CONSOB
COMMISSIONE NAZIONALE PER LE SOCIETA' E LA BORSA

ISSUER REGULATION

TRANSPOSITION OF DIRECTIVE 2004/25/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AND REVIEW OF REGULATIONS ON TAKEOVER BIDS AND EXCHANGE TENDER OFFERS

18 February 2011

Comments to this Consultation Paper must be received by 4 March 2011 at the following address:

C O N S O B
Legal Studies Division
Via G. B. Martini, 3
00198 ROME, ITALY

or online using SIPE – the Integrated System for External Users

The comments received will be disclosed to the public on conclusion of the consultation, unless specific non-disclosure requirements apply. Generic notices of confidentiality of the contents of e-mail, located at the bottom of the messages, shall not be considered as a requirement not to disclose comments transmitted.

CONSOB

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Second Consultation Paper

ANNEXES

I. INTRODUCTION

On 6 October 2010, Consob published a Consultation Paper containing proposed amendments to the Issuer Regulation[1] to incorporate Directive 2004/25/EC of the European Parliament and Council (hereinafter the "Directive") and for a more general review of the regulation of takeover bids and exchange offers.

The term in which observations could be presented was established as 15 November 2010. On 27 October 2010, a public hearing was held at the CONSOB Romeheadquarters. It provided a first opportunity for a debate with the market on the main proposed regulations. Written observations on the consultation paper were received up to December.

Great participation was seen in the consultation, with the various Italian and foreign stakeholders well represented. 28 written replies were received, published on the Institute website, from:

- Borsa Italiana;
- all the major issuer, intermediary and Italian institutional investor associations (ABI, Assogestioni, Assonime, Assosim, Confindustria);
- some of the main international institutional investors who sent a joint reply (Hermes Equity Ownership Service, CalPERS, F&C, Local Authority Pension Fund Forum, Mn Services, Railpen);
- the International Corporate Governance Network which brings together institutional investors from the main countries, overall managing funds amounting to approximately 10 thousand billion dollars;
- twelve of the major law firms operating in Italy (Studio legale associato Allen & Overy, Studio legale Carbonetti e associati, Studio legale associato Carnelutti, Studio legale associato Cleary Gottlieb Steen & Hamilton LLP, Studio legale associato Clifford Chance, Studio legale associato Galbiati e Sacchi, Studio legale associato Ghidini e Girino, Studio legale associato Gianni, Origoni, Grippo & Partners, Studio legale Jones Day, Studio legale associato Legance, Studio legale Labruna Mazziotti Segni and Studio legale associato NCTM);
- six natural persons (Dott. Salvatore Bragantini, Prof. Gianfranco D'Atri, Dott.ssa Stella D'Atri, Prof. Avv. Giuseppe Guizzi, Prof. Corrado Malberti and Mr. Marco Bava).

The responses showed a general appreciation for the purpose and general layout of the proposals, which were considered to be appropriately supported by in-depth comparisons with regulations of other countries and cost-benefits analysis.

The main criticism made by issuer representatives concerned a possible imbalance in the definition of the main innovations in favour of the protection of minority shareholders with respect to the efficiency of the market for corporate control. In actual fact, the proposals involved by this type of

[1] Regulation approved by Consob with resolution no. 11971 and subsequent amendments.

criticism (in particular the forecast whitewash mechanisms for the exemption in case of merger and crisis situation and the measures to reduce pressure to tender) mainly concern relations between majority and minority shareholders, to the latter's advantage, without reducing the efficiency of the market for corporate control, as confirmed by the limit to the measures to reduce pressure to tender to only those bids brought by corporate insiders (majority shareholders or directors).

The baseline taken in defining the new regulations was, in fact, that of avoiding elusion and optimising corporate dialectic, reducing the discretional powers of Consob. This constraint, which is confirmed, derives from the specific nature of the ownership and control structures of Italian companies and the experience in application. In view of the very few bids made in recent years (moreover mainly of an amicable nature or for the purpose of delisting), this set-up looks to strengthen the position of minority shareholders with regards to that of majority shareholders, in order to increase trust in the capital market and, therefore, its appeal both to investors, thanks to the reduced risk of expropriation, and to issuers, thanks to the reduction of capital cost.

In view of the observations received, some amendments have been made to the proposed regulation, with the following aims:

a) to clarify and simplify some provisions, meeting the market requests to reduce the costs of regulatory compliance and bring the Italian regulations in line with those of the major European countries. To this end, the following can be seen: amendments that extend and better define the hypotheses of inapplicability of the regulation to bids concerning financial products other than securities, the new proposal in terms of the preparation of guarantees, the simplifications in terms of determining sell-out and squeeze-out prices and, finally, the changes concerning the content of the issuer statement and the opinion of the independent directors on “internal” bids;

b) to fine-tune the application of the more innovative provisions, in view of the indications and suggestions made by the parties consulted. To this end, the regulation of the inclusion of derivative financial instruments in the threshold for mandatory takeover bid has been modified, the system of assumptions in relation to acting in concert has been refined and the provisions on transparency during takeover bids and the application of the best price rule have been somewhat “alleviated”;

c) to optimise company and bidder independence, keeping appropriate investor protection. Under this scope, an alternative regime to the re-opening of terms awarding the correction of the pressure to tender to the separation of adhesion and approval of the bid has been introduced, as only the latter is relevant for the purpose of takeover bid effectiveness. A “corrective” action has also been introduced for the application of whitewash mechanisms in exemption from the compulsory takeover bid consequent to mergers or spin-offs, allowing the companies to determine statutory quorum calculations, up to a maximum of 7.5%, needed for the opposing vote of the minorities to take effect.

