LS/04/139

Annex 2 – Legal issues related to public and private offering

1. Introduction

This note analyses some specific legal issues relating to the offering of bonds raised by some recent Italian cases.

In order to better understand the issues at stake, it is necessary to outline the main rules on bonds and securities issues and investments in Italy and in Europe. A comparison with the US system will also be useful and give some suggestions in order to improve the current legal framework. The US financial markets are in fact highly regulated and notably developed; however, also the US financial markets are not immune from financial and corporate frauds and scandals, as the Enron and Worldcom scandals can tell.

Therefore, this note makes a preliminary assessment of the applicable rules according to Italian law, Community law and US law.

First of all, it is worth mentioning some background information concerning the issues at stake. In the recent corporate insolvencies (as described in Annex 1), corporate bonds were issued and placed according to a similar framework, whose main features are the following.

1. The bonds were usually issued by Luxembourg or The Netherlands based subsidiaries and were regulated by the English law. The bonds were issued in the Euro corporate bonds market, which has recently increased in importance, number and amounts of issues.
2. The bonds were usually issued by private placement, therefore underwritten by professional investors, such as investment banks.
3. In case of public offering, the issuer published a prospectus on the main characters of the issue, otherwise, in case of private placement, a more synthetic offering memorandum was drafted.
4. The bonds were usually listed in the Luxembourg stock exchange.
5. The bonds were usually resold by banks or other investment firms to individual investors in other countries, including Italy.
6. The bonds did not have to be provided with rating, evaluating the credit risk.
7. The bonds were usually guaranteed by the parent company.

2. Legal rules for bond offerings in Italy

It is first important to distinguish two different phases: the issue and the distribution of securities among investors concerning respectively the primary and secondary market.
The first phase is the issue of the new securities, when the proceeds go directly to the issuer and the placement of them usually made by a syndicate of investment banks, usually called *underwriters*.
Newly issued securities or a stock of already issued securities can be placed by a syndicate of underwriters under the same conditions to the public of the investors in a so called *public offering*, usually accompanied by the listing of the securities in a stock exchange. Newly issued securities or a stock of already issued securities can also be placed with a limited number of professional investors, in a so-called *private placement*. In both the cases of public and private placement the shares are offered at standard conditions to the potential investors.

After the securities have been placed, they can be re-sold in the secondary market, where each sale is individually negotiated at specific conditions, usually by specialised and regulated intermediaries.

The two different aspects of the circulation of securities (standard placement – individual trading) are subject to different sets of rules in Italy, as well as in Europe and in the US.

2.1. The rules of public offerings and of private placements in Italy

Public offerings and private placements of securities in Italy are subject to the rules of the Legislative Decree No 58 of 1998, also known as "*Testo Unico della Finanza*" or "*TUF*" and of the relevant implementing regulations.

Article 1 of TUF contains a broad definition of "*financial instruments*" or securities, which includes of course shares and bonds, but also shares of mutual funds and money market instruments. The same Article also contains a broad definition of "*investment services*", which includes the placement of securities and the trading of securities as intermediary (broker) or as principal (dealer). All investment services are reserved to authorised and regulated subjects.

Article 94 of TUF clearly states that any investment solicitation (as also defined by Article 1 of the TUF) of securities to the public must be made by means of the previous publication of a prospectus, as authorised and controlled by Consob. The publication of the prospectus and the control and supervision by Consob are essential in order to protect the investors and the transparency of the financial and corporate markets, which are the main purposes of the TUF itself and of Consob's activity (as stated in Articles 5 and 91 of the TUF).

The above-mentioned requirements are however time consuming and costly; securities issues and offerings are therefore subject to specific exemptions from said requirements in such cases as when they are not deemed necessary for the protection of investors and market transparency.

Article 100 of TUF therefore points out that the provisions mandating the publication of a prospectus do not apply in cases of *private placements*, which occur in the case of investment solicitations addressed only to professional investors, or to a limited number of subjects, or for a limited amount.

As regards the liability of the subjects who place securities to the public, and in particular as regards the liability for the information contained in the prospectus, Article 95, second paragraph, of TUF, states that Consob establishes the rules of conduct of the issuer, of the offeror and of the underwriters of the securities. More specifically the lead underwriter which organises the placement of the shares has to sign a statement on the formal compliance of the prospectus and on the completeness of the information contained on the basis of the verifications that the lead underwriter should carry out (Article 5 of Consob regulation on issuers).

