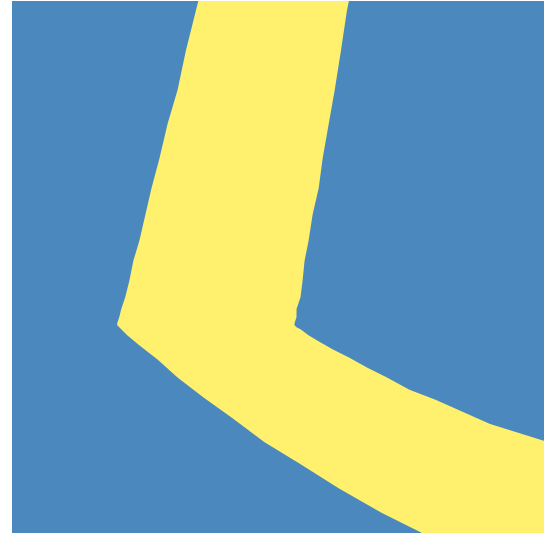




Notice requirements for issuing and offering financial instruments in Italy



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1 Introduction

The Italian banking regulations (*Istruzioni di Vigilanza*), as integrated by the bank of Italy's (the Bank) resolution published in the official gazette on 12 August 2002 (the Regulations) set out the notice requirements (the Notice Requirements) for issuing and offering 'financial instruments' in Italy.

The Regulations have been recently integrated by a Bank release dated 14 October 2005 (the October 2005 Release) aimed at reducing the instances in which an Advance Notice (as defined below) must be given by increasing the thresholds for exempted transactions and introducing new classes of 'standard financial instruments'.

Financial instruments are defined in the Regulations as securities issued to raise funds, negotiated or negotiable in a market, destined to a number of investors also belonging to predetermined categories. This definition includes, among others, the securities normally negotiated in the monetary market (eg *certificati di deposito* (deposit certificates) and *cambiali finanziarie* (commercial papers)), the securities representing derivative instruments (eg futures, options, swaps, forward rate agreements) and the securities not regulated by the Italian legislation (eg *polizze di credito commerciale* (bills of commercial credit)).

The Notice Requirements provide for a notice to be given to the Bank:

- prior to the relevant issue or offer of financial instruments (the Advance Notice); and
- after the relevant issue or offer of financial instruments (the Post-Issue Notice).

2 Excluded transactions

Pursuant to the Regulations, in addition to issues/offerings made on foreign markets, the issues/offerings in Italy of the following financial instruments are excluded from the requirement to give both Advance and Post-Issue Notice:

- 1 financial instruments issued, or guaranteed, by the Republic of Italy;
- 2 equity securities, different from those representing participation in open or close collective investment undertakings (*organismi di investimento collettivo*);
- 3 quotas or financial instruments representing participation in Italian collective investment undertakings (*organismi di investimento collettivo*); and
- 4 quotas or financial instruments representing participation in a collective investment undertaking (*organismo di investimento collettivo*) settled in an EU member state and complying with EU legislation.

3 Exempted transactions

The issues/offerings in Italy of the following financial instruments are exempted from the requirement to give Advance Notice:

- 1 financial instruments issued by EU member states;
- 2 'standard' (the definition of 'standard' is contained in Annex I to this client guide) financial instruments guaranteed by EU member states;
- 3 standard *certificati di deposito* (deposit certificates) and fixed or variable *buoni fruttiferi* (interest-bearing securities);
- 4 standard financial instruments provided that, pursuant to the October 2005 Release, the total face value of issues/offerings does not exceed:
 - (a) €2bn, when aggregated with the issues/offerings made in the previous 12-month period; or
 - (b) €4bn if such financial instruments (i) are listed or are to be listed in regulated markets and the €4bn amount is not exceeded when aggregated with the value of the issues/offerings made in the previous 12-month period; (ii) meet the criteria under which a Cumulative Notice might be given; or (iii) meet the criteria under which a Short Notice might be given¹;
- 5 warrants on financial instruments excluded or exempted from the requirement to give Advance Notice insofar as they provide for physical delivery of the underlying assets (ie are not cash settled); and
- 6 quotas or financial instruments representing participation in a collective investment undertaking (*organismo di investimento collettivo*) not complying with EU legislation (ie non-harmonised UCITS) provided that the formalities disposed by article 42.5 and seq of the legislative Decree 58/1998 are respected.