Before proceeding with the final approval of the new regulations on takeover bids, Consob considers it useful to open a new, faster consultation stage that will exclusively apply to the main changes made to the draft already submitted to the market. To this end, you are urged to respond to

this consultation by using the questionnaire included in part IV of the Document, supplementing it with any additional information and assessments you deem useful.

When adopting the amended regulations, upon conclusion of the consultation stage, an Explanatory Report will be published on the analysis of the impact of the regulation and the outcome of the consultations.

Lastly, Consob deems it useful to bring to the market's attention its intent to start-up, subsequent to publication of the changes to the regulation, a new consultation on a Communication containing the Commission guidelines on the implementation of the regulation on takeover bids. In this way, both in implementation of a Commission intention and in response to a clear market demand, previous interpretations will be collected into a single *corpus*, adapting them to the new regulatory framework.

II. MAIN NEWS COMPARED WITH THE FIRST PROPOSED REGULATION

The innovation applied following observations received and further investigations are briefly described below. Please refer to part III of this Document for the new proposal and to Annex 1 for an explanation of the changes made to the text submitted to consultation.

1. *Cases of inapplicability of takeover bid regulations for bids concerning financial products other than securities and regulations applicable to exchange tender offers on debt securities* (arts. 35-*bis* and 35-*ter*)

In relation to the application scope of the regulation on takeover bids or exchange offers (hereinafter jointly referred to as "OPAS" or "takeover bids"), art. 35-*bis* establishes, in implementation of the delegation envisaged by art. 101-*bis*, subsection 3-*bis* of the Consolidated Law on Finance, a series of exemptions involving the non-application of all the rules on takeover bids: these operate automatically, with no need for a specific petition by the bidder. Art. 35-*ter*, on the other hand, in compliance with art. 102, subsection 4-*bis* of the Consolidated Law on Finance, establishes the conditions that, if met, allow for the application of the regulations relating to initial public offerings in lieu of that relating to takeover bids, allowing the bidder, therefore, to present a specific petition and apply the bid, duly integrated and without needing to request the approval of a new document, or the related exemptions where applicable.

As compared with the version of the Regulation released for consultation, the changes made to art. 35-*bis* intend to make the framework of available exemptions more coherent. More specifically:

i. it has been specified that some of the exemptions envisaged only apply to debt securities restructuring transactions promoted directly or indirectly by their issuers (art. 35-*bis*, subsection 5);

ii. the situations envisaged have been more completely aligned with those, of similar *ratio*, envisaged by the (Italian and European) regime of initial public offerings (art. 34-*ter* IR). As such, the exemptions have therefore been made applicable also with regards to securities offered for exchange (and no longer only to those purchased by the bidder: see art. 35-*bis*, subsection 5), thereby also including the transactions reserved to the principals of financial instruments for a total amount in excess of the threshold established by the regulation on prospectuses (art. 35-*bis*, subsection 5, letter. b). Finally, the exemption in relation to bids focussing on professional investors has been made independent of the nature of the financial product concerned by the bid (art. 35-*bis*, subsection 4), without prejudice to the exclusion of shares from this exemption (in compliance with the provisions of art. 101-*bis*, subsection 3-*bis* of the Consolidated Law on Finance);

iii. the exemptions envisaged for takeover bids or exchange offers have been extended to transactions implemented, on their own securities, by the OECD Member States (art. 35-*bis*, subsection 5, letter a);

iv. the exemption envisaged, should debt restructuring plans be approved (the "consent solicitation"), has been better defined, in order to clarify that this situation only concerns the

hypothesis that the solicitation should concern the expression of a vote and not adhesion to an exchange tender offer, whilst the requirement to prepare a short summary note in Italian and making specific informative documentation available, has been eliminated (art. 35-*bis*, subsection 3).

This simplification has some important consequences. First and foremost, it makes the legal framework applicable to situations where the need to protect investors is reduced, clarifying that some of the exemptions envisaged only apply to situations relating to debt restructuring. Secondly, it aligns the Italian regulations with those of most European countries, whereby consent solicitation is not generally considered as a bid. Thirdly, the recourse to exemptions eliminates, for Italian and foreign bidders, administrative expenses that had, in the past, resulted in the exclusion of Italian investors from some consent solicitations or cross border bids.

With regards to articles 35-*ter*, it has been established that the ability of using the bid prospectus for the purpose of public tender offers concerning debt securities, is also extended to include situations where the prospectus available is a base prospectus or a prospectus for admission to listing on a regulated market.