2.2. The rules of securities trading in Italy

Once securities have been issued and offered to the public, or to professional underwriters in a private placement, they can be freely re-sold to individuals, providing the rules of conduct on intermediaries have been complied with.

In Italy it is therefore possible that securities sold to professional investors in a private placement can subsequently be re-sold to investors in individual tradings. In this case the rules on transparency and on the obligation to previously publish a prospectus do not apply and the investor who buys the securities does not receive the degree of information he would receive in a public offering.

The authorised intermediaries who can re-sell the securities to investors however have to comply with the rules of investment services as established by TUF and by the implementing Consob regulation. They have therefore to uphold a diligent, transparent and correct conduct, to acquire the necessary information, ensuring that clients are always adequately informed and to have an organisation which reduces the conflicts of interests, and in the case of such conflicts, they have to ensure transparency and equal treatment (Article 21 of TUF).

The Consob regulation on intermediaries further specifies the rules of conduct of intermediaries, which have to take specific measures in case of conflicts of interests, and always have to verify the adequacy of the operation for the investor, taking into consideration his experience in investments, his financial situation, his investment objectives and his propensity to risk.

2.3. The general rules concerning bonds issues

Rules concerning bonds issues, placements and tradings in Italy are subject to the same rules applicable to other securities in general. As they represent a debt from the issuer, they are also subject to specific limits by the Italian Civil Code on corporations and by banking statutes and regulations.

2.3.1 Corporate law limits on bonds issues

In order to prevent companies from having an excessive level of indebtedness, with the ensuing risk of bankruptcy, specific limits are provided by the Italian Civil Code to the issue of bonds. Said limits have been however deeply amended by the recent reformation of Italian company law.

Until 31 December 2003, pursuant to Article 2410 of the Italian Civil Code, now amended, companies could issue bonds up to the limit of the paid in and existing share capital, as resulting from the most recently approved financial statements. However, for listed companies the limit was raised to the amount of the company’s paid in share capital and reserves, as resulting from the last balance sheet.[1]

Starting from 1 January 2004, Article 2412 of the Italian Civil Code, as recently amended by the reformation of company law, states that a company can issue bonds for an aggregate amount not exceeding two times the sum of the share capital, of the legal reserve and of the free reserves, as indicated by the most recently approved financial statements.

[1] See Art. 11 of the Italian Banking Law (Legislative Decree No 385 of 1993) and an implementing decree of CICR of 3 March 1994.

Said limit can be exceeded in the case of private placement to professional investors; however, if the bonds are re-sold, the seller is jointly liable for the solvency of the issuer towards purchasers who are not professional investors.

The above limits are not applied in the case of companies whose shares are listed in regulated exchanges and only with regard to bonds listed in the same or in other regulated exchanges.

It should in any case be pointed out that the recent reformation of corporate law in Italy has made it easier for corporations to issue bonds, as the limits have been notably reduced (and do not apply to listed companies) and the decision to issue bonds, which previously was to be resolved by the shareholders, can now be taken by the board of directors (with the exception of convertible bonds). Moreover, after the reformation of Italian corporate law, the "*Societa' a responsabilita' limitata*" (limited liability companies) can also issue bonds, but they can be placed only with professional investors who, in the case of re-sale, are jointly liable for the solvency of the issuer towards purchasers who are not professional investors or shareholders.

2.3.2 Control on bonds issues or placements

In Italy bonds issues are also regulated by banking law, notably by Article 129 of Legislative Decree No 385 of 1993 (also known as "*Testo Unico Bancario*" or "*TUB*"). The mentioned article provides for the obligation to previously communicate to Banca d'Italia any issue or sale of bonds exceeding a certain amount. Banca d'Italia can forbid or delay the issue or the sale of the bonds in such cases when they could jeopardise the stability and the efficiency of the securities market.

The above-mentioned communication is required in case of new bonds issues in Italy, which can be offered to the public or privately placed, but it is required also in case of placement or offering in Italy of bonds issued abroad also by foreign companies.

The control that Banca d'Italia exercises is therefore limited to the systemic market stability and it does not take into consideration the situation of the single issuer, but the overall financial situation in the Italian securities market.