Please note that the issues or offerings that, according to this section 3, are exempted from the Advance Notice requirement, may still require, as summarised in section 4 below, a Post-Issue Notice.

¹ Under the previous regulations, financial instruments could be qualified as 'standard' financial instruments where the total face value of issues/offerings made in a year period did not exceed:

- (a) €50m; or
- (b) €150m if such financial instruments were listed or were to be listed.

4 Advance Notice

Advance Notice is to be given by :

- 1 the issuer;
- 2 the offeror; or
- 3 any entity that has been instructed to give notice by either the issuer or the offeror (in this case the relationship of the entity giving the Advance Notice shall need to be specified in the Advance Notice).

The Notice Requirements provide for three types of Advance Notice, which alternatively are to be given to the Bank:

- (a) Cumulative Notice;
- (b) Ordinary Notice; and
- (c) Short Notice.

4.1 Cumulative Notice

4.1.1

A Cumulative Notice covering all the issues or offerings of the following calendar semester that raise savings on a customary basis may be given by any of the entities listed in Annex II to this client guide provided that the following criteria are met:

- 1 the amount of debt security does not exceed €250m for each issue or offering;
- 2 the following financial instruments are issued or offered:
 - a. standard financial instruments issued by Italian entities: *obbligazioni* (bonds), *cambiali finanziarie* (commercial papers), *certificati di investimento* (investment certificates) or *polizze di credito commerciale* (bills of commercial credit);
 - b. standard financial instruments issued by non-Italian entities: *obbligazioni* (bonds), notes or commercial papers issued or guaranteed by a Qualified Entity (as defined at Annex I);
 - c. non-standard financial instruments issued by Italian or non-Italian entities: *obbligazioni* (bonds), *cambiali finanziarie* (commercial papers), *certificati di investimento* (investment certificates) or *polizze di credito commerciale* (bills of commercial credit), notes, commercial papers or warrants; and
- 3 non-standard financial instruments issued or offered in Italy whose main features have been notified in advance and accepted by the Bank. Reference is to be made in the Cumulative Notice to the notice previously given to the Bank providing the main features of non-standard financial instruments.

4.1.2

Cumulative Notice shall be given by 31 May and 30 November in each year and shall contain details of all transactions to be entered into by the relevant entity within each six-month term.

4.2 Ordinary Notice

4.2.1

An Ordinary Notice covering a single issue or offering is to be given if:

- 1 a Cumulative Notice has not been given; or
- 2 a Cumulative Notice has been given, but:
 - a. the issue or offering exceeds the amount of each transaction in 4.1 (1); or
 - b. the debt securities do not have the characteristics given in 4.1 (2) above.

The Ordinary Notice may be replaced by a Short Notice should the conditions in 4.3.1 below be met.

4.2.2

The Notice Requirements provide for the filing of the Ordinary Notice between 30 and 20 clear days prior to the proposed date of the issue or offer.

The days to be calculated for making the filing and the issue/offering on time are calendar days and not business days.

Please note that, save for what is set out in section 5 below, the issue or offer can take place after the expiry of a 20 day period following the filing.

4.2.3

- 1 The Ordinary Notice shall give information on the following:
 - a. number and total amount of the financial instruments;
 - b. financial characteristics (terms and conditions of the issue/offering are to be enclosed); and
 - c. form and timing of the issue/offering.
- 2 Financial instruments (*obbligazioni, cambiali finanziarie, certificati di investimento, polizze di credito commerciale*) issued by non-banking entities shall indicate:
 - a. the amount, split for each type of the financial instruments still outstanding;
 - b. the amount of capital and reserves evidenced in the last approved financial statements; and

- c. the occurrence of the conditions possibly required by the applicable legislation (in particular about guarantees, guarantor's nature, financial statements of the last three years evidencing profits).
- 3 Non-Italian financial instruments issued by entities not based in OECD countries shall give information on legislative framework and the supervisory controls to which the issue/offering and the issuer are subject.
 - 4 Financial instruments representing derivative instruments shall indicate the entity bearing the risk and, if such entity is non-Italian, if it is subject to regulatory surveillance in its country.
 - 5 Financial instruments issued in securitisation or repackaging transactions shall give information on:
 - a. each entity that, in whatsoever capacity, takes part in the transaction: name, economic-juridical nature, activities carried out and specific roles played in the transaction (eg seller or buyer or depositary of the underlying assets, provider of credit line or liquidity, bondholders representative or counterparty in the swap);
 - b. underlying assets: kind, nominal amount, market value, evaluation criteria utilised, average loss registered in the last three years (as for assets non-listed in an official market), listing market and average prices and average sales volumes in the last quarter (for assets listed in a official market), term, yield, interest payment modalities, other financial characteristics and, if assigned, rating;
 - c. details of the risks of the transaction and of the instruments provided to cover such risks, specifying the circumstances under which such covers do not apply; cases and conditions of advance repayment; and
 - d. all other details necessary to a better understanding of the transaction.

