

Fund Management

Contributing editors

Bryan Chegwidan and Michelle Moran



2016

**GETTING THE
DEAL THROUGH**

GETTING THE
DEAL THROUGH 

Fund Management 2016

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Italy

Dante Leone and Nicola Rapaccini

CP-DL

Fund management

1 How is fund management regulated in your jurisdiction? Which authorities have primary responsibility for regulating funds, fund managers and those marketing funds?

Fund management, as well as all related activities including marketing, is regulated under Italian law as a result of domestic legislation and the (direct or indirect) application of European Union directives and regulations. Specifically, fund management activity is primarily governed by Italian Legislative Decree No. 58 of 24 February 1998 (the Consolidated Law on Finance (TUF)), as implemented by four different secondary regulations, namely:

- the Regulation on Collective Investment Asset Management issued by the Bank of Italy;
- the Regulation on the Organisation and Control of Intermediaries providing Investment and Collective Management Services issued by the Bank of Italy and the Italian Stock Market Regulatory Authority (Consob);
- the Regulation for Intermediaries issued by Consob; and
- the Regulation for Issuers issued by Consob.

The whole set of rules governing asset management activities has been recently revised as a result of the entry into force of EU Directives No. 2009/65/EC on Undertakings for Collective Investments in Transferable Securities (the UCITS IV Directive) and No. 2011/61/EC on Alternative Investment Fund Managers (AIFMD), and the related EU regulations and acts.

The Bank of Italy and Consob are the authorities responsible for the supervision of investment funds and fund managers in Italy and, in general, for the regulation of the asset management sector and operators in that sector.

2 Is fund administration regulated in your jurisdiction?

No, this is not a regulated activity. However, investment fund managers wishing to delegate to third parties specific duties related to the performance of their services are required to inform the Bank of Italy and Consob of such intention, by indicating to whom the functions or services are delegated (prior communication is not required for managers that fall within the AIFMD's definition of below-the-threshold fund managers, ie, fund managers for which the total value of assets under management does not exceed €100 million, or €500 million if the funds do not make use of leverage and do not allow investors to exercise the right of redemption for at least five years after the initial investment).

Specifically, fund managers may outsource essential or important operations, services or activities, as long as the outsourced third party is qualified to manage the delegated functions with the diligence required by the nature of the assignment and as long as fund managers remain responsible towards the investors for the actions of the delegated subjects. Fund managers must also retain the ability to supervise the delegated third parties at all times, to be able to (i) give further instructions with regard to the delegated functions at any time, and (ii) revoke such mandate with immediate effect, to the extent appropriate to protect the interests of investors.

3 What is the authorisation or licensing process for funds? What are the key requirements that apply to managers and operators of investment funds in your jurisdiction?

Both the organisation of investment funds and the activity of fund managers are subject to licensing processes and to compliance with specific requirements pursuant to Italian and EU laws and regulations. These processes and requirements differ based on the features of the manager, the type of the investment fund and the prospective investors (the answers below set out a detailed analysis of such requirements and processes for each legal structure).

To obtain authorisation to provide asset management services, irrespective of the nature of the managed investment fund, Italian fund managers must obtain an authorisation from the Bank of Italy, subject to compliance with certain requirements, including:

- the adoption by the fund manager of the legal form of an Italian joint stock company;
- generally a minimum fully paid-up capital of €1 million, subject to certain exceptions for managers of funds reserved to professional investors (for which the minimum capital is set at €500,000) and managers falling below certain thresholds in respect of assets under management pursuant to the AIFMD (for which the minimum capital is set at €50,000);
- experience, independence and integrity requirements for persons performing administrative, management and supervisory functions;
- specific integrity requirements for persons holding a controlling interest in the fund manager; and
- appropriate organisational and functional structures, as indicated in a specific report prepared for the benefit of the Bank of Italy.

After formation of the fund management entity and once these requirements are complied with, the authorisation request is submitted to the Bank of Italy. If all requirements and conditions are fulfilled, after a 90-day period from the submission of the request, the manager is expressly authorised by the Bank of Italy and listed in a special register held by the Bank of Italy.

The requirements described above apply to fund managers established in Italy. If an investment manager is established in another EU member state and authorised under the AIFMD or UCITS IV Directive, subject to compliance with certain rules of those Directives, that manager is entitled to manage Italian investment funds or market foreign or Italian investment funds in Italy, upon simple notification to the Bank of Italy (the 'European passport').