2. *Communication of the bid, guarantees and typical layout of the bid document* (arts. 37, 37-*bis* and Annex 2A)

Some provisions of art. 37 have been revised (e.g. concerning the first communication to be sent to Consob and disclosed to the market, announcing the intent to promote a bid) with a view to clarifying and simplifying the content, also in view of some comments from the market.

In terms of guarantees, in the text of the regulation presented for consultation – in order to implement the principles of the Directive and inspired by the provisions of the German and English orders – the obligation was envisaged to acquire, from the very start of takeover bid proceedings, a declaration of a "*qualified party*" in accordance with article 1, subsection 1, letter *r)* of the Consolidated Law on Finance, certifying that the bidder is able to make full payment of the bid made. Some observers have pointed out that the declaration required from the intermediary may involve an increase in the costs of the transaction. As such, the provisions of the regulation have been amended to require a declaration issued by the bidder himself, in which he certifies that he "*is able to meet all payment commitments in full of amounts due in cash*" or that he "*has taken all reasonable steps to ensure that his commitments shall be met in relation to payments in kind*".

Finally, Annex 2 was amended and, in particular, the typical layouts of the bid document, again with a view to clarifying and simplifying the content (Layout 2, renumbered Layout 1, for takeover bids on listed securities, published for consultation and Layout 1, renumbered Layout 2 for takeover bids on unlisted securities).

3. *Issuer statement and opinion of the independent directors* (arts. 39 and 39-*bis*)

In the text of the regulation published for consultation, the minimum content of the issuer statement has been analytically regulated (art. 39) and a new provision has been introduced, requiring the independent directors of the issuer, in the event of bids brought by insiders, to express an opinion assessing the bid and the suitability of the price, to be attached to the issuer statement (art. 39-*bis*).

Some marginal changes were made following the outcome of the consultation, which concerned the content of the issuer statement (see art. 39, subsection 1). More specifically, some requests have been circumscribed considering the issuer's availability of information (and therefore their "production" cost) and their effective value in terms of notifying investors.

With reference to the opinion of the independent directors in the bids promoted by insiders, the rule has been changed to incorporate the market demand to avoid possible duplication of documents to issuers (issuer assessment of bid and separate opinion of the independent directors). The provision of art. 39-*bis*, subsection 2 has therefore been refined to clarify the fact that the opinion of the independent directors is prior and functional to the meeting of the board of directors called to assess the bid and can, therefore, during said meeting, be accepted in full by the board. To this end, it has been specified that the opinion of independent directors shall be the subject of a separate communication (to be attached to the issuer statement) any time this is not "*entirely incorporated*" by the board of directors. Vice versa, should the board entirely accept the assessments of the independent directors, these shall be contained in the statement in accordance with art. 39, subsection 1, letter *c)*.

4. *Reopening the terms of the bid* (art. 40-*bis*)

The provision to reopen the terms has been introduced as a correction to the pressure to tender in order to allow minor investor offerees of a bid they deem to be inappropriate, to supply their securities during a second round that opens following success of the takeover bid.

The main criticism raised by the market of the new provision concerned the risk that the opening, albeit only potential, of a second round would result in investor inertia, even where in favour of the bid. These latter will, in fact considering their adhesion as ineffective in terms of the success of the takeover bid and will then tend to wait for the second round(despite being aware that this will only be opened in the event of the bid being successful) to avoid transaction costs that cannot be recovered if the bid is to fail (e.g. non-availability of securities). The market has suggested considering as an alternative solution, of equal efficiency to the reopening, the provision of a referendum whereby offerees express their assessment (positive or negative) of the merits of the bid separately from their adhesion, without incurring transaction costs linked to the non-availability of securities.

Although the grounds for the criticism raised mainly depend on assumptions of an irrational behaviour by offerees and the relevance of the transaction costs to which they would be exposed in adhering to the first round, the provision of the referendum has been introduced as an opt-out possibility from the regime of reopening the terms (art. 40-*bis*, subsection 3, letter *d)*). More specifically, in all non-mandatory bids, the bidder can choose to subject the efficiency of the bid to

approval of the offerees, which must be formulated by completing a specific section of the subscription sheet. The reopening of terms would not, therefore apply to bids that have received approval by the majority of the subscribing investors.

5. *Transparency during takeover bids and the best price rule* (arts. 41 and 42, subsections 2-4)

The transparency regime in the six months following closure of the bid of purchase and sale transactions carried out on the financial products concerned by the bid (and on derivative instruments including cash-settled derivatives, with these products underlying them) by bidders and people acting jointly (art. 41, subsection 7) has been coordinated with the provisions of art. 152-*octies* on internal dealing. The communication to Consob of purchases made during the six months subsequent to bid closure is not necessary where the same information has been disclosed under the scope of transparency on internal dealing, in situations where the bidder or people acting jointly, fall under the scope of "relevant persons" (defined by art. 152-*sexies*, subsection 2, letter c).