The information listed above in (a), (b), (c) and (d) shall also be given for:

- securitisation or repackaging of financial assets issued in securitisation or repackaging transactions, for each phase of the transactions; and
- structures similar to those above, eg credit linked financial instruments (defined as those that ultimately condition, entirely or partially, the payment of interest and/or principal to economic events concerning the solvency of an entity different from the issuer), to the extent applicable.

4.3 Short Notice

4.3.1

A Short Notice may be given by any of the entities listed in Annex III to this client guide provided that the:

- 1 financial instruments are issued or guaranteed by a Qualified Entity (as defined in Annex I) with the same features of a previous issue or offer, notice of which has been given with Ordinary Notice by the same issuer or for which notice of its essential features has already been given to the Bank and accepted; and
- 2 principal amount of the financial instruments does not exceed €250m.

4.3.2

The Notice Requirements provide for the filing of the Short Notice five days prior to the proposed date of the issue or offer.

Once this term has expired, the issue or the offer can take place, subject to section 5 below.

4.4 Form of the Advance Notice

Notices are to be given in a form set out in a schedule to the Regulations, integrated by a note drafted in Italian containing all the additional information necessary, addressed to:

Banca d'Italia – Amministrazione Centrale – Servizio Vigilanza sull'Intermediazione Finanziaria – Divisione Controlli sul Mercato Finanziario, Via Milano 64, 00184 Rome and to the relevant branch of the Bank (if any).

It must first be sent by fax, followed by letter.

5 Bank of Italy: request of further information, prohibition or delay of issues or offerings

Once an Advance Notice has been given, the Bank can request further information or prohibit or delay issues or offerings.

5.1 Request for further information

The Bank may request further information within:

- 1 15 days of receiving an Ordinary Notice or a Cumulative Notice; or
- 2 5 days of receiving a Short Notice.

If the Bank requests further information, a new 20 day period will have to run prior to the issue or offer date.

5.2 Prohibition – delay

The Bank may prohibit or delay issues or offerings within:

- 1 20 days of receiving an Ordinary Notice; or
- 2 5 working days of receiving a Short Notice.

The Bank may further prohibit, according to section 5.3.1 below, or delay, according to section 5.4, issues or offerings for which a Cumulative Notice has been given.

5.3 Prohibition

5.3.1

The Bank may prohibit issues or offerings if the principal amount of the offering or issue is non-compatible with the size of the market, unless such an issue or offering is split.

5.3.2

The Bank may prohibit issues or offerings in the cases listed in section III, 3 of the Regulations and summarised in Annex IV of this client guide.

5.4 Delay

If the principal amount of the offerings and issues, to be effected in the same period of time together with transactions already noticed (also by other issuers), is non-compatible with the sizes and conditions of the primary or secondary market, the Bank may agree with the issuer a different agenda or a reduction in the amount of the issue or offering.

If no agreement is reached between the Bank and the relevant issuer the relevant issue or offering may be delayed for a maximum term of three months.

6 Post-Issue Notice

Post-Issue Notice is to be given after the issue or offering of these financial instruments:

- 1 debt securities for which Advance Notice is to be given as summarised in section 2 above;
- 2 debt securities that are exempted from advance notice requirements, if the issues/offerings made in the last 12 months by the same issuer exceed €m; and
- 3 shares, if the transactions entered into in the last 12 months by the same issuer exceed €500,000.

6.1 Entity that has to give the Post-Issue Notice

Post-Issue Notices are to be given for:

- 1 issues by Italian resident financial intermediaries, made directly by the issuer for any type of debt security and shares and any type of placement; or
- 2 non-Italian resident financial intermediaries issuing debt securities and shares:
 - a. directly; or
 - b. if placed through intermediaries, by each intermediary for the portion placed through that intermediary.

6.2 Timing and form of the Post-Issue Notice

Post-Issue Notices are to be given on a monthly basis.