The controls and limits on the single issuer, unless a systemic stability concern arises, are therefore those established by the Italian Civil Code and by TUF, which provides for the above-mentioned limitations. Other forms of control, which are particularly important, but which are not within the scope of this memorandum are the following. (i) A control on the management and on the financial statements of the company are also exercised by the shareholders, by the statutory auditors and, when required, by the external auditors. (ii) A control of the indebtedness of single companies towards each bank and towards the banking system is also exercised by each bank and financial institution, and indirectly by Banca d'Italia, also by means of a centralised reporting system called "*Centrale dei rischi*". (iii) It can also be remarked that no credit rating is required in Italy in order to offer bonds to the public or to negotiate them with individual investors.

2.3.3 The bonds issues and their placement and trading in the recent cases

The recent corporate insolvencies cases highlighted possible weakness in the legal framework to be further analysed.

1. The bonds were issued by foreign subsidiaries of the Italian parent company by means of private placement to professional investors. This procedure is common in the issue of corporate Eurobonds. These issues are subject, as concerns the issuer, to the statutes and regulations of the state where the issuer is based, and in many cases also by English law with regard to the regulation of the securities. They usually comply also with common practices and criteria as the ones established by the International Primary Market Association.

   In any case, these bond issues are not subject to corporate Italian law, nor to the Italian supervisors. As they are launched through foreign subsidiaries, they are usually not subject to the above-mentioned limits of the Italian Civil Code on the amount of bond indebtedness and, as they are privately placed, they are usually not subject to the obligation to publish a prospectus (although an offering circular is usually prepared for the professional investors).

2. The bonds were usually guaranteed by the Italian parent company. These guarantees made it possible for the bondholders to have recourse on the assets of the Italian companies.

3. The bonds were re-sold to individual investors in Italy. The re-sale to individuals is possible without the need of a prospectus when the sales are individually traded and an offer to the public of standard terms and conditions does not occur. However, the intermediaries negotiating and selling the securities are still subject to the above-

mentioned investment provisions of TUF and of the related regulations, which require the compliance with specific duties of fairness, transparency and protection of the investor.

4. The bonds issues were subject to the communication to Banca d'Italia according to Article 129 of TUB.

3. The European Union rules: the Prospectus directive

3.1 General rules

The new Prospectus Directive, which will have to be implemented by the Member States no later than 1 July 2005, has been hailed as a major step towards the integration of the European financial markets by means of a new "single-passport" procedure, which replaces the current mutual recognition procedure; by a new EU-wide definition of "offer to the public", with specific exemptions for non-public offers; and by common disclosure standards.

The Prospectus Directive makes clear definitions and gives a clear discipline of the following aspects.

1. The definition of "security" generally includes bonds and debt securities, with the exception of money market instruments (Article 2, Paragraph 1, letter (a)).

2. An "Offer of securities to the public" is defined as "a communication to persons in any form and by any means, presenting sufficient information on the terms of the offer and the securities to be offered, so as to enable an investor to decide to purchase or subscribe to these securities. *This definition shall also be applicable to the placing of securities through financial intermediaries.*" (Article 2, Paragraph 1, letter (d)).

3. Article 3 establishes the obligation to publish a prospectus in any case of offer of securities to the public. There are however some important exemptions in cases of private placement (Article 3, Paragraph 2, which includes, among others, the offer of securities to qualified investors, the offer of securities to fewer than 100 natural or legal persons per Member State other than qualified investors and specific cases of whole sale offers of securities).
   The same Paragraph states that "any subsequent resale of securities which were previously the subject of one or more of the types of offer mentioned in this paragraph

shall be regarded as a separate offer" for the evaluation of the occurrence of a public offer. The same Paragraph further confirms that: "*The placement of securities through financial intermediaries shall be subject to publication of a prospectus if none of the conditions (a) to (e)*[2] *are met for the final placement*".

Further exemptions from the obligation to publish a prospectus are indicated in Article 4.

As already pointed out, the above-mentioned rules more clearly address issues which were not subject to specific regulation by the previous Directives.

However, as regards the sequence of private placement – resale to retail investors, by means of which the Cirio and Parmalat bonds were sold, it is not entirely clear whether or not the Prospectus Directive makes a substantial improvement. It seems in fact that it is still possible to privately place securities solely to qualified investors, being therefore exempted from the obligation to publish a prospectus, and thereafter to resell individually the securities through investment intermediaries to retail investors. The subsequent individual re-sales would however still be subject to the rules of the Investment Services Directive.

