
LEGAL INFORMATION NEWSLETTER

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We are pleased to provide you with the new issue of our legal information newsletter.

Topical legal questions are discussed and those related to issues that you might encounter.

We hope that you will find it of interest. We would welcome any comment you might have.

NEW STOCK INDICES OF BORSA ITALIANA MARKETS & OVERVIEW OF THE LISTING REGULATORY REQUIREMENTS FOR THE IPOs

D.Lgs. 24.2.1998, n. 58 (T.U.F.)
D.Lgs. 6.2.2004 n.37
Reg. Att. Consob 14.5.99, n. 11971
Regulations of Borsa Italiana Markets

INTRODUCTION

Since its privatisation on 1st January 1988, the Italian Stock Exchange has admitted more than 113 companies to listing on the stock exchange.

According to the data released by Borsa Italiana Spa, those companies were able to raise funds for more than € 35 billion, offering investor and intermediaries the benefit of a more liquid and transparent market.

Starting from 31 January 2005, new Market Indices have been adopted by the Italian Stock Exchange.

Since that date, the MIB Index (one value per day based on official prices) and the MIBTEL Index (calculated intra-day, one value per minute) are now referring not only to equity securities of the Electronic Equity Markets, but also to those of the Nuovo Mercato.

The NUMEX and NUMTEL indices of the Nuovo Mercato are no longer calculated.

The new STAR, TECHSTAR-NM and ALL STAR indices represent the quality small and medium-sized companies.

M.T.A. - BLUE CHIPS & THE NEW INDICES AT A GLANCE

MTA, acronym for Mercato Telematico Azionario, is the Electronic Equity Market for companies operating in consolidated areas of the economy.

MTA is subdivided into the following segments:

- BLUE Chips is the equity share market segment with capitalization above 800 million Euros

- The new STAR index is a mid-cap segment dedicated to companies with a market capitalization lower than 800 million Euros, complying with specific requirements in terms of liquidity, transparency and corporate governance

- SBO, which stands for Segmento di Borsa Ordinario, is instead the segment representing those companies with a market capitalization inferior to 800 million Euros, not belonging to the Star segment

- The new TECHSTAR-NM index is the market for high growth companies with innovative business model or high tech products or processes.

Tech Star companies have increasing EBITDA or Net Debt equal or inferior to six times their EBITDA

- The ALL-STAR index includes those companies listed in both the STAR and the TECHSTAR-NM segments

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- Mercato EXPANDI is especially designed for small companies, with a consolidated position in their markets and a track record of positive economical and financial results.

GOING PUBLIC

Going public is at some point a key choice for many successful companies, both with private and institutional capital, to fund their new mid-long term investments.

Decision must be based on the assessment of the company, its management resources, the stage of development and its prospects.

The company's objectives and the shareholder goals must lead the choice of being listed on the Stock Exchange.

Generally speaking, flotation involves more responsibility, but also several advantages, which lead to greater transparency and efficiency, improving the overall management performance.

REGULATORY REQUIREMENTS OF BORSA ITALIANA AND MARKET REQUIREMENTS

Companies that intend to go public must fulfil two distinct sets of criteria, which are Regulatory Requirements and Market Requirements.

Regulatory Requirements – The Regulations of Borsa Italiana Markets set forth rules and guidelines for listing on the Stock Exchange.

The Regulations have progressively become less restrictive and have changed perspective towards the attributes which investors look for in a company.

The Regulatory Requirements that Borsa Italiana sets forth may be divided into the following categories:

1. Requirements for the issuers
2. Requirements for the shares
3. Disclosure and transparency obligations
4. Corporate governance requirements
5. Market Participants

Among the Requirements *for the issuers* are the followings:

- Ability to generate revenue in conditions of management autonomy

- Publication and filing of the latest three annual reports (at least one annual report for the TechStar companies)

- Last balance sheet audited

Additional requirements depend on the market segment of reference (TechStar, Star etc.).

Besides the requirements for the issuers, other requirements relate to *the stock shares*, for instance market capitalization and minimum required percentage of free floating shares, which also depend on the market segment of reference.

In addition to the above rules companies intending to be listed on the Stock Market must fulfil certain *disclosure and transparency obligations* in accordance with existing legislation.