Italian resident entities give notice to the competent Bank branch within 10 days on the month following the relevant issue or offering.

Non-Italian resident entities give notice to:

Banca d'Italia, Amministrazione Centrale, Servizio Vigilanza sull'Intermediazione Finanziaria, Divisione Controlli sul Mercato Finanziario, Via Milano, 64, 00184 Rome.

Annex I – Standard financial instruments

Financial instruments are standard if the following criteria, set out in Table II of the Regulations, are met.

1 Issuer

The issuer must be a Qualified Entity or an entity resident in a Qualified Country.

Qualified Entity is defined as a Qualified Country, international organisations to which Italy participates as a member state, banks and financial intermediaries resident in Qualified Countries, companies listed in regulated markets of Qualified Countries, banks and financial companies controlled by financial intermediaries resident in Qualified Countries.

Qualified Country is defined as an EU country and Zone A country² with an investment grade rating. Each Zone A country investment grade must be affirmed by at least two qualified rating agencies or at least by one rating agency provided that no other qualified rating agency has denied the investment grade.

2 Denomination

The relevant financial instruments must be denominated in euros or the currency of a Zone A country.

3 Yield

The yield may be fixed, variable or a mix (ie fixed for a term and subsequently variable or *viceversa*), provided that the yield is consistent with the market conditions at the time of the issue by taking into account the term of the securities and the issuer.

The financial structure (eg indexation mechanics and coupon cash flow composition) of the financial instruments must not be a hurdle to the assessment of the actual yield.

4 Indexation parameters

The interest rate is to be determined by reference to:

- c. monetary indices such as the yield of BOTs (ie the Italian state short-term gilts), Euribor, Libor or other equivalent indices in relation to the euro;
- d. medium-term indices such as Rendistato, Rendiob, and swap rates on the euro;
- e. the euro or a currency of an Zone A country; and

² Zone A countries are defined as OECD countries and Saudi Arabia.

f. Zone A country equity market indices, equity instruments listed in regulated markets of Zone A countries, or baskets of the mentioned indices or securities. The value of the securities and the indices is to be published on a daily basis in financial newspapers with a large domestic readership. The interest rate must refer to the interest only (and repayment of capital is to be guaranteed in any event) and is to be represented by call options on reference rates incorporated in the debt securities. The securities must be for a term equal to or below 15 years.

5 Minimum and maximum rate, repayment premia and index spreads

The minimum or maximum rate, the repayment premium and any spread on interest rate, if fixed, should be such that the overall yield of the securities is consistent with the conditions of the financial markets. Minimum and maximum rates are to be determined to guarantee equitable conditions between the issuer and the subscriber. The repayment premium must have a financial nature.

6 Interest payment dates

The interest coupon term is to be not less than three months or for a single payment at the end of the term.

7 Repayment of principal

Repayment of principal is to be at par for all instruments (including zero coupon instruments or instruments similar to zero coupon instruments).

8 *Obbligazioni* (Italian long-term debt securities).

a. *Obbligazioni* must be:

- ordinary and non-convertible; or
- convertible into shares or with a warrant attached that gives the right to buy shares.

b. The original term is not to be less than 36 months. However, the original term may be less than 36 months provided that the average term is not less than 24 months.

For issue of securities in tranches, or for a prolonged placement period, the average term of the issue in aggregate must not be less than 24 months. The residual term is not to be less than 18 months.

c. Advance repayment at the request of the issuer may be made:

- at least 18 months after the closing of the offer period of the last tranche; or
- at par for securities other than zero coupon securities or securities similar to zero coupon securities (for which the repayment price is to be coherent with the yield of the securities).

Issuers may, however, buy back the securities from the market.

- d. Advance repayment at the request of the subscriber may be made:
- at least 24 months after the closing of the offer term of the last tranche; or
 - at par for securities other than zero coupon securities or securities similar to zero coupon securities (for which the repayment price is to be coherent with the yield of the securities).

If an advance repayment is provided at the request of the issuer, but a similar advance repayment is not provided at the request of the subscriber, the terms and conditions of the issue have to specify the conditions under which such advance repayment shall become exercisable.

9 Notes (ie non-Italian debt securities)

- a. The original and the average term must not be less than three months for notes issued by international organisations, Zone A countries, foreign branches of Italian banks and non-Italian banks subject to equivalent surveillance to the surveillance provided for by Italian legislation; and
- b. for entities not referred to in (a), the average term of the notes must not be less than two years.

