months basis (also after the end of the placement period).

However, the amendments brought to the Rules in August 2016 have softened certain of the above requirements in respect of Managers and Offerors. In particular, Managers and Offerors:

- (i) are required to comply with the reporting obligations starting from January 1, 2017, however, with respect to financial instruments offered or placed from October 1, 2016 to December 31, 2016, reporting obligations must be complied with by January 20, 2017; and
- (ii) in the case of offering or placement of covered warrants, certificates, ETCs and ETNs, are not required to report information related to the number of outstanding instruments and the trading price thereof for quarters subsequent to that in which the placement/offer took place.

1.5 Sanctions

According to Article 144 of the Italian Banking Act, any breach of the reporting obligations, set forth in Article 129 of the Italian Banking Act and in the Rules, by banks and other entities subject to the supervision of the Bank of Italy may be sanctioned with an administrative fine issued by the Bank of Italy, ranging from Euro 30,000 to 10% of the relevant entity's revenue.

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