

New Italian rules require filing with the Bank of Italy when issuing and offering financial instruments

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[The new Bank of Italy rules will apply from October 1, 2016.](#)

The Bank of Italy has implemented the provisions of article 129 of Legislative Decree no. 385 of 1 September 1993 (the **Consolidated Banking Act** or **CBA**) (the **Rules**) which require a filing with the Bank of Italy (solely for statistical purposes) when Italian entities issue, offer or place financial instruments in Italy or outside of Italy or non-Italian entities issue, offer or place financial instruments in Italy, regardless of whether or not a prospectus is required or if the transaction is a retail offer or a private placement. The Rules identify the entities, the type of financial instrument¹ which is subject to reporting requirements, the type of information to be filed with Bank of Italy as well as the timing, format and procedures of such filing.

Entities subject to the Rules

The following entities are subject to the filing requirements of the Rules:

1. any issuer, including of a public nature (other than those listed in paragraph B, 2. below) which is resident in Italy, with respect to financial instruments which are offered or placed in Italy or outside of Italy;
2. parent companies which are resident in Italy and are subject to supervision in Italy with respect to financial instruments (i) issued by a member of the group which is not resident in Italy and (ii) which are offered or placed in Italy; and
3. entities which place in Italy financial instruments issued by entities which are not resident in Italy (other than those referred in n. 2. above). If no entity places such financial instruments in Italy, the reporting duty will fall upon the entity offering the financial instruments (if the financial instruments are offered to the public) or upon the issuer (if the financial instruments are directly listed or privately placed)².

Financial instruments excluded from reporting obligations

Importantly the filing requirements do not apply to the following financial instruments:

1. equity securities or securities similar to equity securities of companies, partnerships or other entities and share deposit certificates;

¹ As defined by the Rules, financial instruments (*strumenti finanziari*) are defined in article 1, comma 2, letter a) and b) (i.e. securities and money market instruments).

² Special rules apply in the context of a placement of financial instruments by an underwriting syndicate. When several entities are simultaneously subject to the reporting duties, the manager responsible for settling the financial instrument will provide the main identifying information of such financial instrument, which shall become available as of the date of issue. In addition, each member of the syndicate shall report the amount of financial instruments individually placed in Italy. If orders received by individual members of the syndicate flow into a central book of orders pursuant to a so-called "pot system", the manager responsible for settling and delivering the financial instruments will be responsible for the report.

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2. (i) financial instruments (other than equity securities) issued or guaranteed by the Italian government or an EU member state (including international organizations in which one or more EU member states are part) and (ii) financial instruments issued by the European Central Bank or the central banks of the EU member states;
 3. non-structured financial instruments with an original term of 12 months or less;
 4. financial instruments issued under a reverse enquiry *regime*³;
 5. STEP securities (Short Term European Paper);
 6. certificates of deposit⁴;
 7. financial instruments resulting from the stripping of other debt instruments;
 8. financial instruments that cannot be traded on the capital markets because they are non-transferable, either in full or in part, and which are offered, assigned or due to be assigned to directors or former directors, or to employees or former employees – by the issuer or by the parent group company – of a subsidiary or an affiliate;
 9. financial instruments issued by non-EU member states; and
 10. financial instruments that exclusively permit the purchase or sale of the items listed above, which requires physical settlement of the assets (for example stock options that require the physical settlement of the underlying shares).

Information to be filed with the Bank of Italy and timing

The Rules require the information to be filed with the Bank of Italy relating to, *inter alia*, the issuer and the characteristics of the financial instruments. Specifically the information that is required includes:

1. general information concerning, *inter alia*, the issuer and the financial instrument (to be filed within the first business day after the filing of the prospectus with the competent Authority or, if no filing is provided for, after the settlement date or the issue date);
2. other terms of the financial instrument including the net cost to the issuer, including any hedging (to be filed within 20 days after the filing described under item 1. Above);
3. in case of structured products, information regarding any derivative component (to be filed within 20 days after the filing described under point 1. above); and
4. quantitative data (to be filed at different times depending on the type of financial instrument, including bonds, certificates and warrants).

Penalties

The failure to comply with the obligations set forth in the Rules may result in the payment of the penalties set forth in the CBA⁵.

³ Reverse enquiry: As defined by the Rules, means any transaction pursuant to which a financial instrument is issued upon request of one or more underwriters, provided that such financial instruments may not be subsequently traded or sold to any entity other than the issuer or a designated entity. Provided further that the issuer and/or such designated entity shall hold the financial instruments so acquired in their respective portfolio until maturity or cancellation.

⁴ As defined in Title V, Chapter 3, of Circular no. 229.

⁵ In September 2015, the Bank of Italy launched a public consultation in relation to the provisions implementing the procedure for implementing penalties.

Should you be interested in sharing any comments or views regarding the above or have any queries, please do not hesitate to contact MilanPartners@groups.whitecase.com.

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