

DISCIPLINARY PROCEDURES AND APPEALS HANDBOOK • DECEMBER 2008



AIMItalia
MERCATO ALTERNATIVO DEL CAPITALE

Disciplinary Procedures and Appeals Handbook

Introduction

This handbook, which forms part of the **AIM Italia/Mercato Alternativo del Capitale** rules, sets out the procedures to be followed when: (i) **Borsa Italiana** wishes to commence disciplinary proceedings against an **AIM Italia company** or **nominated adviser** for a breach of the **AIM Italia** rules; and (ii) an **AIM Italia company**, a **nominated adviser**, or any entity applying to become an **AIM Italia company** or **nominated adviser** wishes to lodge an appeal pursuant to the **AIM Italia** rules against any decision of **Borsa Italiana**.

Defined terms used in this handbook shall have the meanings set out in the Glossary to the **AIM Italia** rules.

For the purposes of this handbook, the term “**AIM Italia** rules” shall mean the “**Rules for Companies**” and the “**Rules for Nominated Advisers**” as applicable.

Part One

DISCIPLINARY PROCESS

Verification activity

1. For the purpose of verifying compliance with the **AIM Italia** rules and, more generally, in order to ensure the performance of its functions of organising and managing the markets, Borsa Italiana may:
 - a) request the **AIM Italia company** or the **nominated adviser** to provide all the necessary information and documents;
 - b) convoke the representatives of the **AIM Italia company** or the **nominated adviser** to clarify specific conduct or situations.

Where evidence is found of presumed violations of the **AIM Italia** rules, Borsa Italiana, after acquiring appropriate substantiating elements, shall initiate the procedure referred to in Rule 3.

In the event of minor infringements of the **AIM Italia** rules, **Borsa Italiana** may invite the **AIM Italia company** or the **nominated adviser** to comply adequately with the provisions in question.

Measures against issuers and Nomads

2. Where there is a violation of the AIM ITALIA rules, including the case of a **AIM Italia company** or **nominated adviser** hindering the verification activity referred to in Rule 1, Borsa Italiana may apply one or more of the following measures against the **AIM Italia company** or **nominated adviser** in question, taking into account the seriousness of the violation and any other violations committed in the 30 months preceding the violation:
 - a) a **warning notice**. If in the 30 months preceding the violation the **AIM Italia company** or **nominated adviser** has committed another violation of the same prescription or prohibition for which Borsa Italiana has already imposed a warning notice, the measure referred to in subparagraph b) shall be applied:
 - b) a fine of between 5,000 and 200,000 euros. In deciding on the amount of the fine **Borsa Italiana** shall take into account the seriousness of the violation.
 - c) cancel the admission of its **AIM Italia securities**
 - d) remove the **nominated adviser** from the register
 - e) prevent the **nominated adviser** from acting as a **nominated adviser** to any additional **AIM Italia companies**

The measures provided for in the preceding paragraph shall be made public pursuant to Rule 5, except in the cases of:

- a. a warning notice;
- b. a fine of not more than 30,000 euros.

The measures provided for in paragraph 1 shall always be made public pursuant to Rule 5 if, in the 30 months preceding the violation in question, the **AIM Italia company** or **nominated adviser** has committed other violations of the AIM Italia Rules for which Borsa Italiana has adopted three non-public measures or has committed another violation of the same

prescription or prohibition for which Borsa Italiana has already imposed a measure other than a censure.

The use to which fines are put shall be established on a general basis by Borsa Italiana in an ad hoc measure communicated to Consob and published in a Notice.

Procedure for verifying violations

3. In order to apply the measures referred to in Rule 1, the procedure described in this rule shall be initiated within one year of the presumed violation or of the later date on which Borsa Italiana learned of the presumed violation. In the latter case the procedure described in this rule may not be initiated after three years have elapsed from the date of the presumed violation.

Borsa Italiana shall initiate the procedure by sending the **AIM Italia company** or **nominated adviser** concerned a notification:

- a. containing a description of the alleged violation;
- b. setting a time limit of not less than 15 days within which a written brief may be submitted and possibly a request for a hearing in which to examine the question jointly.

The notification referred to in paragraph 2 may indicate the measure Borsa Italiana intends to apply. In such case, if the time limit referred to in paragraph 2(b) expires without the **AIM Italia company** or **nominated adviser** having submitted a written brief or requested a hearing, Borsa Italiana shall apply the measure indicated in the notification.

If the **AIM Italia company** or **nominated adviser** requests a hearing in which to examine the question jointly or if **Borsa Italiana** considers such a hearing to be necessary, **Borsa Italiana** shall establish the date for the hearing and inform the issuer accordingly. The **AIM Italia company** or **nominated adviser** shall be represented in the meeting either by its legal representative or by a person appointed for the purpose, being allowed to be assisted by a lawyer of its choice. If the **AIM Italia company** or **nominated adviser** fails to attend the hearing without due cause, Borsa Italiana shall proceed on the basis of the evidence collected up to that time. At the end of the hearing, at the request of the interested party, **Borsa Italiana** may set a new time limit of not less than 10 days for the submission of another written brief.

