

Bank of Italy: New Reporting Requirements on Issuances and Offerings of Financial Instruments

The Bank of Italy post-trade reporting requirements are likely to impact the issuance and offering of bonds and other debt securities in Italy.

The Bank of Italy has the power to require entities issuing or offering financial instruments periodic filing of certain post-trade information and data on financial instruments issued or offered in Italy, or outside of Italy by Italian entities, for the purposes of gathering information and monitoring the development of financial products and markets (Article 129 of Legislative Decree no. 385 of September 1, 1993 as amended (the Italian Banking Act)).

On August 25, 2015, following a public consultation run in 2013, the Bank of Italy issued regulatory provisions implementing the primary rule of Article 129 above (the Reporting Measures). The provisions address the scope, entities, type of financial instruments subject to the reporting requirements, and the relevant procedure and timing of information and data to be reported to the Bank of Italy.

According to the Bank of Italy, the rationale behind the Reporting Measures is to organize and rationalize the reporting requirements set forth in Article 129 of the Italian Banking Act in order to create a structured and manageable database containing detailed information about financial instruments available to the Bank of Italy or other authorities, including the Italian Securities Commission (CONSOB) and the European Central Bank (EBA). In the recitals of the Reporting Measures, the Bank of Italy has underscored that the Reporting Measures have been defined considering that the Bank of Italy is also the Italian National Numbering Agency. In its role as the Agency, the Bank of Italy receives and files specific information in connection with assigning the international securities identification number (ISIN) and classifying financial instruments (CFI) codes to newly issued financial instruments, as well as for the purposes of collecting, monitoring and using statistical and supervisory filings.

Notably no other European countries impose such granular reporting requirements, not even those countries which provide for post-trade reporting requirements for similar statistical and information purposes.

The Reporting Measures will enter into force on October 1, 2016 and, in light of the above, are likely to impact especially issuance and offerings of bonds and other debt instruments, which in recent years have represented a helpful and valid financing source for Italian issuers.

This *Client Alert* details the main contents of the Reporting Measures.

Reporting Measures: Scope of application

The reporting requirements regulated by the Reporting Measures apply to financial instruments defined as securities (*valori mobiliari*) and money market financial instruments (*strumenti del mercato monetario*) under the Securities Markets Act¹ (the Relevant Financial Instruments) other than the following financial instruments which are expressly excluded from the scope of application of the Reporting Measures:

- Shares of companies and other securities similar to shares of companies, partnership or other entities and share deposit certificates
- (a) Financial instruments other than equity instruments issued or irrevocably and unconditionally guaranteed by a EU Member State or issued by international public organizations in which one or more EU Member State participates; (b) Financial instruments issued by the European Central Bank or by national central banks of EU Member States
- Non-structured financial instruments² with a duration of 12 months or shorter
- Financial instruments issued under a “reverse enquiry regime,” which the Reporting Measures specifically define as any issuance of financial instruments carried out upon request of one or more underwriters; such instruments are excluded provided that secondary trading of the instruments is excluded and the terms of the transaction provide that the underwriter is entitled to transfer the financial instruments only to the issuer or to a designated entity who will hold the financial instruments until their maturity or cancellation
- Short Term European Paper (STEP) securities issued in a STEP labelled issue program stating compliance with the Step Market Committee’s requirements
- Certificates of deposit as defined by the Bank of Italy Banking Rules³
- Financial instruments resulting from stripping of debt financial instruments
- Financial instruments which cannot be traded on capital markets due to their non-transferability or because they are offered or granted, either by the issuer or by the parent company to directors or former directors, employees or former employees of a subsidiary, affiliate or other company under joint control;
- Securities issued by Extra EU States
- Financial instruments which only entitle the holder to purchase or sell any of the financial instruments under the above points and compulsorily require physical settlement of such financial instruments (e.g. stock options which provide delivery of the underlying shares following their exercise)

Entities subject to the new reporting requirements

The reporting requirements which the Reporting Measures set out apply to the following entities:

- a) Private and public issuers that are resident in Italy with reference to any Relevant Financial Instruments placed or offered⁴ in Italy or abroad
- b) The parent companies of banking, financial, investment companies, asset management groups according to the Italian applicable rules that are resident in Italy with reference to any Relevant

Financial Instruments, which are (1) issued or offered by entities belonging to the same group and but are not resident in Italy, and (2) placed and offered in Italy

