

Bank of Italy

Divisione Analisi Macroprudenziale
Servizio Regolamentazione e Analisi Macroprudenziale
Via Nazionale, 91
00184 Roma

Attn Mr. Francesco Piersante and Mr. Michele Bianchi

Sent by email

19 December 2016

Dear Sirs,

Bank of Italy “Article 129” reporting requirements

The International Capital Market Association (ICMA) is writing in relation to the above reporting requirements, introduced by the Bank of Italy on 25 August 2015 and subsequently amended on 10 August 2016, pursuant to Article 129 of Legislative Decree no. 385 of 1 September 1993, as amended (the **Article 129 Regulation**).

Introduction

1. Representing a broad range of capital market interests including banks, asset managers, exchanges, central banks, law firms and other professional advisers, ICMA’s market conventions and standards have been the pillars of the international debt market for almost 50 years. See: www.icmagroup.org.
2. ICMA is writing in relation to its primary market constituency that lead-manages syndicated, vanilla debt securities issues throughout Europe on behalf of corporate borrowers. This constituency deliberates principally through ICMA’s Primary Market Practices Committee¹, which gathers the heads and senior members of the syndicate desks of 48 ICMA member banks, and ICMA’s Legal and Documentation Committee², which gathers the heads and senior members of

¹ More information is available [here](#).

² More information is available [here](#).

the legal transaction management teams of 21 ICMA member banks, in each case active in lead-managing syndicated debt securities issues in Europe.

3. Members of ICMA's primary market constituency regularly place vanilla debt securities issued by non-resident issuers in Italy, and so will become subject to the Article 129 Regulation reporting requirements from January 2017. (Certain of those entities also place their own securities in Italy themselves and so are already subject to the reporting requirements as issuers.)
4. ICMA members welcomed the amendments made to the Article 129 Regulation in August 2016 and several of the clarifications provided by the Bank of Italy through the publication of the "Frequently Asked Questions" document, which were very helpful.
5. ICMA members have been working hard to prepare for the reporting requirements, particularly given the wide scope of the Article 129 Regulation. In the course of those preparations, a number of queries and concerns have been raised. The most critical points are set out below.

Information not required by Article 129 Regulation

6. We understand that the FE129 reporting platform may require participants to report information that is not required under the Article 129 Regulation. Moreover, those additional reporting fields may be unclear and/or problematic.
7. By way of example, we understand the FE129 reporting platform requires information relating to (among other things) whether the securities are subject to taxation or not. It is not clear whether this question relates to:
 - a. taxation applicable to payments by the issuer in its jurisdiction of incorporation (note that the answer to this is unlikely to be simple, because there could be situations in which withholding tax is applicable to certain payments and not others, so a costly case-by-base analysis would need to be conducted for each issuance, which may not result in a binary "yes/no" answer); or
 - b. taxation applicable to income received by investors in their own jurisdiction (note that this information is not investigated by, or available to underwriters reporting in respect of non-Italian issuers' securities).
8. We also understand that the FE129 platform asks whether securities are subject to tax under Legislative Decree 239/1996. This information is unlikely to be known by non-resident entities and is likely to require a detailed and costly case-by-case analysis by tax experts.
9. We understand the platform does not allow a "Not Applicable" answer and does not allow the report to be finalised unless a "yes/no" answer is provided. This position is very concerning for market participants.
10. Market participants are working hard to prepare for the reporting requirements, and have been basing their preparation on the Article 129 Regulation itself. Requiring information to be reported that is not required under the Article 129 Regulation introduces significant uncertainty (and therefore additional costs) for market participants. As noted above, even if market participants are able to supply the information, they may only be able to obtain it through detailed legal advice, which introduces further costs for market participants.

11. Perhaps most importantly, it would seem that there is no basis in law for the Bank of Italy to require information to be reported that is not contained in the Article 129 Regulation.
12. **We would be grateful if the Bank of Italy could consider and change the FE129 reporting platform before 1 January 2017, so that it does not require any information to be reported other than information required by the Article 129 Regulation. Alternatively, users should be able to enter “Not Applicable” in respect of information not required under the Article 129 Regulation.**

Issuer’s cost of funding (including hedging costs)

13. We understand that the reporting of the issuer’s cost of funding should include the issuer’s hedging costs. As previously communicated to Bank of Italy through the joint letters of Allen & Overy LLP, ICMA and other trade associations, the issuer’s hedging costs are not known directly by third parties that are required to report, such as entities placing financial instruments issued by non-resident entities in Italy. This is the case even where the third party acts as swap counterparty to the issuer, because the issuer may have other hedges in place. The issuer may be unwilling to provide hedging cost information to such entities because it may be commercially sensitive.
14. In light of this, and based on the relevant provisions in the Article 129 Regulation and the “Frequently Asked Questions” document, we understand many ICMA members placing financial instruments issued by non-resident entities in Italy intend to proceed as follows:
 - a. The reporting entity will ask the issuer to provide hedging cost information.
 - b. If the issuer provides its hedging costs, the reporting entity will report the issue price of the financial instruments, less the fees paid to the underwriters by the issuer, less the hedging costs provided by the issuer.
 - c. If the issuer does not provide the hedging costs (e.g. because it is commercially sensitive), the reporting entity will report the issue price, less the fees paid to the underwriters by the issuer.

FE129 platform allowing Sections 1 – 3 information to be reported separately from Section 4 information

15. We understand that the Article 129 Regulation envisages that when a new issue of securities is placed in Italy by several entities (which occurs frequently for syndicated new bond issues), information required under Sections 1 – 3 of the Article 129 Regulation will be reported by one entity and Section 4 information will be reported by any entities placing the securities in Italy.
16. We appreciate that this will allow Bank of Italy to receive Section 4 information relating to the distribution of relevant securities in Italy, without receiving duplicative reporting in respect of the Sections 1 – 3 information on the securities themselves.
17. In light of this, we note that the FE129 reporting platform will need to allow underwriters to access and report information under Section 4, without needing to report information required under Sections 1 – 3.

Concluding remarks

18. As mentioned above, ICMA members are working very hard to prepare for the reporting requirements. However, there are still significant concerns in relation to the administrative burden and costs that will be imposed by the Article 129 Regulation and the practicalities of reporting. For example, there has been no opportunity for market participants to use the FE129 reporting platform on a “test” basis.
19. As previously communicated to Bank of Italy through the joint letters of Allen & Overy LLP, ICMA and other trade associations, an unintended consequence of the Article 129 Regulation could be that non-resident entities are discouraged from placing relevant financial instruments in Italy, particularly where the placement in Italy is not significant in the overall context of the transaction. It should also be borne in mind that we are not aware of any other Eurozone country imposing this type of reporting obligation.
20. Overall, market participants are keen to ensure compliance with the Article 129 Regulation and welcome the amendments made in August 2016 and the guidance that Bank of Italy has provided since then. We would be most grateful if Bank of Italy could continue to assist market participants by considering the points raised above.

We would be happy to discuss the above with you.

Yours faithfully,



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