The rules of correctness governed by art. 42 include the rule adjusting the bid price to the highest price paid by the bidder (best price rule). This rule applies not only in the period running from the communication of the bid and its closure, but also during the six months subsequent to the ultimate payment date. With specific reference to the application of the best price rule, in the six months subsequent to bid closure, in upholding some of the market requests, some "alleviation" has been applied to the regulation of art. 42, subsections 3 and 4. More specifically, a minimum threshold of relevance has been introduced for purchases made in the following six months – established as 0.1% of the category of financial products concerned by the bid – and the tolerance threshold for purchases made in that period under the scope of trading on one's own account has been raised (from 0.5% to 1%).

6. *Competing bids* (art. 42, subsection 5 and art. 44)

In the proposed regulation brought for consultation, a provision has been introduced, which, in an attempt to ensure equal information to bidders, obliges the issuer providing information to one bidder, to notify said information to the others. During consultation, it was noted that this rule, although appreciable in terms of its objective of encouraging efficiency and transparency of the corporate control market, can be used instrumentally by competitors who, interested in the acquisition of information on the issuer, may promote takeover bids at symbolic prices (also in view of the lack, with the amendment of art. 44, of the obligation to offer a price in excess of that of the previous bid). In upholding the market observation and in accordance with the experience of the major foreign jurisdictions, the rule has been changed to establish that the information supplied to one bidder must be supplied to the competitor "upon request" by the latter and only if the requests are specific and circumscribed. It is considered that the risk of bids promoted for the sole purpose of requesting general information, not known to the market, and that may provide a competitive advantage, is thus limited.

In any case, Consob expects that the promotion of a competing bid at a lower price than the

previous one must be suitably motivated by the bidder and it is agreed that the promotion of an "instrumental" bid, namely a bid that, right from the communication to the market, there is no intent of forwarding, may involve an assessment in terms of market integrity.

7. *Treasury shares* (art. 44-*bis*)

In implementation of a specific delegation of law, the regulation presented for consultation governs the relevance of treasury shares for the purpose of calculating mandatory takeover bid thresholds. The proposed regulation intends to reconcile the two juxtaposed needs to prevent treasury shares from being used as an instrument by which to elude mandatory takeover bid regulations, on the one hand, and to allow companies to resort to buy-back where all shareholders are interested therein, on the other.

In the regulations, the two different cases are regulated by: (i) acquisition by the shareholder of a shareholding in a company that already holds treasury shares; and (ii) acquisition of treasury shares by the company in the presence of shareholders who, by virtue of said acquisitions, may exceed the thresholds established by art. 106, subsections 1 and 3 of the Consolidated Law on Finance.

With reference to the first hypothesis, the provision submitted for consultation has been maintained, whereby treasury shares held by the issuer are excluded from the share capital on which the major shareholdings are calculated for the purpose of mandatory takeover bids (art. 44-*bis*, subsection 1).

On this matter, it is not considered necessary to prepare a specific informative system on the treasury shares held by the company and subsidiaries, as the threshold shall only be considered as having been exceeded according to the quantity of "treasury shares" known to the market[2].

With reference to the second hypothesis, whereby the exceeding of thresholds derives from the acquisition of treasury shares by the issuer (and not from the acquisitions of shares by the shareholder), the proposal submitted to the market instead established two possible alternative formulas (art. 44-*bis*, subsection 2):

i. in the first, the benefit of the "exemption from the takeover bid" only concerns the party who does not have control over the issuer and which, therefore, has not influenced the decision to buy treasury shares; this would have the advantage of eliminating the risk of an elusive use of the acquisition of treasury shares by the controlling party with the flaw, however, of requiring a not always simple verification of the existence of a controlling relationship. The strengthening achieved through a purchase of treasury shares would, in any case, be limited insofar as the non-controlling party would be subject to a mandatory takeover bid should, by virtue of the further purchases, he exceed the threshold of 30% or that of the takeover bid from consolidation;

[2] Please note, in any case, that Annex 3F, Section 3 of the IR already establishes that under the scope of communications of monthly transactions on treasury shares, the company shall also disclose the balance of the transactions implemented in the previous month; it is intended thereby that the Commission shall make this provision operative - which is currently suspended - by adopting a provision able to supply the terms and conditions for compliance with this communication obligation.

ii. the second alternative establishes the ability to grant "exemption from takeover bids in the event that the acquisition of treasury shares has been resolved with the whitewash mechanism. In other words, the treasury shares acquired by the company would not be counted in terms of exceeding the threshold where the relative purchase has been resolved with the approval of the minority shareholders.

From the consultation, no clear indication has emerged as to which of the two hypotheses is preferable. In line with the choice to optimise corporate dialectic, the hypothesis now is to opt for the second solution that bases the determination of the neutrality of buy backs for the purpose of takeover bids on the objective criteria of the favourable vote of independent shareholders.

This choice has the advantage of not constraining the acquisition of treasury shares, which often takes place in the interest of all shareholders, including minority shareholders, to the position of the controlling party, as instead would be the case if the first solution proposed in the previous consultation were adopted.