3.2 The specific provisions of the Prospectus Directive on Eurobonds

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The previous legal framework provided for specific exemptions concerning Euro-bonds issues and offerings.

The previous Council Directive 89/298/EEC of 17 April 1989 co-ordinating the requirements for the drawing-up, scrutiny and distribution of the prospectus to be published when transferable securities are offered to the public, on Article 3, letter (l), gave a precise definition of "Euro-securities", as "transferable securities which: are to be underwritten and distributed by a syndicate at least two of the members of which have their registered offices in different States, and; are offered on a significant scale in one or more States other than that of the issuer's registered office, and; may be subscribed for or initially acquired only through a credit institution or other financial institution."

Article 2, letter (l), of the same directive expressly exempted from its application, and therefore of the obligation to publish a prospectus, the "*Euro-securities which are not to be subject of a generalized campaign of advertising or canvassing*". The same Article 2 contained other

[2] Conditions (a) to (e) of Article 3 Paragraph 2 of the Prospectus Directive list the exemptions to the obligation to publish a prospectus.

exemptions, for example with regard to issues or offerings exceeding a determined consideration per investor or a certain denomination amount for each security.

The same directive (Article 20) and the more recent Directive 2001/34/EC of the European Parliament and of the Council of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities (Article 37) also gave the issuer, in certain instances, the possibility to choose the supervisory authority which would have carried out the prior scrutiny of the prospectuses.

The same Directive 2001/34/EC (Article 27) also provided for the possibility to limit the information to be published on listing particulars, when concerning the application for admission to official listing of debt securities normally bought and traded by a limited number of investors particularly knowledgeable in investment matters.

The Prospectus Directive has repealed the Council Directive 89/298/EEC, which contained the definition of Euro-security, and the above-mentioned provisions of Directive 2001/34/EC. Howeversimilar exemptions and exceptions for certain debt securities are still largely applicable, though under a different legal framework.

The above-mentioned Article 3, Paragraph 2, of the Prospectus Directive generally exempts from the obligation to publish a prospectus the issues and the offerings which are not made to the public and those made solely to qualified investors, or the issues or offers of securities whose total or denomination per unit exceeds a certain amount, therefore including private placements and certain wholesale securities usually purchased by professional investors; said exemptions, however, are not applicable in the case of admission to trading of the securities on a EU regulated market. According to Article 3, Paragraph 3, however, “Member States shall ensure that *any* admission of securities to trading on a regulated market situated or operating within their territories is subject to the publication of a prospectus.”

The Prospectus Directive provides for the “Home State Principle” according to which the home member state will have the authority to approve the prospectus and the admissions to trading. The Home Member State is in general determined as the Member State where the issuer has its registered office. However, as regards “non-equity securities whose denomination per unit amounts to at least EUR 1,000” and for other categories of non-equity securities, the Home Member State is defined as the “Member State where the issuer has its registered office, or where the securities were or are to be admitted to trading on a regulated market or where the securities are offered to the public, at the choice of the issuer, the offeror or the person asking for admission, as the case may be" (Article 2, letter (m)). The rule, which gives the offeror or issuer the choice of the approving authority, is therefore also preserved under the new set of rules.

Also with regard to other obligations provided in the Prospectus Directive, this contains several exceptions and exemptions in case of non-equity securities whose denomination per unit amounts to at least EUR 50,000 (see for example, Articles 3, 7, 10), with provisions similar to the repealed ones.

The new Prospectus Directive is also important as it supplies a rule on the "Responsibility attaching to the prospectus" (Article 6). The said Article provides that the "responsibility for the information given in a prospectus attaches at least to the issuer or its administrative, management or supervisory bodies, the offeror, the person asking for admission to trading on a regulated market or the guarantor, as the case may be."

While the Member States can implement the Article with more restrictive provisions, it does not supply a mandatory provision as regards the potential liability of the underwriters or of the lead underwriter of the securities.

3.3 A preliminary assessment of the Prospectus Directive

The new Prospectus Directive constitutes a step forward towards the integration of financial markets and in the view of a greater investor protection, also with regard to corporate bonds. It does not seem, however, to address some of the critical issues which were brought out by the Cirio and Parmalat cases. For example, it does not set out any limits or control on the sequence of private placement – resale to retail investors, which made it possible to sell the Cirio and the Parmalat bonds to thousand of investors (the admission to trading on EU regulated markets however requires the publication of a prospectus).

