

Italy Repeals Requirement for Prior Bank of Italy “Article 129” Authorization for Placements of Non-Standard Securities

Milan-Rome
January 17, 2007

On December 29, 2006, the Italian Government adopted Legislative Decree no. 303 (“Legislative Decree No. 303”), which will come into effect on January 25, 2007.

Legislative Decree No. 303 is primarily intended to rectify certain amendments to Italian law introduced by the Investor Protection Act of December 28, 2005 (the “Act”) that have been the target of criticism by the legal and business community.

Perhaps most significantly for participants in the international capital markets, the amendments made to the Italian Banking Law (*Testo Unico Bancario*) by Legislative Decree No. 303 have repealed the former requirement that the Bank of Italy receive prior notice of certain issues of securities by Italian issuers and certain offers in Italy of foreign securities, as set forth in Article 129 of the Italian Banking Law and the Bank of Italy implementing guidelines (the so-called “Article 129 Procedure”).

Under the previous regime, issuances of securities by Italian entities and placements in Italy of foreign securities (including placements directed only to institutional investors) required prior notice to, and prior authorization from, the Bank of Italy, unless they were specifically exempted.¹

Exempted categories of securities included equity securities and “standard” debt securities² as defined under the Bank of Italy guidelines.

¹ The Article 129 Procedure involved a notice to be filed with the Bank of Italy at least 20 days prior to the commencement of the offer. In order to protect the stability of the Italian market, the Bank of Italy had the authority to delay or prohibit the offering within said 20-day waiting period. The Bank of Italy usually did not issue express authorization. The authorization request was deemed to be approved - and the offer could commence - if within 20 days from the Bank of Italy’s receipt of the request, the authorization had not been expressly denied. Pursuant to Article 143 of the Italian Banking Law, failure to comply with the authorization procedure, could lead to the Bank of Italy imposing on the offeror a fine from Euro 25,820 to 50% of the value of the offer in Italy.

² Debt securities exempted from the Article 129 Procedure included “standard securities” (*i.e.*, when, among other things, the issuer was a “qualified state”, such as an EU member state, an OECD member state or Saudi Arabia which has received an “investment grade” rating, or a bank or a financial intermediary located in a qualified state, and the securities complied with certain parameters concerning the currency, yield, index parameters, nominal rates, reimbursement premiums and spreads on index parameters, coupon and reimbursement of principal amount) having a nominal value (or issue price, in case of securities issued below the par value) which, together with the value of all standard securities offered in Italy by the same

Pursuant to the new wording of Article 129 introduced by Legislative Decree No. 303, issuances and placements of securities in Italy no longer require prior notice to, or authorization by, the Bank of Italy, regardless of the type or value of securities involved.

However, the Bank of Italy retains the power to request that issuers and offerors provide it with other post-offering information and/or reports concerning securities issued or offered in Italy and/or securities issued or offered abroad by Italian persons from time to time. The regulations provide that this *ex post* information may be used by the Bank of Italy only for statistical purposes and to track developments in the financial markets, including developments in the new products offered on such markets. The Bank of Italy may impose fines from Euro 2,580 to Euro 129,110 on the managers and employees of the relevant entities for not complying with its requests.

Pending the adoption of new Bank of Italy guidelines implementing the amended text of Article 129, it is expected that the *ex post* notices reporting basic details of certain types of offerings after their completion that are currently required to be filed with the Bank of Italy on a periodic basis will continue to be required.³

Further rule-making by the Bank of Italy is expected to define the scope of the powers attributed to it by the amended Article 129.

The amendment of Article 129 does not have any impact on other banking, securities and corporate law provisions governing the issuance and offer of securities in the Italian market.

Please feel free to contact Giuseppe Scassellati-Sforzolini in our Rome office (+39 06 695 22 320) or Valentina Zadra in our Milan office (+39 02 72 60 8222) if you have any questions.

CLEARY GOTTLIEB STEEN & HAMILTON LLP

issuer during the prior 12-month period, amounted to less than Euro 4 billion (for standard securities listed or to be listed in a regulated market of an EU member state, an OECD member state or Saudi Arabia), or Euro 2 billion (for standard securities not listed or to be listed in a regulated market of a an OECD country or in Saudi Arabia).

³ Pursuant to such rules, an *ex post* notice to the Bank of Italy is required for placements of (i) standard securities which, under the repealed regime, were exempted from the prior notification, if such placements exceed, in an aggregate value, Euro 5,000,000 over the preceding 12-month period; (ii) equity securities in excess of Euro 500,000 during the preceding 12-month period; and (iii) securities whose placement required, under the repealed regime, prior Bank of Italy authorization. The *ex post* notice must be filed, within 10 days following the month in which the securities have been placed, by the issuer and, for placements carried out through financial intermediaries, also by each intermediary with respect to the securities it placed.

MILAN

Via San Paolo 7
20121 Milan, Italy
39 02 72 60 81
39 02 86 98 44 40 Fax

NEW YORK

One Liberty Plaza
New York, NY 10006-1470
1 212 225 2000
1 212 225 3999 Fax

WASHINGTON

2000 Pennsylvania Avenue, NW
Washington, DC 20006-1801
1 202 974 1500
1 202 974 1999 Fax

PARIS

12, rue de Tilsitt
75008 Paris, France
33 1 40 74 68 00
33 1 40 74 68 88 Fax

BRUSSELS

Rue de la Loi 57
1040 Brussels, Belgium
32 2 287 2000
32 2 231 1661 Fax

LONDON

City Place House
55 Basinghall Street
London EC2V 5EH, England
44 20 7614 2200
44 20 7600 1698 Fax

MOSCOW

Cleary Gottlieb Steen & Hamilton LLP
CGS&H Limited Liability Company
Paveletskaya Square 2/3
Moscow, Russia 115054
7 495 258 5006
7 495 258 5011 Fax

FRANKFURT

Main Tower
Neue Mainzer Strasse 52
60311 Frankfurt am Main, Germany
49 69 97103 0
49 69 97103 199 Fax

COLOGNE

Theodor-Heuss-Ring 9
50668 Cologne, Germany
49 221 80040 0
49 221 80040 199 Fax

ROME

Piazza di Spagna 15
00187 Rome, Italy
39 06 69 52 21
39 06 69 20 06 65 Fax

HONG KONG

Bank of China Tower
One Garden Road
Hong Kong
852 2521 4122
852 2845 9026 Fax

BEIJING

Twin Towers – West
12 B Jianguomen Wai Da Jie
Chaoyang District
Beijing 100022, China
86 10 5920 1000
86 10 5879 3902 Fax