Furthermore, Consob is aware that this choice may present, in combination with that made in the event of acquisitions by shareholders, the contraindication of facilitating the "defensive" use of treasury shares. In actual fact, whilst for an "entering" shareholder, treasury shares (held by the company or subsidiaries) would always result, only the parent company would be able to use them to reinforce its position, ensuring that the company buys them and relying on the interest of the minority shareholders to vote in favour of buy-back transactions in order to benefit from their "value distribution" effect.

Should these considerations be prevalent, Consob may examine alternative solutions establishing the relevance of the purchases of treasury shares for the controlling party while in parallel extending the exemption currently envisaged only for purchases serving stock option plans and other categories of operations.

The parties consulted are therefore asked to specifically express an opinion on this point, by answering Q8 of the questionnaire (part IV).

8. *Significance of derivative financial instruments in calculating thresholds* (art. 44-*ter*)

With reference to the choice to include derivative financial instruments in the notion of major shareholdings for the purpose of mandatory takeover bids, the main criticism received from the market concerned the value of this decision with respect to the possibility, already mentioned in other jurisdictions, to opt for a regime of transparency and a strengthening of enforcement. Alternatively, it has been asked that we limit at least the application scope of the rule to situations that can effectively influence control. On this latter regard, it is highlighted that a distinction *ex ante* of cases that may or may not affect control would appear to be entirely unfeasible.

It was therefore considered appropriate to confirm the underlying choice, namely the extension of the notion of major shareholding for the purpose of mandatory takeover bids, at the same time

reinforcing the complementary nature of the regulation of transparency and that of mandatory takeover bids. More specifically, it would appear appropriate on the one hand to start up a consultation on a transparency regulation above sufficiently high thresholds and, on the other, to extend the exemptions, excluding standardised derivates from the calculation where traded on regulated markets (art. 44-*ter*, subsection 2, letter *a)*) and those held temporarily by virtue of an agreement establishing their transfer within 6 months (art. 49, subsection 1, letter e-*bis*).

9. *Acting in concert* (art. 44-*quater*)

The main criticism concerned the assumption concerning the presentation of a list with a view to electing the majority of the company bodies, insofar as it has been pointed out that this assumption does not, in practical terms, provide proof contrary to the act of presenting the list, operating regardless of the effective appointment of the majority of the members.

In sharing this observation, it has been deemed appropriate to eliminate this assumption, without prejudice to the fact that this situation may constitute a useful clue for the purpose of ascertaining acting in concert. This is also in view of the consideration that the maintenance of the negative assumption of concert for those presenting a list aiming to elect the minority of the directors (see subsection 2, letter b) may, on the contrary, indicate collaboration in the presentation of a list looking to elect the majority, despite not constituting a relative assumption. It is, in any case a clue that, together with other elements, may result in the identification of acting in concert.

Some changes have also been made to the assumption of concert in relation to the advisors (see subsection 1, letter b), in order to clarify that the activity of trading on one's own behalf, implemented in accordance with ordinary operations and market conditions, is excluded from the scope of concert.

10. *Cases of exemption from mandatory takeover bids* (art. 49, subsection 1, letters b) and f))

The main critical observations concerned the provision that exceeding the threshold of 30% due to mergers or spin-offs and bailout transactions of companies in crisis situations other than those of declared crisis is exempt from the mandatory takeover bid if the transaction has been approved by the shareholders' meeting with the whitewash mechanism. Some observers have pointed out that this provision attributes excessive power to minority, unqualified shareholders and have therefore proposed the elimination of the whitewash procedure or, at least, the inclusion of a minimum shareholding percentage threshold of minorities in order to make it efficient.

It has been deemed appropriate to confirm the basic choice that assigns a key role to the whitewash mechanism in the two situations identified, as it is considered that minority shareholders should have the right to oppose transactions involving renunciation to the takeover bid and that this choice is preferable to an intervention, with inevitable discretional profiles, by Consob. The suggestion to provide for "corrective" mechanisms for mergers and spin-offs has, in any case, been upheld. In these cases, companies may introduce statutory conditions of efficiency for the whitewash mechanism that prevents minorities of less than a given capital share, in any case no more than

7.5%, from preventing the exemption from mandatory takeover bids (art. 49, subsection 1-*bis*). The threshold of 7.5% appears adequate to avoid opportunistic behaviour by minorities with interests in competition with those of the company.

Vice versa, it was considered appropriate not to introduce similar corrective measures for the vote of independent shareholders in bailout exemptions related to the crisis situations that lie outside those referred to in art. 49, subsection 1, letter b) nos. 1 and 2. In actual fact, for lack of a "certification" by a third party of the existence of the crisis situation, the danger of a potential buyer making the exemption instrumental was considered as greater than the risk of opportunistic behaviour by minority shareholders (whose votes on the renunciation of exit in undeclared crisis situations would not be subject to conditions).

Upholding a market observation, a provision has also been introduced (subsection 1-*ter*) that requires a complete, detailed pre-meeting disclosure on the operations and effects of the whitewash mechanism. This would thus inform the shareholders of the estimated efficiency of the mandatory takeover bid deriving from the approval of the resolution on said methods.