Also as regards the liability for the prospectus the new Directive does not seem to address the issue of the possible liability of other major participants in securities offerings, as the lead underwriter.

4. A comparative analysis: the US securities statutes and regulations

A comparative analysis with the US securities statutes and regulations will be useful in order to better understand how similar issues have been dealt with and to draw some suggestions for the legal framework in the EU and in the Member States. The exam will be conducted at the Federal level, without considering the State level and the so-called "Blue Sky laws" regulating securities offerings in the singles States.[3]

4.1 The provisions of the 1933 Securities Act

The 1933 Securities Act mainly regulates disclosure in any offer or sale of securities. The 1934 Securities Exchange Act regulates the trading of securities, or the secondary market, as well as persons and institutions involved in the securities industry, and establishes the Securities and Exchange Commission ("SEC").

Section 2(1) of the Securities Act supplies a very broad definition of "security", including of course bonds and debentures.

Section 5 provides that, until a registration statement (which includes a prospectus) is in effect, no securities can be sold through the use of the prospectus or otherwise. The content of the registration statement and of the prospectus is specified in detail in the same Securities Act and in the implementing regulations.

4.2 Exemptions from the obligation to file a registration statement (including a prospectus)

Under Section 4(1) any transaction by an "issuer, underwriter or dealer" requires the filing of a registration statement, unless a specific exemption occurs.

Pursuant to Section 2(11), an "underwriter" is "any person who has purchased from an issuer with a view to, or offers or sells for an issuer in connection with, the distribution of any securities, or participates or has a direct or indirect participation in any such undertaking *[…]*". Any transaction by a person with a view of distributing the securities therefore qualifies said person as underwriter and subjects him to the registration statement obligation.

[3] Source: Robert C.Rosen, International Securities Regulation, 2002, United States booklets.

This definition of “underwriter” and the application to the registration requirement to any transaction by an underwriter, constitute a serious limitation to issues of securities first bought or subscribed by professional investors and then re-sold to retail investors without a prospectus, as is still the case in the Italian and European markets, and as happened in the Cirio and Parmalat cases.

Section 4(2), however, contains an exemption from the obligation to file a registration statement in the case of “transactions by an issuer not involving any public offering”. This rule refers specifically to private placements, which are therefore exempted from the obligation to file a registration statement.

The rule is however quite general and subsequent regulations, such as Regulation D, Rule 144 and Rule 144A, have been enacted in order to better specify its meaning.

4.2.1 Regulation D

Regulation D (Rules 501 to 509) governs the limited offer and sale of securities without registration, and provides several specific exemptions from registration requirements for limited offerings. For example, Rule 504 contains an exemption for limited offerings not exceeding $ 1,000,000 in any 12-months period; Rule 505 contains an exemption for limited offerings not exceeding $ 5,000,000 in a 12-months period to so-called “accredited investors” or to less than 35 purchasers (excluding from the computation the accredited investors). What’s more, in the case of a sale to purchasers who are not accredited investors, the offeror has to comply with minimum disclosure requirements.

In any case, securities sold under Regulation D are restricted securities and may be resold only if subsequently registered under the Securities Act or further exempted. To this purpose, Rule 502 (d) states that the issuer “shall exercise reasonable care to assure that the purchasers of the securities are not underwriters”, which reasonable care may be demonstrated by specific devices, as: (i) reasonable inquiry to determine if the purchaser is acquiring the securities for himself or for other persons, (ii) written disclosure to each purchaser that the securities are not registered and therefore cannot be resold, and (iii) the placement of a legend on the securities certificate or on another document that evidences the securities, stating that the securities have not been registered and setting forth or referring to the restrictions on transferability and sale of the securities.

4.2.2 Rule 144

Rule 144 also provides some specific exemptions of Section 4(2) and of the registration requirement, in order to permit the public sale in ordinary trading transactions of limited amounts of securities owned by “affiliates” and by persons who have acquired “restricted securities” of the issuer, without qualifying the seller as “underwriter” under the Securities Act.

More specifically, Rule 144 establishes a holding period of two years before restricted securities can be resold. Restricted securities, which usually bear a specific “restricted” label, can also be sold before, after a shorter one year holding period, when further requirements are met (existing adequate current information about the issuer, filing of specific notice with the SEC, limit in the number of negotiated shares, trading as ordinary trading transactions).