4 What is the territorial scope of fund regulation? Can an overseas manager perform management activities or provide services to clients in your jurisdiction without authorisation?

As a general rule, a foreign manager is not entitled to perform management activities or provide asset management services to Italian investors without complying with certain specific requirements pursuant to applicable Italian and EU regulations. Such requirements differ depending on whether the overseas manager is a European or a non-European entity, and whether such manager is already authorised in its country (the home country) as an alternative investment fund (AIF) manager under the AIFMD or

a UCITS manager under the UCITS IV Directive. A non-European fund manager must be authorised by the Bank of Italy or another competent EU authority to perform management activities in Italy, while the performance of asset management activity in Italy by an authorised European fund manager requires a notification to the Bank of Italy by the competent authority of the home country of such fund manager. Upon enactment of the Italian regulations on cross-border operations for authorised non-European fund managers, the Bank of Italy will list non-European fund managers authorised to perform services in Italy in a special section of the register held by such authority.

An overview of Italian regulation on overseas managers is set out in questions 9 and 35.

5 Is the acquisition of a controlling or non-controlling stake in a fund manager in your jurisdiction subject to prior authorisation by the regulator?

Any physical or legal person that, for any reason, intends to acquire, directly or indirectly, an interest such as that person could have a significant influence on an Italian fund manager, or an interest that assigns a share of voting rights or capital of at least 10 per cent (by taking into account the shares or units already owned by the acquiring person) is required to notify the Bank of Italy before the acquisition. The same rule applies to proposed dispositions. Advance notice must also be given for any changes in the shareholding of an investment manager when the share of voting rights or capital held directly or indirectly by a person is increased or reduced above or beyond 20, 30 or 50 per cent, and in any event when changes result in the acquisition or loss of control of the Italian fund manager. The Bank of Italy has 60 business days to deny the acquisition (or disposition) of the controlling stake if it considers that the sound and prudent management and financial soundness of the acquisition or disposition target are not fully guaranteed. Furthermore, the acquisitions (or disposition) of the controlling stake must be notified to the Bank of Italy, Consob and the Italian fund manager no later than 30 days of its completion.

6 Are there any regulatory restrictions on the structuring of the fund manager's compensation and profit-sharing arrangements?

Remuneration and incentive mechanisms of professionals performing administrative, management and supervisory functions within the fund managers are subject to specific limits and criteria that are mostly derived from certain general principles set forth in EU regulations. In particular, fund managers' remuneration policies are required to be consistent with and in proportion to the nature and size of the managed fund, as well to (i) comply with the risk strategies of the fund; (ii) be in line with the levels of capital and liquidity of the fund; and (iii) be structured so as to prevent or minimise possible conflicts of interest. Remuneration policies must be approved by the shareholders of the fund manager and take into account the performance and financial results of the managed funds. Generally, a specific corporate body of the fund manager acts as a remuneration committee and is responsible for the structuring of the remuneration policy.

The above-mentioned limits on fund managers' compensation and profit-sharing arrangements do not apply to managers that fall within the AIFMD's definition of below-the-threshold fund managers (see question 2).

Fund marketing

7 Does the marketing of investment funds in your jurisdiction require authorisation?

Fund managers must comply with a specific procedure to be authorised to market investment funds in Italy. The types of authorisation procedures, and the relevant requirements with which a fund manager must comply, mainly differ based on the nature of investment fund proposed to be marketed (such as, for example, if the investment fund is Italian or European, or open or closed-ended) and the kind of investors to which the market activity is addressed (professional investors or retail investors).

As a general rule, the marketing in Italy of an investment fund, irrespective of whether such fund is an Italian or a European-regulated fund, requires the prior filing by the fund manager of a notification with Consob setting forth the business programme of the investment fund, its regulations or articles of association and, for investment funds not reserved to professional investors, the prospectus – and, in certain cases (see question 13), an express marketing authorisation from Consob and the Bank of Italy.

An exception to the aforementioned procedure is expressly provided for Italian-authorized fund managers that fall within the AIFMD's definition of below-the-threshold fund managers, which (as specified under question 14) are only entitled to market units of Italian investment funds reserved to professional investors in Italy: these managers are not required to make any prior notification of their intention to market their funds in Italy.