With reference to the hypothesis of bailout, it has been considered appropriate to limit the exemption established for “declared crisis” situations, certified by a negative opinion of the independent auditor on the company as a going concern, to only those cases where a capital increase has been subscribed, in a similar way as has already been provided for by the very first proposed regulation for restructuring plans (see subsection 1, letter b) no. 2). Both these cases, in fact, outline crisis situations that are certified by private third parties, although held to specific duties. It would appear appropriate to provide for a greater protection of shareholders as represented by the recapitalisation of the company.

11. *Sell-out and squeeze-out* (arts. 50 *et seq.*)

Articles 50 *et seq.* govern terms and conditions for compliance with the right of squeeze-out upon exceeding the significant thresholds (arts. 108, 111 and 112 of the Consolidated Law on Finance). The observations received during the consultation mainly concerned the determination of the price to be paid following the right to squeeze-out or following conversion into cash, upon request by the bearer of the securities concerned by the sell-out, of the price represented in full or in part by the securities. As a general rule, the criteria adopted in defining the price were shared by the market. Some requests for a simplification and clarification of the regulation were, however, received.

In order to reduce the complexity of the regulation, the regime to measure securities offered for exchange has been simplified, both in terms of quantifying the price for the right of squeeze-out and in the conversion of this price into cash upon request by the offerees. The criteria following this intent was that of taking the value of the securities on the date of payment of the previous bid as a reference in all hypotheses where, by provision of the law (art. 108, subsection 3 of the Consolidated Law on Finance) or regulation (art. 50, subsection 3, IR), the price of the right of squeeze-out equals that of said previous bid. The provision was therefore eliminated whereby, for

the purpose of converting the owner's request into cash, reference was made to the weighted average of the official prices of the securities in the month prior to the bid closing date (see 50-*ter*).

Additionally, in upholding other observations in the new proposal, the provisions on the calculation of the price in the event that the previous bid should have been an exchange tender offer have been relisted, in order to clarify their extent, in art. 50 (subsection 5). These same provisions have then also been refined to avoid any possible deficiency, sometimes notified by the parties concerned (e.g. the case where the price of the squeeze-out was equal to that of the previous exchange tender offer has been governed by virtue of a Consob provision - see art. 50, subsection 3).

12. Transitory regime

In order to allow for a gradual adaptation to the new provisions concerning takeover bids and to consider the market's requests for clarification, a transitory regime has been hypothesised, providing for:

- a period of *vacatio legis* from the date of publication in the Official Gazette of the new regulatory provisions, establishing the presumed effect as from 1 May. Consequently, the new provisions will be applicable to all bids for which the communication to Consob and the market in accordance with art. 102, subsection 1 of the Consolidated Law on Finance, or the purchase determining the exceeding of the major threshold for the purpose of resulting in the onset of the mandatory takeover bid, shall be carried out subsequent to that date;
- the immediate efficiency of some provisions, as from the date after the stated publication in the Official Gazette, by virtue of the delicacy of the matters governed and the relevant underlying interests. In particular, these are provisions concerning: (i) definitions and application scope of the new regulatory provisions (arts. 35 and 35-*bis*); (ii) regulations of exchange tender offers for the purpose of acquiring debt securities (art. 35-*ter*); (iii) governing the exemptions from the mandatory takeover bid (art. 49);
- limited to the new situations of exemption in the event of merger or spin-off, governed by art. 49, subsection 1, letter f), the application of current provisions as of the date of the meeting of the administrative body resolving to call the shareholders' meeting to approve the stated extraordinary transaction, in order to remove all interpretational doubt with regards to the application of the new regulatory regime.

III. NEW PROPOSED TEXT

TITLE II
TAKEOVER BIDS OR EXCHANGE TENDER OFFERS

Chapter I
General rules

Article 35
(*Definitions*)

1. In this Title:
a) "days": trading days, meaning days that regulated markets located or operating in Italy are open, in accordance with the calendar published by Consob on its website;
b) "interested parties": the bidder, the issuer, persons linked to them by relationships of control, companies subject to common control and associate companies, members of their boards of directors and internal control bodies and their general managers, and the shareholders of the bidder or the issuer who are parties to one of the agreements subject to disclosure pursuant to Article 122 of the Consolidated Law in addition to those operating in concert with the bidder of issuer;
c) "issuer": companies whose financial products are the subject of a takeover bid or exchange tender offer or where one or more parties acting in concert acquire a major shareholding for the purpose of the provisions of Part IV, Title II, Chapter II, Section II, of the Consolidated Law;
d) "bidder": any natural or legal person that promotes a takeover bid or exchange tender offer;
e) "related parties" and "related party transactions": the parties and transactions as defined in Annex 1 to the regulations adopted by Consob with resolution no. 17221 of 12 March 2010;
f) "independent directors", "independent members of the management board", and "independent supervisory board members": the parties as defined in Article 3, subsection 1, paragraph h) of the regulations adopted by Consob with resolution no. 17221 of 12 March 2010;
g) "long position": a financial position in which the contracting party's financial interest is positively correlated to the performance of the underlying;
h) "short position": a financial position in which the contracting party's financial interest is negatively correlated to the performance of the underlying;
i) "derivatives": the instruments listed in Article 1, subsection 3 of the Consolidated Law, as well as any other financial instrument or contract capable of resulting in the assumption of a long or short financial position on underlying securities;
j) "group": the parent company, its subsidiaries and the companies subject to joint control;
k) "securities": the financial instruments specified in article 101-*bis*, subsection 2 of the Consolidated Law;
l) "debt securities": the equity values specified in article 1, subsection 1-*bis*, letter b) of the Consolidated Law.

