Borsa Italiana

AIM Italia/Mercato Alternativo del Capitale

Note for Investing Companies

~~1st March 2012~~
31 August 2015

The Italian text of these Rules shall prevail over the English version

London Stock Exchange Group

Note for investing companies

Contents

1. Introduction

This note **applies to an AIM Italia company, admitted to trading before the effective date of the provisions on AIFs [31 August 2015], which did not apply for the relevant authorization, and to an AIM Italia company established with the purpose of purchasing a specific business (i.e. "special purpose acquisition companies", etc.). It** sets out specific requirements, rule interpretation and guidance relating to certain **applicants** and **investing companies**. It forms part of the **Rules for Companies** (and comes within the definition of **Note** in those rules) and **Rules for Nominated Advisers**.

For the avoidance of doubt, where an **applicant** is issuing a **Prospectus**, both the **Prospectus Rules** and the **Rules for Companies** must be complied with.

If a **nominated adviser** believes that provisions set out in this note are not applicable or appropriate to a particular **AIM Italia company** they should contact **Borsa Italiana**.

Emboldened terms used in this note have the same meanings as set out in the **Rules for Companies**, unless otherwise defined.

~~2.~~ ~~"Investing Companies"~~

~~The **Rules for Companies** contain the definition of "**investing company**", a company which has as its primary business or objective, the investing of its funds in the securities, business or assets of any description **Borsa Italiana** should be consulted if there is any doubt concerning whether or not an **applicant** or an existing **AIM Italia company** should be treated as an **investing company**.~~

~~The definition of **investing company** includes companies whose primary objective is to pursue an investing activity, in accordance with its stated **investing policy**, with other operations being of ancillary nature. Such definition also includes entities such as cash shells, blank cheque companies and special purpose acquisition companies.~~

~~3.~~2 Appropriateness for AIM Italia/Mercato Alternativo del Capitale

~~*3.1*~~ *2.1 Appropriateness of certain entities*

~~***Entity types***~~

~~In assessing the appropriateness of an **investing company** for **AIM Italia/Mercato Alternativo del Capitale**, a **nominated adviser** should take into account that the company must be appropriate for **AIM Italia/Mercato Alternativo del Capitale's** regulatory framework.~~

~~The **investing company** should usually be a closed-ended entity, which can be constituted in various legal forms, typically as a company (with a similar structure to an Italian S.p.A.) or by contract (equivalent to the Italian "fondo comune di investimento di tipo chiuso"), which does not require a restricted investor base.~~

~~The entity should be straightforward and not complex in terms of structure, securities and **investing policy** and should issue primarily ordinary shares (or equivalent).~~

Controlling stakes

Where an **investing company** takes a controlling stake in an investment, there should be sufficient separation between each investment to ensure that the **investing company** does not

become a trading company. Cross-financing or sharing of operations, for example, should be limited.

If an **investing company** is intending to undertake an acquisition that might result in it not being an investing company (e.g. it will become an operating business further to the acquisition), the application of rule 14 of the **Rules for Companies** (reverse take-overs) should be considered.

Cross-holdings

An **investing company's** exposure to risk through any cross-holdings should be considered.

~~***Feeder Funds***~~

~~If an **investing company** principally invests it funds in another company or fund that itself invests in a portfolio of investments, the impact of this on the company's **investing policy** should be considered. This should include an assessment as to whether the **investing company's investing policy** should mirror that of the master fund.~~

~~The **admission document** should contain adequate disclosure of any features discussed in this paragraph 3.1, as applicable.~~

~~*3.2*~~ *2.2 Investment Managers*

A **nominated adviser** must satisfy itself that each **investment manager** is in each case appropriate and has sufficient experience for the investing company and its investing policy.

There should be appropriate agreements in place, such as an on-going contractual commitment, between an i**nvesting company** and any **investment manager,** covering key matters.

Where there is an **investment manager**, an **investing company** should have in place sufficient safeguards and procedures to ensure that its board of **directors** retains sufficient control over its business.

~~*3.3*~~ *2.3 Independence*

Borsa Italiana would usually expect the board of **directors** of the **investing company** as a whole, and its **nominated adviser**, to be independent from any **investment manager**.

The **investing company** should disclose whether or not its board of **directors**, and **nominated adviser**, are independent from the **investment manager** in its **admission document**. Any subsequent changes to this position should be appropriately **notified**.

Borsa Italiana would also usually expect the **nominated adviser**, and the board of **directors** as a whole, to be independent of any **substantial shareholders** or investments (and any associated **investment manager**) comprising over 20% of the gross assets of the company. If they are not, this should again be adequately disclosed in the **admission document** or **notified**.

When considering whether any relevant party is independent, reference should be made to the situations of incompatibility and the management of conflicts of interest referred to in the rule 18 of the **Rules for Nominated Advisers**.

~~4.~~ 3. Admission Document requirements

~~*4.1 Application of Annex XV on admission*~~

~~*Unless the Prospectus Regulation 809/2004/EC apply, in interpreting Schedule Two (h) of the* **Rules for Companies**, *an* **admission document** *in relation to an* **investing company** *should disclose the information required by* **Annex XV** *of Prospectus Regulation 809/2004/EC in addition to the requirements of Schedule Two of the* **Rules for Companies**. *Disclosure made in accordance with* **Annex XV** *should:*~~

~~♦ *be taken to supersede the requirements of Schedule Two (a) in relation to disclosure otherwise required under* **Annex I** *of the Prospectus Regulation 809/2004/EC;~~*
~~♦ *except where* **Annex I** *disclosure is not required pursuant to Schedule Two (b)(i). These parts of* **Annex I** *will continue to not be required.~~*

~~*4.2*~~ *3.1 Further Disclosures on admission*

In interpreting Schedule Two (h) of the **Rules for Companies** the following information should be included within the front part of an **admission document**:

- the expertise its **directors** have, as a board, in respect of the **investing policy**;
- where there is an **investment manager**:
  - the name of the **investment manager**;
  - the experience of the **investment manager** and its expertise in respect of the **investing policy**;
  - a description of the **investment manager**'**s** regulatory status including the name of the regulatory authority by which it is regulated, if applicable;
  - a summary of the key terms of the agreement(s) with the **investment manager**, including fees, length of agreement and its termination provisions;
- if applicable the company's policy in relation to regular updates as per 5.3 below.