Such obligations include periodic information (quarterly, half-yearly and yearly), price sensitive information, like dividends calendar and details, information concerning fundamental corporate changes or extraordinary operations, including changes in share capital, take over bids, mergers, acquisitions or de-mergers and significant amendments to the by-laws.

Here as well, additional requirements depend on the market segment of reference.

Corporate governance requirements are the adoption of a Code of Conduct regulating the disclosure of Internal Dealing transactions and the adoption of the Corporate Governance Code, with compulsory annual declaration on its implementation.

Among others, the appointment of a set minimum number of non-executive and independent Directors to the Board and of an internal Audit Committee are mandatory in order to be listed on the Star segment.

Among the *market participants*, the appointment of a Sponsor is necessary to assist the company in the listing process and support it for at least one year producing research reports and organising meetings with the investors.

The Sponsor is a financial intermediary who assist the company through the listing process and the after-market.

For instance, when a company is ready to float the sponsor informs the Italian stock exchange that documents and data are complete, that the company has sound internal controlling and financial planning procedures and that its financial projections are realistic.

In most cases the sponsor also acts as Global Co-ordinator, undertaking to underwrite and place the shares of the listing company in the market. On major operations there may be more than one global Co-ordinator.

The Sponsor undertakes the following additional commitments to be carried out for one year at least after the IPO:

- To publish two equity research notes of the issuing company (yearly)
- To publish a brief analysis report of significant events affecting the life of the issuing company
- To organize a meeting with the financial community twice a year at least.

Other advisors are also needed according to the size of the company and the specific issuance.

Auditors are responsible for reviewing the company's financial records for potential investors, legal advisers advise on changes to company's articles of incorporation, director's contracts, prospectus drafting and on the underwriting agreements.

In addition financial PR consultants provide their services in connection with the run-up flotation, maximising the degree of awareness of the company and its business among the professional investment community and the general public.

The Market Requirements are based on real growth and business prospects and include:

- Positive economic and financial track record
- Realistic business plan
- Quality and continuity of management
- Corporate governance
- Transparency of ownership and accountancy
- Timing and market opinion
- Company investor relationship

IPO: FLOTATION PLANNING AND LISTING PROCEDURE

The T.U.F. (Financial Laws Unified Text) the Regulations of CONSOB and the Regulations of Borsa Italiana Markets set forth the provisions and rules of the flotation process.

To begin the overall process, it is first necessary to pass formal resolutions by the Board of Directors and by the General Shareholder Meeting of the issuing company.

If the planning involves a stock capital increase, then a Special Shareholder Meeting has to be called in order to effect it and the auditing company must be informed.

After the above corporate resolutions have been adopted, the company must formalize the appointment of the Sponsor, which generally acts as Global Co-ordinator of the operation as well. The legal advisers, financial PR consultants are also appointed at that stage.

During the kick-off meeting with the sponsor, the operation is structured, the roles and responsibilities for the management of the listing project are defined and a calendar is established for the listing process timetable.

Subsequently, the company must organize the legal and business due diligence.

The aims of the due diligence are valuation of the feasibility of the operation, identification of the key factors for the success of the operation, rating of the company's value and of the stock issuance to be listed.

While company and Sponsor carry out the business due diligence, the appointed Law firm proceeds with the legal due diligence in cooperation with the Sponsor, taking care, among other things, of the necessary documents relating to the Meetings of the Board of Directors and of the Shareholder Meeting pertaining to the listing process.

Since the beginning of the operation is rather important to contact the main financial institutions involved, Borsa Italiana, Consob etc. to the extent of taking into account an adequate timetable for the application process.

Moreover, the Sponsor has to initiate contacts with the syndicate structure.

Informative Prospectus – At the same time, the issuing company begins to draft the informative prospectus that must be presented to CONSOB for its approval, as provision of Article 94 of the T.U.F sets forth.

The informative prospectus is the fundamental document of a listing process, which provides information to the potential investors about:

- The nature and characteristics of the operation
- Any relevant financial, economic and market data of the issuing company
- The purpose, goals, objectives and strategy underlying the decision of the company of being listed on the Stock Exchange.

Once the above actions have been undertaken, it is also necessary to carry on the valuation process of the issuing company itself in order to determine the value of the stock issuance to be placed on the market.

According to the Regulations of Borsa Italiana Spa, the Sponsor has to certify that the issuing company has set up procedures for release of precise and updated information, adequate to represent its actual financial and economical situation.