8 What marketing activities require authorisation?

All activities relating to the marketing of investment funds in Italy are subject to prior notification to, and authorisation by, national competent authorities. In particular, both in-office marketing and door-to-door selling require prior notification by Consob and approval by the Bank of Italy.

9 What is the territorial scope of your regulation? May an overseas entity perform fund marketing activities in your jurisdiction without authorisation?

The general authorisation rules described in question 7 also apply to the marketing in Italy of an investment fund by a European fund manager that is authorised to provide asset management services in its home country, in which case the notification to Consob of the intention to market in Italy is made through the competent authority of the European fund manager's home country.

As of February 2016, Italy has not yet completed the adaptation of its domestic regulations to the rules set forth in the AIFMD for the marketing in Italy of non-European investment funds by authorised Italian, European and non-European fund managers, or for the marketing in Italy of Italian or European investment funds by non-European fund managers. The entry into force of such rules is also still subject to the issuance of an ad hoc delegated act by the European Commission.

10 If a local entity must be involved in the fund marketing process, how is this rule satisfied in practice?

Non-authorized, non-Italian fund managers intending to market units or shares of a foreign investment fund in Italy may contract with an Italian-authorized fund manager that would carry out the authorisation procedure described in questions 7, 13, 14, 24 and 25.

Retail funds

11 What are the main legal vehicles used to set up a retail fund? How are they formed?

The form of Italian legal vehicles does not typically depend on the kind of proposed investors.

Italian collective investment vehicles may be set up in one of the following forms:

- investment fund organised in the form of a separate pool of assets, divided into units, set up and managed by an external authorised Italian asset management company (SGR);
- variable capital investment company (SICAV), an open-ended fund in the form of a joint stock company with variable capital and with a registered office and head office in Italy, whose exclusive purpose is the collective investment of its assets, internally managed by its internal governing body or externally managed by an SGR; or
- fixed capital investment company (SICAF), a closed-ended fund in the form of a joint stock company with fixed capital and with a registered office and head office in Italy, whose exclusive purpose is the collective investment of its assets, which may also be internally managed by its internal governing body or externally managed by an SGR.

Each of the above-mentioned legal vehicles may qualify as an AIF pursuant to the AIFMD (as reflected in the Italian regulations) or as an undertaking for collective investment in transferable securities (UCITS) pursuant to the UCITS IV Directive (as implemented in the Italian regulations). In particular, according to EU regulations:

- a UCITS is an undertaking with the sole purpose of collective investment in transferable securities or in other liquid financial assets of capital raised from the public and that operates on the principle of risk-spreading and has been authorised in accordance with the UCITS IV Directive; and

- an AIF is a collective investment undertaking, including investment compartments thereof, which raises capital from a number of investors, with a view to investing it in accordance with a well-defined investment policy for the benefit of those investors, and that has not been authorised in accordance with article 5 of the UCITS IV Directive.

With respect to the specific authorisation procedure applicable to retail funds, see question 3.

12 What are the key laws and other sets of rules that govern retail funds?

Retail funds, as well as the management and marketing of such funds by fund managers, are governed by the same set of laws and regulations generally applicable to fund managers and the asset investment activity described in question 1. Other than the general provisions governing the establishment and authorisation of retail funds, the applicable Italian regulations provide for certain ad hoc rules with respect to the information that retail fund managers need to make available to the investors before and following their investment into the retail fund and that are meant to increase the transparency of such funds in order to help non-professional investors perform a better due diligence on the funds and their managers, as well as to create specific safeguards ensuring that such investors are always well informed and adequately protected.

13 Must retail funds be authorised or licensed to be established or marketed in your jurisdiction?

General rules regulating the establishment and authorisation of investment funds (which are described in question 3) also apply to retail funds. Further specific provisions apply to the marketing in Italy of retail funds, be they AIFs or UCITS funds.

With respect to AIFs, the AIFMD does not originally allow marketing of AIFs to retail investors, while it gives each EU member state full discretion to determine whether marketing of AIFs to retail investors is allowed in its jurisdiction. Italian regulations expressly provide for the possibility of marketing AIFs to retail investors and include a set of rules to protect such investors from the financial risks to which they may be exposed as a result of their investment in such funds.