Adequate information should also be included about the **investing company's** taxation status and any policy or strategy the **investing company** has in relation to taxation, if applicable.

~~*4.3*~~ *3.2 Financial Information under Rule 3 of the Rules for Companies*

After consulting the **nominated adviser**, a newly incorporated **investing company** that has not traded, made any investments or taken on any liabilities in place of the financial information under Rule 3 of the **Rules for Companies** must include a statement in its **admission document** that since the date of its incorporation the company has not yet commenced operations and that it has no material assets or liabilities, and therefore that no financial statements have been prepared as at the date of the **admission document**.

~~5.~~ 4. Interpretation of the Rules for Companies

References to Rules are to rules in the **Rules for Companies**.

~~*5.1*~~ *4.1 Rules 7, 13 and 17 (lock-ins for new businesses, related party transactions and disclosure of miscellaneous information)*

An **investment manager** (or any company in the same group) and any of its key employees that are responsible for making investment decisions in relation to the **investing company** will be considered:

- a **director** for the purposes of the application of **Rules 7** and **13**; and
- a **director** for the purposes of the disclosure of any **deals** by **directors** under **Rule 17**.

~~5.2~~ 4.2 Rule 8 (Investing companies)

Borsa Italiana would expect the condition of **admission** to raise a minimum of € 3 million in cash via an equity fundraising on, or near, **admission**, referred to in **Rule 8** to usually be satisfied by an independent fundraising and not be funds raised from **related parties**, unless the **related party** was an **authorised person**.

The reference to "near" would usually mean no more than ten business days before the day of the admission.

If the company is a closed-end investment fund, this condition for **admission** does not apply.

~~5.3~~ 4.3 Rule 11 (General disclosure of price sensitive information)

Periodic disclosures

The **nominated adviser** of an **investing company** should consider with the **investing company** whether regular periodic disclosures (such as a regular net asset value statement or details of main investments, for example) should be **notified** in order to update market participants, having due regard to market practice and the activities of the **investing company**. The approach to making regular updates should be included in the **admission document** or a relevant circular and any changes to this **notified**. Such periodic disclosures do not negate the need for any **notification** otherwise required by **Rule 11**.

Change of investment manager

The appointment, dismissal or resignation of any **investment manager** (or any key personnel within the **investing company,** or **investment manager,** which might impact achievement or progression of the **investing policy**) would generally be considered price sensitive information requiring **notification** without delay. Any such **notification** should include information on the consequences of the appointment, dismissal or resignation.

Cumulative effect of investment changes

When making an assessment of whether **notification** of an investment or a disposal of an investment is required, the cumulative impact of a series of investments or disposals should be considered.

Change of information previously disclosed

The **investing company** should asses, after consulting the **nominated adviser**, whether any change to the information disclosed on **admission**, pursuant to paragraph 4.2 of this note, should be **notified**.

~~5.4~~ 4.4 Rule 12 (Substantial Transactions)

An investment made by an **investing company** that:

- is in accordance with its **investing policy**; and
- only breaches the EBITDA and turnover tests contained in the **class tests**,

would therefore not require disclosure as a **substantial transaction** in accordance with **Rule 12**.

For the avoidance of doubt, however, **Rule 11** may still require **notification** of such investment and the information required by Schedule Four of the **Rules for Companies** should be considered a useful basis for such **notification**.

~~5.5~~ 4.5 Rule 14 (Reverse take-overs)

Pursuant to **Rule 14**, an acquisition (which should be interpreted broadly and include undertaking an investment in a company or assets, for example) by an **investing company** which exceeds 100% in any of the **class tests** may be considered a reverse take-over, even if such an acquisition is made in accordance with its stated **investment policy**.

However, an acquisition made by an **investing company** that:

- is in accordance with its **investing policy**;
- only breaches the EBITDA and turnover tests contained in the **class tests**; and
- does not result in a fundamental change in its business, board or voting control,

would not be considered a reverse take-over under **Rule 14**.

In all other instances, the company, after consulting the **nominated adviser**, must approach **Borsa Italiana** if it considers that an acquisition falling within **Rule 14** should not be treated as a reverse take-over. For the avoidance of doubt, **Rules 11** and **12** may still require **notification** of such an investment.

~~5.6~~ 4.6 Rule 15 (Actions or disposals resulting in a fundamental change of business)

A disposal by an **investing company** which is within its **investing policy** will not be subject to the requirement under **Rule 15** to obtain **shareholders'** consent on the basis of a circular. However a disclosure in accordance with Schedule Four should still be made.

However, where an **investing company** disposes of all, or substantially all, of its assets, within the meaning of **Rule 15**, the **investing company** will have twelve months from the date of that disposal to implement its current **investing policy** in accordance with **Rule 15.** If this is not fulfilled, the **investing company** will be suspended pursuant to **Rule 40.** Any change to its investing policy will be subject to **Rule 8**, but the twelve month period will continue to apply.

Borsa Italiana S.p.A.
Piazza degli Affari, 6
20123 - Milano
www.borsaitaliana.it

Borsa Italiana