4.2.3 Rule 144A

Rule 144A was enacted by the SEC to create a safe harbour from registration requirements, to allow for private, unregistered re-sales of securities to “qualified investment buyers”, which include sophisticated or professional investors as insurance companies, investment companies, certain employee benefit plans and other entities, provided that in the aggregate they own and invest on a discretionary basis at least $ 100,000,000 in securities of issuers that are not affiliated with the qualified investment buyer.

Securities purchased under Rule 144A are restricted securities within the meaning of Rule 144 and of other exempting regulations as Regulation D, and can be resold only pursuant to Rule 144A or to other exemptions.

Rule 144A exemptions are currently used by foreign issuers who intend to place a “tranche” of their securities in the US without having to file a registration statement with the SEC and the related requirement of reconciling the issuer’s financial statements to US GAAP.

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4.3 Liability arising from securities offerings

As regards the liability arising from securities offerings, Section 11 of the Securities Act establishes that in case any part of the registration statement contains any untrue statements of a material fact or omits a material fact which is required in order not to make the statement misleading, civil liability attaches, among others, to: (i) every person who signed the registration statement; (ii) every person who was the director or partner of the issuer at the time of the filing; (iii) every accountant, engineer, or appraiser who was, with his consent, named as having prepared or certified any part of the registration statement; (iv) every underwriter with respect to the security. Section 11 also offers ways to avoid or to limit said liability; of particular interest is

Section 11(b)(3), which provides the so-called “due diligence defense”, pursuant to which any potentially liable person, except the issuer himself, may avoid liability by proving that he made a reasonable investigation of the registration statement and believed that it contained no material misstatement or omission.

Section 12(1) also provides for the liability of any person who offers a security in violation of Section 5, therefore in violation of the obligation to file a registration statement.
Section 12(2) further provides for the liability of any person who offers or sells a security on the basis of a false or misleading prospectus or oral communication and who shall not sustain the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of such untruth or omission. This last provision is quite broad as it extends prospectus liability, already addressed in Section 11, to any subject who sold the securities on the basis of the same prospectus.

The Securities Act and the Securities and Exchange Act contain other important provisions concerning the liability and the sanctions arising from the breach of the rules on securities offerings and trading, including criminal sanctions. In any case, the above-mentioned Sections 11 and 12 of the Securities Act and the other sanctioning provisions of the US securities statutes seem to be more extensive and strict than the Italian and the European statutes and regulations.

It is also important to point out that, in the wake of the Enron and Worldcom scandals, the US Congress in 2002 enacted the so-called Sarbanes Oxley Act, which has widely reformed US security and corporate law, in order to improve the quality of financial reporting, independent audits and accounting services and to increase the responsibility of management for corporate disclosures and financial statements.[4] Among other things, the Sarbanes Oxley Act: establishes a new regulatory body to oversee public company auditors; redefines the relationship between auditors and clients; places direct responsibility for the audit relation on board audit committees; establishes new disclosure requirements for issuers; requires certification of periodical reports by chief executive officers and chief financial officers; bans most loans to officers and directors of public companies; mandates new rules of professional responsibility for lawyers and analysts; and strengthens a variety of criminal penalties and enforcement measures.

[4] See Robert C. Rosen, *above*, at 11-12.

4.4 Suggestions from the US securities statutes and regulations

The US securities statutes and regulations, as above outlined, present a detailed and proven system of regulation of securities (and therefore also bonds) offerings and trading, for the purpose of the investors' protection, notwithstanding the recent scandals have highlighted that no system is infallible in detecting and avoiding frauds to the investors.

The US system clearly distinguishes public offerings and private placements (which are specifically regulated); in the case of private placement, the securities are restricted (also by labelling the securities certificates and imposing holding periods) and any further non-exempted sale of restricted securities requires the filing of a registration statement including a prospectus. The sequence private placement – resale to retail investors, which is lawful in the EU and Italian legal frameworks, and which permitted the sale of Cirio and Parmalat bonds to thousands of investors, is not allowed in the US system. However, a private placement still has some extent of flexibility, as Rule 144A permits further re-sales among qualified investment buyers and the other mentioned exemptions also allow for limited and regulated re-sales.

Also as regards the liability attachment to the offering and sale of the securities and to the publication of the prospectus, the US legislation is more extensive than the European and the Italian legislation, as it specifically individuates a wide range of responsible subjects, including the underwriter, as well as every person who offers securities in violation of the obligation to file a registration statement or on the basis of a false or misleading prospectus.