On the basis of the evidence collected as part of the procedure referred to in the preceding paragraphs, **Borsa Italiana** shall decide within 45 days of the hearing or the subsequent expiry of the time limit for the submission of another written brief as provided for in paragraph 4, or if no such hearing is requested or scheduled by Borsa Italiana, within 45 days of the expiry of the time limit set pursuant to paragraph 2(b).

Decisions adopted pursuant to the preceding paragraph shall be promptly notified to the interested party giving the reasons for the decision. If one of the measures referred to in Rule 2 is applied, the costs of the procedure and in particular those in relation to the examination of the written briefs submitted and the hearings requested, determined on a flat-rate basis in accordance with the measure referred to in Rule 2, shall be charged to the **AIM Italia company** or **nominated adviser**.

Challenging of measures

4. Measures referred to in Rule 2 may be challenged within 15 days of the notification referred to in respectively Rule 3, paragraph 6 before the Appeals Board established pursuant to Rule 10

Disclosure to the public of measures

5. Applications of the measures referred to in Rule 1 shall be made public in **dealing notices** after 15 days have elapsed from the notification of the measure to the interested party without the question being referred to the Appeals Board or, where it has been so referred, after 10 days have elapsed from the notification of the Appeals Board's decision to the parties.

At the request of the **AIM Italia company** or **nominated adviser**, the complete text of the measure shall be made public, possibly together with all the acts of the proceedings, including the decisions of the Appeals Board.

Suspension of time limits

6. The time limits referred to in these Rules, except for those provided for in Rule 1, shall be suspended from 1 August to 31 August of each year.

Part Two

General provisions

Jurisdiction

7. The **AIM Italia** rules and any other provisions concerning the operation of the **AIM Italia** market and services and subsequent amendments shall be governed by the laws of Italy.

Disputes submitted to the courts

8. Disputes concerning the fees referred to in the **AIM Italia** rules shall be heard exclusively by Italian judges and the competent court shall be exclusively the Court of Milan.

Other disputes

9. Any dispute other than those referred to in Rule 8 caused by or deriving from the AIM Italia rules or any other provisions concerning the operation of the market and subsequent amendments shall be settled finally by a Board of Arbitration set up in accordance with Rule 11.

Prior recourse to the Appeals Board procedure referred to in Rule 10 shall be a necessary condition for initiating the arbitration procedure.

Appeals Board

10. The Appeals Board shall be composed of three members appointed by the Board of Directors of Borsa Italiana, which shall also appoint one of the members to be the chairman. The seat of the Appeals Board shall be at Borsa Italiana.

The members of the Appeals Board shall be chosen from among independent persons of proven expertise in matters concerning financial markets.

The appointment shall be for three years and may be renewed once. Where one of the members vacates the position before the termination of the appointment, the Board of Directors of Borsa Italiana shall appoint a substitute; such appointment shall last until the termination of the appointments of the other members of the Appeals Board.

The decisions of the Appeals Board shall be adopted in accordance with law allowing debate within 30 days of the date of the challenge referred to in Rule 4 and shall be promptly notified to the parties. The language of the proceedings shall be the Italian language.

In agreement with the other members of the Board, the chairman may assign a question to a single member of the Board.

The decisions of the Appeals Board shall not be binding on the parties and where one of the parties initiates arbitration pursuant to Rule 11, they shall not be binding on the arbitrators, who shall have the broadest prerogatives and powers to re-examine the entire dispute without any preclusion.

Board of Arbitration

11. The Board of Arbitration shall be composed of three members appointed as follows:

- a) the party that initiates the arbitration procedure shall send an instrument to the other party in which it:
 - declares its intention of initiating the arbitration procedure;
 - indicates the subject of the challenge;
 - designates its arbitrator;
 - invites the other party to designate its arbitrator;
- b) the party that receives the invitation referred to in subparagraph a) shall designate its arbitrator within 20 days of receiving the notice; in the event of its omitting to do so, the second paragraph of Article 810 of the Code of Civil Procedure shall apply;
- c) the third arbitrator, who shall act as Chairman of the Board of Arbitration, shall be appointed consensually by the arbitrators referred to in subparagraphs a) and b); where they fail to agree within 20 days, the third arbitrator shall be appointed by the Chairman of the Milan Court.

The arbitration proceedings thus instituted shall be ritual and shall comply with the provisions of the Italian Code of Civil Procedure. The procedure must be initiated, on pain of debarment from action, within 30 days of the notification referred to in Rule 10, paragraph 4. The dispute shall be settled in accordance with the provisions of Italian law and the language of the arbitration proceedings shall be the Italian language.

The seat of the Board of Arbitration shall be in Milan in the place designated by its Chairman.