An auditing company supports the Sponsor to this extent by issuing a comfort letter.

The auditing company must also express its opinion about the congruity of the stock issuance price within 30 days from the communication of the Board of Directors.

At this stage, a Special Shareholder Meeting has to pass resolution on the eventual increase of the stated stock capital. The minimum issuance price, or the price range for issuance of the stock shares has to be fixed.

A material step is the introduction of the operation to the financial market analysts for their evaluation.

Documentation released to the analysts must be supported by precise and clear data and informations, capable to provide a comprehensive overview of the terms and elements of the operation as a whole.

Another critical step is the filing of the application for the official listing to the Italian Stock Exchange.

The application must be presented along a set of documents, among which are the Company's Bylaws, the Shareholder Meeting resolution to get public, the informative prospectus, the required financial documents and the above mentioned certification by the Sponsor.

The same set of documents must be filed with CONSOB as well, so that this latter institution may express its opinion about the fairness and completeness of the informative prospectus.

According to Article 94, par. 3 of the T.U.F., CONSOB can require the company to provide further integrative documentation within 15 day from the date of filing.

The Security Exchange Commission may also determine specific means of publication of the prospectus.

The underwriting agreement(s) – The underwriting agreement regards the purchase of the issuing stock shares by the underwriting syndicate participants.

The same agreement establishes the provisions for the eventual guarantee by the underwriting syndicate.

Marketing Plan – At this stage of the listing process, the issuing company has to carry out a marketing plan in order to draw the attention of the main professional investors, checking out their opinion about the attractiveness of the operation.

Based on business results of the company, it is necessary to set up the plan for roadshows and marketing events, focusing on the steps of the operation, identifying potential investors.

The next step is to file the definitive version

of the informative prospectus and the other required documents with CONSOB.

Within two months from the filing of the listing application, Borsa Italiana Spa issues its decision about admission or rejection of the application.

Decision by Borsa Italiana Spa, which is effective for six months, is communicated to the applicant company and to CONSOB.

In the same period time, CONSOB should authorize publication of the IPO prospectus.

Bookbuilding – The listing price of the floating shares is determined through bookbuilding.

The list of professional investors interested in the operation and the listing price they are available to correspond for the amount of stock issuance they interested in, are reported on the book.

The stock issuance price is set by comparing their offer and demand registered on the book.

Once the issuance price has been fixed, those investors which offered a price inferior to the fixed price are excluded.

The issuance price reflects the feeling of the investors about the company and the expectations of price-raising of the share.

Roadshows – Following the authorization by CONSOB, the roadshows begin. During a roadshow the stock listing planning is illustrated and explained to the professional investors, along with all the necessary information about the stock offering and the issuing company.

During this period of time the underwriting syndicate is set up through the underwriting agreements previously negotiated with the participants.

INITIAL PUBLIC OFFERING

Article 8 of the Consob Regulation n. 11971/99 provides that publication of the notice of filing of the IPO prospectus with CONSOB must occur five days at least before beginning of the IPO.

Before the date set for the beginning of the IPO, the issuing company publishes the informative prospectus along with the decision of admission to listing by Borsa Italiana Spa.

The definitive issuance price for the stock shares is set through resolution by the Board of Directors, which approves the terms of the public offering as well.

Following these actions the issuing stock shares are assigned to the participants of the underwriting syndicate, which will start the Initial Public Offering.

The IPO must last not less than two days.

The issuing stock shares are paid off and delivered through their deposit at *Monte Titoli* Spa, respectively within 10 days from their payment and 20 days from the end of the public offering.

After the IPO, the issuing company must inform Borsa Italian Spa about the results of the public offering within the operating business day of the Stock Exchange next to the public offering final day.

The Stock Exchange then verifies the existence of the floating requirements, and subsequently admits the shares to be listed on the Exchange by setting a date for the beginning of the trade negotiations and by giving notice of it to the public through two press agencies at least.

Finally, the trade negotiations begin on the Stock Exchange and the first-day trading price for the shares is indicative of the perception of the interest by the market investors.

During the initial period of trading negotiation the syndicate may intervene in the financial market in order to support the share price quotation and/or to stabilize it, either by buying the shares on the market or by offering to the market the eventual greenshoe.

The greenshoe, generally does not exceed 10-15% of the total amount off stock issuance placed on the financial market.