10 Commercial papers

- a. The average term must not be less than three months for non-Italian companies:
- listed on regulated markets of Zone A countries and with a minimum denomination of €50,000; and
 - belonging to Zone A countries but not listed on regulated markets of Zone A countries, with the last three accounts showing a profit and having obtained a guarantee for at least 50 per cent of the principal amount of the issue by entities carrying out banking, financial or insurance activities, and subject to supervision equivalent to that provided for by Italian legislation and with a minimum denomination of €50,000.

The following are considered to be standard financial instruments.

- 1 Step-up and step-down bonds, ie bonds whose yield, or spread on indexation parameters, have a value growing or decreasing over time. This category includes bonds with variable yield and maximum rate predetermined for specified periods of time (the sliding-cap securities).
- 2 Debt securities whose interest rate is determined by reference to Libor or swap rate (the so-called Constant Maturity Swap) on the currency of a Zone A country.

- 3 *Polizze di credito commerciale* (bills of commercial credit) with the following characteristics:
 - a. each *polizza* is a minimum of €50,000;
 - b. original and average term is not less than 30 days;
 - c. each *polizza* is to be subscribed by only one financing entity; and
 - d. formalities of assignment to third parties according to article 1260 and seq of the Italian civil code.

The current practice of issuing *polizze* with original and average terms of less than 30 days negatively affects the market.

Further, according to the October 2005 Release, the following are standard financial instruments:

- 1 call- and put-covered warrants that can be qualified as ‘plain vanilla’, provided that the underlying is represented by listed shares, shares indices and/or currencies of Zone A countries;
- 2 *obbligazioni* (long term debt securities) that have a yield linked to an official index (calculated by Eurostat or Istat) based on the index of retail prices for the families of workers and employees in Italy and Europe;
- 3 *obbligazioni* that have an indexed yield linked to an underlying static fund constituted by one or more Italian or EU collective open-ended investment undertakings (Organismi di Investimento Collettivo del Risparmio), being harmonised pursuant to CEE directive 85/611 and authorised to be placed in Italy;
- 4 *obbligazioni* that have (i) a maximum maturity date of five years; and (ii) a yield not less than a guaranteed minimum and linked to an underlying basket of financial instruments whose composition changes on the basis of an objective criterion such as Constant Proportion Portfolio Insurance. In this case, the value of the underlying basket has to be published, at predetermined intervals, in an Italian financial newspaper);
- 5 *obbligazioni* that are secured by predetermined asset classes and are issued pursuant to specific sector regulations by authorised financial intermediaries (eg covered bonds, pfandbriefe and equivalent securities);
- 6 new or hybrid equity or quasi-equity financial instruments and subordinated debt instruments issued by EU banks or banks located in a Zone A country, pursuant to the applicable capital adequacy rules (which shall be consistent with the international standards);

- 7 *obbligazioni* that have a maximum maturity date of 15 years and a coupon yield in an amount equal to the higher of (i) the minimum guaranteed coupon (fixed for each year until the maturity date) and (ii) a multiple of the difference between two interest rates on currencies of a Zone A countries;
- 8 *obbligazioni* that are Target Amount Redemption Notes, having a variable yield indexed to standard parameters (objective and published) that are pre-paid in the event that the aggregate of all the paid coupons reaches a target yield;
- 9 limited recourse instruments representing a loan granted by the relevant issuer (Loan Participation Notes) which, through appropriate selling restrictions, can be sold in Italy exclusively by professional investors which are not individuals; and
- 10 financial instruments that:
 - a. are issued/offered by qualified companies (ie banks and financial intermediaries resident in Qualified Countries, companies listed in regulated markets of Qualified Countries or financial companies controlled by financial intermediaries resident in Qualified Countries) or companies incorporated in a Qualified Country, but not offered exclusively to its shareholders; and
 - b. either:
 - (A) are rated investment grade (or, to the extent such financial instruments are not subordinated, the issuer or the guarantor is rated investment grade); or
 - (B) include a selling restriction (to be inserted in the relevant issue documentation) pursuant to which such financial instruments shall not be placed in the primary market nor sold in the secondary market to persons who are not professional investors or to individuals and, in the event such financial instruments are intended primarily for the Italian domestic market, have a minimum denomination of €0,000.

