Courtesy Translation
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Kind Attention: Mr. Carlo Gola

Rome, 14 July 2014

Supplementary observations relating to the consultation document "*Information reporting as contemplated in Article 129 of the TUB relating to the offer of financial instruments in Italy*" (dated October 2013)

Dear Mr. Gola,

Our firm is grateful for the opportunity of attending the informal meeting of 3 June 2014 concerning the discussion of the significant issues of the new draft regulation drawn up by the Bank of Italy in relation to the information reporting obligations pursuant to Article 129 of Legislative Decree 385 of 1 September 1993, as amended (the Consolidated Law on Banking, or **TUB**).

[On behalf of the Joint Associations Committee on Retail Structured Products (JAC), along with The International Capital Market Association (ICMA) and The International Swaps and Derivatives Association (ISDA), and with the support of the *Associazione Italiana Intermediari Mobiliari* (ASSOSIM)**]**[1] , please find summarised below a few important comments which we have already submitted to the attention of the Bank of Italy with position paper dated 13 December 2013.

The following observations are deliberately set out in outline, as they have been already discussed at the mentioned meeting of 3 June 2014; however, we remain at your disposal for any further clarification that you may consider necessary or appropriate.

[1] In relation to the information concerning the members and the activities of the mentioned associations, please see our position paper submitted to the Bank of Italy on 13 December 2013.

Yours faithfully,

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SUPPLEMENTARY OBSERVATIONS RELATING TO THE CONSULTATION DOCUMENT "*INFORMATION REPORTING AS CONTEMPLATED IN ARTICLE 129 OF THE TUB RELATING TO THE OFFER OF FINANCIAL INSTRUMENTS IN ITALY*"

With reference to the new draft regulation (the **New Draft Regulation**) concerning the consultation document on "*Information reporting as contemplated in Article 129 of the TUB relating to the offer of financial instruments in Italy*", as published on 14 October 2013 (the **Measure**), we wish to thank the Bank of Italy for unofficially circulating the New Draft, as discussed at the meeting on 3 June 2014.

You may want to consider that the New Draft Regulation seems not to fully take into account the actual needs of the market operators as well as the international capital market practice, with the risk that, in the absence of amendments to the New Draft Regulation as suggested below, the Measure would ultimately discourage non-resident entities from issuing and offering financial instruments in Italy. In particular, such results would stem from the provisions under the New Draft Regulation which imply for market operators the need to establish systems and procedures that would make activities in Italy complex and based on information and ongoing reporting systems which are not required in other jurisdictions where such operators carry out their activity.

1. Subjects

In the course of the above mentioned meeting of 3 June 2014, we discussed the opportunity to come to a definition of the entities responsible for reporting in the cases of offering and placement of financial instruments issued by non-resident entities or that are addressed to institutional investors only, or in the case of the so-called *private placement*.

In subjecting to the rules entities that place financial instruments issued by non-resident entities (other than resident group parent entities subject to supervision, as defined), the New Draft Regulation requires, in the case of private placements, that the reporting obligations be fulfilled by the issuers themselves in the absence of the placement entities. This provision should be revised in light of the following observations.

As known, a large number of private placement transactions involve the presence of intermediaries whose role is to help the issuer distribute the financial instruments among investors. This circumstance often concerns foreign issuers who may want to rely on the activity of intermediaries for the placement of financial instruments into Italy.

Therefore, in the case of private placement, we suggest that the reporting obligations be fulfilled by:

- with respect to Italian issuers - the issuer itself pursuant to the general rules, regardless of how the financial instruments are offered and placed among investors; and

- with respect to foreign issuers – either the issuer (when there is no intermediary) or the intermediary involved in the distribution activity.

In addition to the above, in the event of placements that occur through the structure of a syndicate, and in particular in relation to the so called "pot system" case, whereby all or some of the orders collected by the members of the placement syndicate flow into a central book, it is suggested to supplement the existing provision referred to in paragraph 2.1. of the New Draft Regulation with the following clause that also distinguishes between the information concerning the securities database from that relating to the placement and type of investors:

"*With reference to letter c) above, if reporting relating to the same financial instrument is required of a*

number of entities involved in placing instruments in Italy, which are part of a consortium/placement syndicate, the data concerning the registration information, available at the date of issue, shall be provided by the member of the consortium /placement syndicate responsible for settlement with the issuer. Whilst each member of the consortium/placement syndicate will be required to report on its own account the data relating to the amount placed in Italy, and where applicable, the repartition among the different categories of investors. In the case of the so called "pot system" structure[2], the reporting will be due by the syndacate member responsible for the regulation and delivery of the securities at the time of their issue".

2. Scope of application (Exemptions)

The Bank of Italy may want to consider the possibility of excluding from the scope of the Measure certain types of transactions, such as senior unsecured vanilla issues concerning non-Italian issuers, or at least, to consider, in relation to any issue, the introduction of a materiality threshold so as to avoid the reporting requirements when the amount placed into Italy is not very significant, as sometimes occur in the case of securities with a minimum denomination of € 100,000 (therefore intended for qualified investors or in any case exempt from regulations applicable to the retail placements) which are placed in different countries at the same time, given the nature of the placement in this case that would eliminate the need of providing an adequate monitoring of information through the instrument of Art. 129 TUB.

3. Timing

Under the New Draft Regulation, it is clear the appreciable effort to reduce the burden of entities subject to the information reporting regime ex Art. 129 TUB in light of the assumption that some of the information to be reported (limited to securities with ISN Domestic Code) would be already required for the *Anagrafe Titoli* (**AT**) purposes at the time of allocating the ISIN codes to newly issued financial instruments.

However, the reporting obligations required by the AT do not apply in relation to a significant number of cases, especially in the event in which the assignment of the ISIN code is requested and obtained in jurisdictions other than in Italy (this is the case of almost all of the so-called Eurobonds that normally have an ISIN "XS" code issued by Euroclear or Clearstream).

Nevertheless, as we have often underlined, the requirement of reports characterised by articulated and periodical timescales, not only could raise difficulties in the practical implementation of the regulation in question, but could ultimately lead to discourage non-resident entities from issuing and offering financial instruments in Italy (especially in the case of placement in Italy of not significant amounts in the overall context of the transaction), taking into account the possible "anomaly" of the Italian case as compared to the other Eurozone countries.

In this respect, it is highly advisable to revise the considered timeframe by envisaging a single term for the reporting obligation that should be carried out ex post on a monthly basis (as in the past pursuant to the previous provisions of Art. 129 TUB), or, if possible, quarterly.

Allen & Overy – Studio Legale Associato

[2] Under this structure, all or some of the orders collected by each member of the consortium / placement syndicate flow into a central book.