Fund managers are required to follow a specific procedure to market units or shares of AIFs to retail investors in Italy. Specifically:

- the marketing in Italy of Italian open and closed-ended retail AIFs by authorised Italian fund managers requires a simple notification to Consob, and, with respect to closed-ended funds, a specific approval;
- the marketing in Italy of Italian open and closed-ended retail AIFs by authorised European fund managers requires a double notification to Consob, respectively, by the authorised European fund manager and the competent authority of the home country of such fund manager;
- with respect to closed-ended AIFs, a specific approval by Consob is also required; and
- the marketing in Italy of European open and closed-ended retail AIFs by authorised Italian or European fund managers requires a prior authorisation by Consob. With respect to European closed-ended AIFs, a notification to Consob by the competent authority of the home country of such AIFs is also required.

With respect to UCITS, in line with the EU legal framework applicable to this category of investment vehicles, the marketing in Italy of units and shares of retail funds is subject to prior communication to Consob by the competent authority of the home country of the manager of the UCITS.

14 Who can market retail funds? To whom can they be marketed?

The marketing of retail funds is reserved to all authorised Italian and European fund managers that do not fall within the AIFMD's definition of below-the-threshold fund managers. With respect to the marketing of retail funds by an authorised non-European fund manager, see questions 9 and 35.

Retail funds may be marketed to retail investors, which are defined by Italian regulations as those investors that do not have the specific professional experience, knowledge and expertise to make their personal investment decisions consciously and to properly assess the risks involved in this kind of investment. See question 25 for the definition of non-professional investor.

15 Are there any special requirements that apply to managers or operators of retail funds?

There are no special requirements that apply to managers or operators of retail funds. In general, fund managers, irrespective of the type of fund they manage and the kind of proposed investors, are subject to several organisational and capital adequacy requirements such as the fulfilment of sound administrative accounting procedures, control and safeguard arrangements for electronic data processing and adequate internal control mechanisms including, without limitations, rules for personal transactions by their employees or for the holding or management of investments in order to invest on their own account.

16 What are the investment and borrowing restrictions on retail funds?

Italian regulations set forth a wide and detailed set of rules with respect to investment and borrowing restrictions applicable to retail funds. In particular, various criteria and bans relate to permitted investment activities, risk mitigation, diversification and leverage restrictions.

These rules are meant both to protect retail investors and to ensure the stability and integrity of the financial markets, independently of whether the managed retail fund is a UCITS or an AIF.

In general, retail funds may not invest their assets in activities (securities, listed or unlisted money-market instruments, derivatives for the transfer of credit risk, etc):

- that do not fulfill the conditions set forth in the Regulation on Collective Investment Asset Management (Title V, Chapter III);
- that are not in line with their investment policy; or
- whose risks are not properly supervised by the manager's risk management system.

In addition, retail UCITS and (open-ended) AIFs need to maintain a certain portion of their assets in cash or cash equivalent, in order not to compromise the redemption right of investors.

The maximum leverage ratio for retail funds is typically two times for retail funds (while non-retail funds have a much wider range of possible leverage limits).

17 What is the tax treatment of retail funds? Are exemptions available?

Income earned by Italian investors in Italian retail (as well as non-retail) investment funds, as well as proceeds from the redemption or transfer price of interests in such funds, to the extent exceeding the average cost of subscription (or purchase) of such interests, are subject to a withholding tax at a rate of 26 per cent. The withholding tax, which is applied by the manager of the fund, counts (i) as a payment on account for individual businesses (if the interests relate to the business), personal undertakings, capital companies, business entities and permanent establishments of non-resident companies or entities; and (ii) as a final tax for all other persons, including those exempt or excluded from corporate income tax.

Foreign investors may or may not be subject to the aforementioned withholding tax, depending on the type of investment fund, the kind of investor (retail or professional) and the country of residence.

18 Must the portfolio of assets of a retail fund be held by a separate local custodian? What regulations are in place to protect the fund's assets?

The assets of any Italian investment fund (UCITS or AIF) must be held with a local custodian expressly authorised by the Bank of Italy to provide depositary services to investment funds. The custodian's mandate may be conferred upon authorised banks in Italy, Italian branches of European banks, investment companies and Italian branches of investment firms.

Italian regulations essentially prescribe that the custodian must act independently and for the benefit of the fund's investors. The custodian, in the performance of its duties, is required to adopt appropriate measures to prevent potential conflicts of interest between the performance of its custodial duties and its other activities. In addition to the custody of cash and financial instruments, custodians perform duties of verification of ownership and maintain a record of other assets held by the fund. Custodians may entrust the holding of part of the fund's assets to other authorised custodians, acting in their capacity as sub-depositaries.