Art. 35-*bis*
(*Scope*)

1. This Title shall apply to all takeover bids and exchange tender offers, as defined by Article 1.1v) of the Consolidated Law, without prejudice to this Article and Articles 2, subsections 3, 5 and 6 and 35-ter.

2. Article 37 and the other provisions of this Chapter that Consob from time to time may declare to be applicable shall apply to public offerings involving financial products other than financial instruments.

3. The provisions of this Title and those of Part IV, Title II, Chapter II, Section I of the Consolidated Law do not apply to the situations where the principals of financial products are called to approve amendments to the terms, conditions or other clauses of the related regulations or statutes, by means of participating in a resolution or other decision that has the power to bind principals who are absent, abstain or are in disagreement.

4. The provisions of this Title and those of Part IV, Title II, Chapter II, Section I of the Consolidated Law do not apply to takeover bids or tender exchange offers concerning financial products other than the securities offered exclusively to qualified investors, as defined in article 34-*ter*, letter b) of this regulation.

5. The provisions of this Title and those of Part IV, Title II, Chapter II, Section I of the Consolidated Law do not apply to takeover bids or tender exchange offers aiming to acquire debt securities, if promoted directly or indirectly by the issuer of said debt securities, where:
a) the financial instruments that the bidder intends to purchase or, in the event of a tender exchange offer, to offer in exchange, are issued by a Member State of the Organisation for Economic Cooperation and Development (OECD) or by international organisations of a public nature to which one or more Members States of the OECD belong or that benefit from the unconditional, irrevocable guarantee of these;
b) the financial instruments other than those specified in subsection 7 that the bidder intends to acquire or, in the event of a tender exchange offer, to offer in exchange, have a total nominal value per investor and per separate bid, or are of a unitary nominal value equal to that specified in article 34-*ter*, subsection 1, letter d) and, respectively letter e);
c) the financial instruments that the bidder intends to acquire or, in the event of a tender exchange offer, to offer in exchange, are instruments of the money market issued by banks with a due date of less than 12 months;

6. The provisions of this Title and those of Part IV, Title II, Chapter II, Section I of the Consolidated Law do not apply to takeover bids or tender exchange offers promoted directly or indirectly by the European Central Bank or by the national central banks of the Member States of the European Union.

7. The provisions of this Title and those of Part IV, Title II, Chapter II, Section I of the Consolidated Law do not apply to takeover bids or tender exchange offers, if promoted directly or indirectly by the issuer, aiming to acquire, or in the event of tender exchange offers, to offer in exchange:
a) units of open-ended UCITs, whose minimum subscription amounts to at least 250,000 euros;
b) financial instruments issued by insurance companies with a minimum initial premium of at least 250,000 euros.

Art. 35-ter
(*Tender exchange offers aimed at acquiring debt securities*)

1. As provided by Article 102, subsection 4-bis of the Consolidated Law, the bidder may send Consob a justified request containing the characteristics of the transaction, the provision of this Chapter for which exemption is requested.

2. Without prejudice to the provisions of subsection 1, in the event of exchange tender offers held concurrently in several member states of the European Union, in place of the bid document envisaged by article 38 the bidder may use the bid prospectus or listing prospectus on a regulated market, as long as the prospectus has been approved, in compliance with Directive no. 2003/71/EC, by the supervisory authorities of its home member state. In this case, the draft prospectus transmitted to the competent authorities is annexed to the justified request and the summary note is supplemented with at least the following information:
a) methods and terms of subscription of the bid in Italy;
b) payment method and related tax regime;
c) risk factors significant for the purpose of the decision to subscribe to the bid;
d) existence of potential conflicts of interest between the parties involved in the transaction (bidder, parties appointed to collect subscriptions, advisors, lenders);
e) essential elements regarding the issue of financial instruments to be exchanged, as well as the related exchange ratio.

3. Should the bidder intend to use a base prospectus, the supplementary information indicated in subsection 2 is included in a separate document, to be attached to the grounded request.

4. The bidder shall promptly send Consob the amended draft prospectus transmitted to the supervisory authorities during the investigation.

5. The language rules envisaged by article 12, subsection 3 shall apply to the prospectus set forth in subsections 2 and 3.

Article 36
(*Publication of press releases and documents relating to the bid*)

1. In this Title information shall be deemed to have been notified or made known to the market where it is contained in a statement promptly sent by Consob to at least two news agencies. Should the issuer or bidder have financial instruments admitted for trading on a regulated Italian market, the information must also be transmitted to the market management company. Should the statement need to be disclosed during contracting, the transmission to Consob and the market management company shall take place at least fifteen minutes prior to public disclosure.