Annex II – Cumulative Notice

Only the following entities may give a Cumulative Notice provided that the issue of financial instruments is by the same issuer and placed in Italy:

- 1 a financial market intermediary, where debt securities are issued by the same financial market intermediary or by Italian or non-Italian third party entities for financial instruments to be placed in Italy;
- 2 Qualified Countries, as defined at Annex I (excluding EU countries that are exempted from the Notice Requirements);
- 3 international organisations to which Italy participates as a member state; or
- 4 companies listed in regulated markets of a Qualified Country.

Annex III – Short Notice

Only the following entities may give a Short Notice.

- 1 Financial Intermediaries. These are defined as Italian banks, SIMs, stockbrokers registered in the relevant register and the financial intermediaries registered in the list provided in article 107 of Legislative Decree 385/1993, provided that they are authorised by article 19.4 of Legislative Decree 58/1998 to place activities of financial instruments, and foreign intermediaries authorised to place activities of financial instruments in Italy through a branch or within the rules of free movement of services.
- 2 Qualified Countries, as defined in Annex I (excluding EU countries that are exempted from the Notice Requirements).
- 3 International organisations to which Italy participates as a member state.

Annex IV – Specific circumstances in which the bank of Italy may prohibit an issue or an offering

The Bank may prohibit an issue or an offer when:

- 1 the collection of savings representing repayable funds is not effected in accordance with provisions enacted by the CIPE, the Italian interministerial committee for credit and savings or other provisions of law, or any other order enacted under the law and the relevant term of the financial instruments is below three years, unless Italian legislation allows for a shorter term;
- 2 financial instruments that are regarded as typical in the market provide the relevant terms and conditions for non-standard provisions;
- 3 unusual financial instruments are not sufficiently spread on the market and do not fall within a scheme of general application which has, among other things, been subject previously to regulatory approval;
- 4 financial instruments represent a quota of collective managed assets and the asset management activity is illegal;
- 5 the financial conditions of the transaction alter the correct and ordered way the market functions or are not based on criteria of simplicity and transparency;
- 6 the interest is not calculated by reference to parameters calculated on an objective basis and collected from wide and transparent markets. In particular, reference is to be made to parameters ensuring continuity in measuring and periodic collection;
- 7 the financial instruments issued or offered give a right to the subscriber to acquire or exchange other financial instruments, if the underlying financial instruments do not satisfy the same requirements to which the issued or offered financial instruments have to comply with; and
- 8 regarding non-Italian securities, it cannot be established that the precedent requirements are complied with and that there are equivalent controls as provided by Italian legislation in the country of the issuer or the offeror. In the case of derivative instruments, which are not negotiated on organised markets, the issuer or the offeror is to be a market intermediary subject in its own country of origin to adequate forms of supervision.

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<p>BARCELONA Mestre Nicolau 19 08021 Barcelona T + 34 93 363 7400 F + 34 93 419 7799</p>	<p>DÜSSELDORF Feldmühleplatz 1 40545 Düsseldorf T + 49 211 49 79 0 F + 49 211 49 79 10 3</p>	<p>LONDON 65 Fleet Street London EC4Y 1HS T + 44 20 7936 4000 F + 44 20 7832 7001</p>	<p>SHANGHAI 34th floor Jinmao Tower 88 Century Boulevard Shanghai 200121 T + 86 21 5049 1118 F + 86 21 3878 0099</p>
<p>BEIJING 3705 China World Tower Two 1 Jianguomenwai Avenue Beijing 100004 T + 86 10 6505 3448 F + 86 10 6505 7783</p>	<p>Mailing address Postfach 10 17 43 40008 Düsseldorf</p>	<p>MADRID Fortuny 6 28010 Madrid T + 34 91 700 3700 F + 34 91 308 4636</p>	<p>SINGAPORE Freshfields Drew & Napier 20 Raffles Place #18-00 Ocean Towers Singapore 048620 T + 65 6535 6211 F + 65 6533 5007</p>
<p>BERLIN Potsdamer Platz 1 10785 Berlin T + 49 30 20 28 36 00 F + 49 30 20 28 37 66</p>	<p>FRANKFURT AM MAIN Taunusanlage 11 60329 Frankfurt am Main T + 49 69 27 30 80 F + 49 69 23 26 64</p>	<p>MILAN Via dei Giardini 7 20121 Milan T + 39 02 625 301 F + 39 02 625 30800</p>	<p>TOKYO Ark Mori Building 18F 1-12-32 Akasaka Minato-ku Tokyo 107-6018 T + 81 3 3584 8500 F + 81 3 3584 8501</p>
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