



Borsa Italiana

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Mittente del comunicato : BORSA ITALIANA

Societa' oggetto : --
dell'Avviso

Oggetto : AIM Italia/Mercato Alternativo del Capitale -
Statutory clause on tender offers to be
included in the bylaws of companies -
clarification

Testo del comunicato

See the annex

Disposizioni della Borsa

**AIM ITALIA/MERCATO ALTERNATIVO DEL CAPITALE
STATUTORY CLAUSE ON TENDER OFFERS TO BE INCLUDED IN THE BYLAWS OF
COMPANIES - CLARIFICATION**

Article 6-bis of the AIM Italia/Mercato Alternativo del Capitale Rules for Companies (hereinafter the “Rules for Companies”) establishes, among other things, that *“an applicant shall insert into its by-laws the provisions on takeovers specified in Schedule Six effective from the start of trading on AIM Italia”*.

Schedule Six of the Rules for Companies contains the model of bylaw clause pertaining to takeover bids that AIM Italia issuers must include in their bylaws as a precondition for admission to trading of their own financial instruments on the AIM Italia market. The rules governing takeover bids constitute a characteristic feature of the AIM Italia market model, and thus the presence of the corresponding clause in the bylaws of issuers is a prerequisite for the continued trading of the relative financial instruments.

The model of bylaw clause set out in Schedule Six establishes, insofar as we are concerned, that *“From the time the Company’s shares are admitted to trading on AIM Italia, the provisions (hereinafter the “provisions in question”) on listed companies referred to in Legislative Decree 58/1998 (hereinafter the “Consolidated Law on Finance”) and the related Consob implementing regulations on mandatory cash and exchange tender offers (with reference exclusively to Articles 106 and 109 of the Consolidated Law on Finance) shall become applicable by voluntary reference and insofar as they are compatible”*.

In this regard, it should be pointed out that Article 106 of the Consolidated Law on Finance was amended by the legislator (Article 20 of Italian Decree Law no. 91 of 24 June 2014, as amended by conversion law no. 116 of 11 August 2014) through the inclusion – insofar as we are concerned – of the following provisions:

- The bylaws of SMEs ⁽¹⁾ may provide for a different threshold from the one indicated in paragraph 1 (i.e. the threshold of 30% which once exceeded triggers a mandatory takeover bid), but in any case may be no lower than twenty-five percent and no higher than forty percent. If the amendment to the bylaws is made after the start of trading of the securities on a regulated market, those shareholders who did not have a say in the decision to make said amendment shall be entitled to withdraw in regard to part or all of their securities; Articles 2437-bis, 2437-ter and 2437-quater of the Italian Civil Code (new paragraph 1-ter of Article 106 of the Consolidated Law on Finance) shall apply;

¹SMEs are defined as “small and medium-sized enterprises, issuers of listed shares, which have, as evidenced by the financial statements relating to the last financial year, also before admission to trading of their shares, revenues up to 300 million euro, or an average market capitalization in the last calendar year of less than 500 million euro. If the revenue and capitalization requirements are exceeded for three financial periods, that is, for three consecutive years, the issuer no longer qualifies as an SME (Article 1, paragraph 1, letter w-quarter 1), of the Consolidated Law on Finance).

- The obligation to make a takeover bid established by paragraph 3, letter b) (i.e. the obligation to make a so-called “consolidating” takeover bid following acquisitions of over 5% by those who already hold a 30% equity interest – or the diverse percentage interest provided for by the bylaws - without holding the majority of voting rights at the ordinary shareholders’ meeting), does not apply to SMEs, provided that such is established in their bylaws, until the date of the shareholders’ meeting called to approve the financial statements for the fifth financial year following listing (new paragraph 3-quater of Article 106 of the Consolidated Law on Finance).

In this regard, it should be pointed out that:

A) those companies that wish to be listed on the AIM Italia market, that fall within the category of SME, may establish in the bylaw clause regarding takeover bids, for the purpose of admission to trading on the AIM Italia market, both a different threshold for mandatory takeover bids (pursuant to paragraph 1-ter of Article 106 of the Consolidated Law on Finance) and the non-application of the “consolidating” takeover bid for the first five years of trading on the AIM Italia market (pursuant to paragraph 3-quater of Article 106 of the Consolidated Law on Finance).

B) those companies already listed on the AIM Italia market that fall within the category of SME, may choose to amend the bylaw clause regarding takeover bids, by establishing a different threshold for mandatory takeover bids, provided that they grant the right to withdraw to those shareholders that did not have a say in the corresponding decision to make said amendment, as provided for by paragraph 1-ter of Article 106 of the Consolidated Law on Finance.

The aforesaid companies, however, may not amend the bylaw clause in order to establish the non-application of the “consolidating” takeover bid, not even in the event that five years have yet to lapse since the start of trading; in other words, the non-application of the “consolidating” takeover bid may only be implemented in the case of those companies that exercise the bylaw opt-out within the context of the procedure for admission to trading on the AIM market.

It should also be pointed out that any elimination of the bylaw clause concerning takeover bids, on the part of an AIM Italia company, or the amendment thereof in a form that fails to comply with the aforementioned instructions, shall result in the suspension from trading on the AIM Italia market of the corresponding financial instruments, pursuant to Article 40 of the Rules for Companies, together with the launch of proceedings to investigate any breach of the Rules for Companies. It should be noted that should suspension last for a period of more than six months, Borsa Italiana will cancel the admission of AIM Italia securities where these have been suspended from trading for more than six months.

Nominated Advisors are advised to promptly contact Borsa Italiana in regard to any plans to amend the bylaws of an AIM Italia Issuer that do not comply with the AIM Italia Market Rules and this Notice.