19 What are the main governance requirements for a retail fund formed in your jurisdiction?

Managers of retail (as well as non-retail) investment funds are subject to specific organisational and governance requirements that are meant to ensure sound and prudent management, risk mitigation, proper accounting reporting obligations and the resolution of conflicts of interest.

Among other things, in line with the EU legal framework, Italian regulations expressly require that fund managers establish:

- a permanent internal corporate body with supervisory functions that oversees the investment strategies and remuneration policy of the managed investment funds (with respect to non-retail investment funds, this requirement does not apply to managers falling within the AIFMD's definition of below-the-threshold fund managers);
- a remuneration committee responsible for the structuring of the remuneration policy of the fund manager (with respect to non-retail investment funds, in line with the principles described in question 6, this requirement does not apply to managers falling within the AIFMD's definition of below-the-threshold fund managers);
- a permanent internal corporate body with risk management and compliance functions, which operates independently and is not involved in the performance of services or activities it monitors; and
- a permanent internal corporate body with internal audit functions that maintains and evaluates the adequacy and the effectiveness of the internal control mechanisms and arrangements (with respect to non-retail investment funds, this requirement does not apply to managers falling within the AIFMD's definition of below-the-threshold fund managers).

Each of these functions (which, based on the size of the investment fund managed by the fund manager, may have to be entrusted to separated internal bodies) and related internal policies are also subject to periodic update and review.

20 What are the periodic reporting requirements for retail funds?

With respect to retail AIFs, depending on the type of funds and their fund managers, such managers are required to provide Consob with yearly, semi-yearly or quarterly information on:

- the main instruments in which they are trading;
- the principal exposures and the most important concentrations of the AIFs that they manage;
- the relevant markets where they actively trade;
- the overall level of leverage employed by each AIF;
- the illiquid assets and the relative arrangements for managing them;
- the current risk profile of the AIFs and the relevant risk management systems; and
- the main categories of assets in which the AIFs have invested.

In addition, with respect to each retail AIF, managers are required to disclose to investors, on a yearly, semi-yearly or quarterly basis:

- the percentage of the AIF's assets that are subject to special arrangements arising from their illiquid nature;
- any new arrangements for managing the liquidity of the AIF;
- the current risk profile of the AIF and the risk-management systems employed by the AIFM in order to minimise those risks;
- any changes to the maximum level of leverage that the AIFM may employ on behalf of the AIF as well as any right of use the collateral or any guarantee granted under the leveraging arrangement; and
- the total amount of leverage employed by the AIF.

With respect to both UCITS and AIFs, managers are required to prepare an annual report for each financial year and, with respect to UCITS, a half-yearly report covering the first six months of the financial year. The annual report must include a balance sheet or a statement of assets and liabilities, a detailed income and expenditure account for the financial year, a report on the activities of the financial year as well as any significant information that will enable investors to make an informed judgement on the development of the activities of the UCITS and its results. The half-yearly report must include at least a statement of the assets and liabilities, the number of units in circulation, the net asset value per unit and the securities included in the portfolio.

21 Can the manager or operator place any restrictions on the issue, transfer and redemption of interests in retail funds?

The only restriction that may be placed on the issuance, transfer or redemption of interests in retail funds originates from the frequency of calculation of the fund's net asset value, which coincides with the time frame for such issuance, transfer or redemption and may not be shorter than every 15 days.

Non-retail pooled funds

22 What are the main legal vehicles used to set up a non-retail fund? How are they formed?

The legal vehicles available to set up a non-retail fund in Italy are the same vehicles described in question 11 with respect to retail investment structures.

23 What are the key laws and other sets of rules that govern non-retail funds?

Non-retail AIFs, as well as the management and marketing of such funds by fund managers, are governed by the same set of laws and regulations generally applicable to fund managers and their asset investment activity, as described in question 1.

24 Must non-retail funds be authorised or licensed to be established or marketed in your jurisdiction?

The establishment of non-retail funds is subject to prior authorisation. See question 3 for a description of the authorisation procedure of non-retail AIFs. An exception to this rule applies for certain holding vehicles established by a limited number of investors, to the extent that they do not qualify as AIFs under Italian law.