- c) Entities that place Relevant Financial Instruments in Italy issued by entities other than those listed under point (b) above, which are not resident in Italy; if no one acts as placing entity, the reporting requirements are due from (1) the offeror in case of public offer of the Relevant Financial Instruments, or (2) the issuer in case of private placement⁵ or direct listing.⁶ If the placement of the financial instruments is carried out by different offerors belonging to an underwriting syndicate, principal information and identification details on the Relevant Financial Instruments which are available on the issue date are due from the manager responsible for their settlement towards the Issuer; each member of the syndicate shall report on its own account data regarding the amount of Relevant Financial Instruments that it has individually placed in Italy; if the placing orders collected by each member of the syndicate fall within a single central book according to the so-called “pot system,” the reporting requirements will be applied to the manager responsible for the settlement and delivery of the Relevant Financial Instruments at the issue date (the lead manager)

Procedure, content and timing

The Bank of Italy collects and stores the reported information using the same procedures already provided for the assignment of ISIN codes to securities⁷ and, in particular, using the Bank of Italy web platform.⁸ Filing the reporting information can be outsourced provided that in any case the entity subject to the reporting requirements as identified above remains responsible for the accuracy of the information filed and for meeting the relevant deadlines.

The Reporting Measures require filing with the Bank of Italy qualitative and quantitative information and data regarding the Relevant Financial Instruments as detailed in Schedule A, Sections 1-4 to the Reporting Measures. In particular,

- Qualitative information and data regarding the Relevant Financial Instruments, the issuer and any guarantor or any parent company, including general information about the terms of the specific issuance (e.g. currency, type of instrument, listing regulated market or listing multilateral trading facility, selling restrictions, seniority/subordination, issue and settlement dates, maturity date, interest payments dates, issue/offering price, settlement date, early redemption options, derivative components) must be reported to the Bank of Italy within one business day following the filing of the prospectus with the competent authority or, in case no filing is required, within the settlement or the issue date.
- Qualitative information on (1) other terms of the Relevant Financial Instruments (e.g. yield, costs of issuance), and (2) other specific terms of structured Relevant Financial Instruments (type of optionality, type of exercise and leverage) must be reported to the Bank of Italy within 20 days following the expiry of the deadline under point (a) above.
- Quantitative information and data relating to:
 - Covered warrants, certificates, exchange traded commodities (ETC) and exchange traded notes (ETN) and regarding the number of outstanding instruments and the trading price, must be reported within 20 days following the end of each quarter starting from the quarter on which trading of the instruments started or, in case the instrument is not listed, from the quarter on which the placement started.⁹

- Other Relevant Financial Instruments and regarding:
 - o The placed or underwritten amount (providing details about the type of underwriters) must be reported within 20 days following the end of the placement or the end of the offer.
 - o Any early redeemed amounts must be reported within the business day following the settlement/redemption date.
- Other Relevant Financial Instruments, including a coupon and regarding the amounts of such coupons, may be reported within the business day following the settlement/payment date.

Sanctions

Breach of the reporting obligations set forth in Article 129 of the Italian Banking Act and in the Reporting Measures is punished with fines between € 2,580-129,110, to be paid by responsible directors, managers, statutory auditors and employees of the entity subject to the reporting requirements.

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Endnotes

- ¹ See Section 1.2. of the Reporting Measures which defines “financial instruments” as financial instruments under Article 1, paragraph 2, letters a) and b) of Legislative Decree no. 58 of February 24, 1998 as amended (the Securities Market Act).
- ² The Reporting Measures define structured financial instruments as those financial instruments which embed a derivative component other than the early redemption of the option of the issuer or the holder. Derivative financial instruments as defined in the Securities Markets Act are included in the definition of structured financial instruments.
- ³ See Title 3, Chapter 3, of Bank of Italy Circular no. 229 of April 21, 1999 as amended.
- ⁴ The relevant offerings under the Reporting Measures are both the public offers requiring the approval of a prospectus according to Directive 2003/71/EC and private placements regardless without taking into account the exemption regime set forth in Article 100 of the Securities Market Act and the implementing provisions of article 34-*ter* of CONSOB issuers regulation no. 11971 of May 14, 1999 as amended.
- ⁵ The Reporting Measures define “Private placements” as offers (for the definition of which please see endnote 4 above) of financial instruments addressed to specific investors.
- ⁶ The Reporting Measures define “direct listing” as the procedure according to which financial instruments already issued are listed directly without any previous offering period.
- ⁷ The Reporting Measures have clarified that information and data already acquired by the Bank of Italy in connection with the assignment of the ISIN code do not have to be re-filed.
- ⁸ Available at <http://www.bancaditalia.it/statistiche/servizi/isin-anagrafe-titoli/index.html>
- ⁹ More specifically, data as of December 31 shall be reported by January 20; data as of March 31 shall be reported by April 20; data as of June 30 shall be reported by July 20, and data as of September 30 shall be reported by October 20.