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Liability management: green light in Italy

Following a market consultation process commenced on 22 March 2012 and concerning tender offer regulations, CONSOB (the Italian securities regulator) issued Resolution No. 18214 on 9 May 2012 (the "**Resolution**"), approving new secondary regulations which aim to simplify the procedure applicable to tender and exchange offers for debt securities, as well as to reduce the costs and the administrative burden of these transactions and ensure that rules on offers for debt securities are consistent with European practice.

Key issues

- Consob intervenes on tender and exchange offers for debt securities
- Freedom to proceed with tender and exchange offers for debt securities when launched by the issuer

The amendments are contained in Title II, Part I of the CONSOB Regulation No. 11971, as subsequently amended (the "**Regulation on Issuers**").

The new regime set forth in the Resolution will enter into force on 6 June 2012.

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Tender and Exchange Offers for debt securities

New exemptions

One of the main changes is to the exemption regime provided by the legal framework, which now facilitates liability management transactions and makes Italian rules consistent with liability management practice elsewhere in Europe. There will no longer be different treatment on the basis of the minimum denomiation of the notes that are targeted by the tender or exchange offer, and these transactions can be launched without the need for a CONSOB-approved offer document, even where the underlying notes to be purchased or exchanged have a minimum denomination of EUR 1,000.

The original consultation was aimed at addressing the fact that while the previous exemption allowed exchange offers to take place provided that the new notes offered in exchange had a minimum denomination of EUR 50,000, investors who did not hold enough existing notes to be able to exchange for a new note could not be given a cash payment without triggering the requirement of publishing a CONSOB-approved offer document. The consultation raised the possibility that such investors would be able to participate in an exchange offer and receive a cash payment without following the CONSOB route.

The Resolution, contrary to what had been initially proposed during the consultation period, now extends the exemption to all tender and exchange offers for debt securities, where the offer is made by the issuer, irrespective of the denomination of the existing notes that are the subject of the offer, or any new notes offered in exchange. The exemption applies to "*financial products other than securities, saving shares, units of collective investment undertakings and financial products convertible in, or granting the right to subscribe for or purchase, securities*".

Therefore, this exemption applies to most debt securities, including hybrid debt (for example trust preferred shares and preference shares).

Offers made by the issuer

In order to benefit from this exemption, the offer will need to be launched by the issuer of the notes, or by:

- companies which control the issuer, are its subsidiaries or are subject to common control with it; or
- intermediaries acting on behalf of the issuer or of the companies listed in the point above (to the extent that the issuer or the companies listed above and the intermediary entered into an agreement whereby the latter undertakes to transfer to the issuer the securities tendered); or
- the guarantor of the debt securities.

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