The managers of non-retail AIFs must follow a specific procedure for national and cross-border marketing.

The marketing in Italy of units or shares of Italian or European non-retail AIFs by authorised Italian fund managers only requires prior notification to Consob, while Italian non-retail AIFs marketed by those Italian managers that fall within the AIFMD's definition of below-the-threshold fund managers are not subject to this prior notification requirement.

The marketing in Italy of Italian or European non-retail AIFs by authorised European fund managers requires a simple notification to Consob, which may be made through the competent authority of the country of authorisation of the European fund managers.

25 Who can market non-retail funds? To whom can they be marketed?

The marketing of non-retail AIFs is reserved to authorised Italian and European fund managers.

With respect to the marketing of non-retail funds by an authorised non-European fund manager, see questions 9 and 35.

In line with the applicable EU legal framework, non-retail AIFs can only be marketed to professional investors, defined as private or public investors who possess the experience, knowledge and expertise to make their own investment decisions and properly assess the risks that they incur, such as:

- entities that are required to be authorised or regulated to operate in the financial markets, in particular:
 - credit institutions;
 - investment firms;
 - other authorised or regulated financial institutions;
 - insurance companies;
 - collective investment schemes and management companies of such schemes;
 - pension funds and management companies of such funds;
 - commodity and commodity derivatives dealers;
 - members of a stock-exchange market engaging in proprietary trading;
 - stockbrokers; and
 - other institutional investors;
- large undertakings meeting certain size requirements;
- other institutional investors whose main activity is to invest in financial instruments, including entities dedicated to the securitisation of assets or other financing transactions;
- the government and the Bank of Italy; and

- other national and regional governments, public bodies that manage public debt, central banks, international and supranational institutions such as the World Bank, the IMF, the ECB, the EIB and other similar international organisations.

Investors other than those mentioned above, including public sector bodies and private individual investors, may also qualify as professional investors, upon request. In such case, the Italian manager should perform an adequate assessment of the expertise, experience and knowledge of the client, based on certain standard tests and criteria.

26 Do investor-protection rules restrict ownership in non-retail funds to certain classes of investor?

Only the investors set out in question 25 may hold interests in non-retail AIFs. In addition, certain regulated entities (such as Italian pension funds, banks, financial intermediaries or insurance companies) must comply with specific limitations to their ability to hold interests in non-retail AIFs.

27 Are there any special requirements that apply to managers or operators of non-retail funds?

There are no special requirements that apply to managers or operators of non-retail AIFs.

A description of the organisational and capital adequacy requirements to which managers of non-retail AIFs are subject, as well as the special provisions on professional liability of such managers, is set out in questions 3 and 15.

As a general rule, the professional liability of managers of AIFs (risks of loss or damage caused by a relevant officer through the negligent performance of activities for which they have legal responsibility) must be covered through additional own funds or professional indemnity insurance.

28 What is the tax treatment of non-retail funds? Are any exemptions available?

The tax treatment of non-retail funds is the same as that applicable to retail funds, described in question 17.

29 Must the portfolio of assets of a non-retail fund be held by a separate local custodian? What regulations are in place to protect the fund's assets?

The assets of a non-retail AIF must be held by a separate local custodian. The rules applicable to custodians of non-retail AIFs are the same general ones applicable to investment funds, as described in question 18.

In addition, under the AIFMD, EU member states may allow a 'simplified custodian regime' under which the custodian of certain AIFs may be an entity that carries out custodial functions as part of its other professional or business activities, however, Italy has not yet adopted this simplified arrangement.

30 What are the main governance requirements for a non-retail fund formed in your jurisdiction?

An overview of the main governance requirements for non-retail AIFs formed in the Italian jurisdiction is set out in question 19 with respect to retail investment structures.

31 What are the periodic reporting requirements for non-retail funds?

An overview of the periodic reporting requirements for non-retail AIFs is set out in question 20.

Separately managed accounts

32 How are separately managed accounts typically structured in your jurisdiction?

Separately managed accounts are typically structured as accounts held with a broker-dealer or another investment firm, and managed discretionally by an asset management company or a broker-dealer.

33 What are the key legal issues to be determined when structuring a separately managed account?

In the case of separately managed accounts, bespoke agreements typically govern the relationship between investor and manager. Special attention is typically devoted to the precise contours of the investment objective

Update and trends

As described in question 35, the forthcoming enactment of the EU rules on the management and marketing in Italy of non-European AIFs, as well as the management and marketing in Italy of investment funds by non-European fund managers, is certainly the most significant and likely future development in this sector.

Furthermore, on 17 December 2015 the EU Commission adopted the final version of the delegated regulation implementing Directive 2014/91/EU (the so called UCITS V Directive). This regulation is in line with the principles of the AIFMD, and it is meant to increase the level of protection already offered to retail investors in UCITS funds, by ensuring some stricter rules and requirements with respect to the responsibilities of depositaries and by introducing remuneration policy requirements for UCITS managers and administrative sanctions. EU member states will have to implement the UCITS V Directive into national law by 18 March 2016.

On 9 December 2015, Regulation 2015/760/EU on European Long-Term Investment Funds (ELTIFs Regulation) became applicable in each EU member state. The ELTIFs Regulation establishes a new kind of investment fund for professional and retail investors enabling them to invest in long-term infrastructure projects. According to the ELTIFs Regulation, only EU AIFs that are managed by AIFMs will be eligible to market themselves as ELTIFs. The aim of the ELTIFs Regulation is boosting the funding available to companies looking for long-term capital for projects mostly in the energy, transportation, social housing, schooling and hospital sectors.

(type of assets, geographies, level of liquidity, etc), the investor's ability to redeem or otherwise receive cash, and the conflicts of interest with the manager's other clients or other lines of business.

34 Is the management or marketing of separately managed accounts regulated in your jurisdiction?

The management of separately managed accounts (and the offer of such services to potential investors) is a regulated activity, reserved to asset management firms and broker-dealers. As a result, rules similar to the ones applicable to the offer of retail funds apply to the marketing of separately managed accounts.

General

35 Are there proposals for further regulation of funds, fund managers or marketers of funds in your jurisdiction?

As of February 2016, Italy has not yet implemented in its national regulations the EU rules governing:

- cross-border operations by authorised Italian fund managers in non-EU countries;
- the management and marketing of non-European AIFs by authorised Italian, European and non-European fund managers; and
- the authorisation for non-European fund managers to manage and market Italian or European AIFs.

The European Commission is expected to issue a delegated act that will address these matters throughout the EU. Subsequent to the publication of this delegated act, Italian domestic regulations will likely be brought into line with EU rules.

36 Outline any specific requirements for stock-exchange listing of retail and non-retail funds.

The main requirements for the listing of open-ended funds on the Italian stock exchange or another regulated market include:

- the prior filing of a notification with Consob, no later than one day before the listing, including information on the fund, (such as the prospectus and the key investor information document (for non-Italian open-ended funds, the filing may be made by the competent authorities of the home country of the manager of such funds); and
- the public disclosure of the information documents by means of publication in the main national newspapers and on the internet.

The main requirements for the listing of closed-ended funds include:

- the prior filing of a prospectus with Consob including information on the fund (for non-Italian closed-ended funds, the filing may be made

by the competent authorities of the home country of the manager of such funds);

- approval by Consob of the prospectus; and
- the public disclosure of the information documents by means of publication on the internet.

37 Is it possible to redomicile an overseas vehicle in your jurisdiction?

Italian regulations do not allow an overseas investment fund to redomicile in Italy.

However, specific rules are provided with respect to the cross-border merger of a European UCITS and an Italian UCITS, which may create a new Italian investment fund.

According to such rules, the merger must be authorised by the Bank of Italy. Required documentation includes the plan of merger, the certificate of conformity issued by the custodians of the funds involved in the merger and a summary of the information communicated to the investors, which must enable them to prepare a justified opinion on the impact of the merger on the investment.

38 Are there any special rules relating to the ability of foreign investors to invest in funds established or managed in your jurisdiction or domestic investors to invest in funds established or managed abroad?

No, other than the marketing and placement restrictions described in questions 7, 13 and 24, and the rules on the qualification of professional investors in non-retail funds described in question 25, there are no additional specific rules limiting the ability of foreign investors to hold interests in Italian funds or of Italian investors to hold interests in foreign funds. With respect to certain foreign funds, however, a practical limitation to the investment by Italian-resident individuals may be constituted by the unfavourable tax treatment of proceeds from those foreign funds in the hands of such individual investors.

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Getting the Deal Through

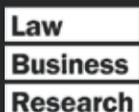
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