2. Should the information contained in the statement be disclosed to the market by a bidder or issuer with financial instruments admitted to trading on a regulated Italian market, the methods specified in Part III, Title II, Chapter I shall apply. In the case of a bidder or issuer with financial instruments admitted to trading on a regulated non-Italian market, the methods established for that market shall apply.

3. Statements, notices and documents relating to the bid shall be published without delay on the issuer's internet site or, in any event, on the site indicated by the bidder pursuant to Article 37, subsection 1, letter o).

4. For the purpose of publication on their respective internet sites, the issuer and the bidder shall promptly exchange the documents indicated in subsection 1.

Art. 36-*bis*

(Publication of Consob measures)

1. The measures pursuant to Article 103, subsection 4, paragraph f) of the Consolidated Law are published in the Consob Bollettino and on its internet site.

Art. 36-*ter*
(Notice of the choice of Supervisory Authority)

1. The issuing company's choice of competent authority to supervise the offer pursuant to Article 101-ter, subsection 3, paragraph c) of the Consolidated Law shall be disclosed to the market no later than the first trading day. The notice shall remain available on the issuing company's internet site.

Art. 37
(Communication of the bid)

1. The notice referred to in Article 102, subsection 1 of the Consolidated Law, disclosed to the market and the issuer, shall indicate:
a) the bidder and its parent companies;
b) the persons acting in concert with the bidder on the offer;
c) the issuer;
d) the category and quantity of financial products in the offer;
e) the price offered for each category of financial products in the offer, as well as the overall consideration of the offer;
f) the comparison of the price offered with the recent performance of the security, where admitted to trading in a regulated market;
g) the reasons for the bid and, where applicable, the event from which the obligation to make a bid arose;
h) the bidder's plans, with specific regard to its intention to delisting the financial instruments in the bid from trading, and to carry out extraordinary transactions;
i) if and to what extent the bid is funded by debt;
j) the conditions the bid is subject to;
k) the shareholdings, including derivative financial instruments conferring a long-term position in the issuer held by the bidder and by the persons acting in concert;
l) notices or applications for authorisation required by the regulations applicable, providing information on the initiation of the related proceedings before the supervisory authorities;
m) where applicable, the effective submission to Consob of the petition pursuant to Article 104-ter, subsection 3 of the Consolidated Law or the intention to submit such petition;
n) where applicable, the effective submission to Consob of the petition pursuant to Article 106-ter, subsection 3, letter c) of the Consolidated Law or the intention to submit such petition;
o) the internet site where the press releases and documents relating to the bid will be published.

2. If the bid regards financial products other than securities, the notice shall contain the elements indicated in subsection 1 to the extent applicable.

Art. 37-*bis*
(*Guarantees*)

1. The bidder may make the communication established by article 37 only after first having ensured that he is able to fully and completely fulfil all payment commitments of the price in cash or after having taken all reasonable steps to ensure that all commitments made in relation to payments in kind will be met.

2. At the same time as the communication pursuant to article 37, the bidder, together with his contact and identification data, shall send Consob a declaration certifying the method by which he has complied with the provisions of subsection 1.

3. By the day before the date planned for the publication of the bid document, the bidder shall send the following to Consob:
a) the documentation on the establishment of the performance guarantees; or
b) a copy of the resolution to issue the financial products offered for a price.

Art. 37-*ter*
(*Promotion of the offer*)

1. The bidder shall promote the offer by submitting the following to Consob:
a) the bid document and any acceptance forms, drawn up in accordance with the models in Annexes 2A and 2B;
b) certification of the effective transmission of the notices or applications for authorisation required by the regulations applicable to the transaction to the competent authorities.

2. 2. The documents indicated in subsection 1, paragraph a) may also be sent in electronic form.

3. Promotion of the offers shall be disclosed without delay to the market in a statement to the market and at the same time to the issuer.

Art. 37-*quater*
(Petition for determination of equivalence)

1. From the date of the notification pursuant to Article 37 until the day after the dissemination of the issuer's statement, the bidder or issuer may submit to Consob the petition pursuant to Article 104-ter, subsection 3 of the Consolidated Law. The petition shall be accompanied by supporting documentation useful for the purpose of assessment and shall be copied to the issuer or to the bidder. The market shall be promptly notified of the effective submission of the petition.

2. Within five days from the receipt of the documentation, the party receiving the petition may provide Consob with its written observations, supported by suitable documentation.

3. Consob shall make its decision, by way of a justified measure, within twenty calendar days from the date of submission of the petition. If it is necessary to request additional information or documentation, this term shall be suspended once until the reception of said information or documentation.

Article 38
(Bid documents)

1. The bid document, approved by Consob and supplemented in accordance with any requests pursuant to Article 102, subsection 4 of the Consolidated Law, shall be sent to Consob and the issuer without delay, also in electronic form.

2. The document is sent to the intermediaries appointed at least in electronic form and is disclosed in accordance with article 36, subsection 3. The publication and method of disclosure of the document is simultaneously communicated by means of the publication of a notice in newspapers with suitable circulation.

3. Depositories shall inform depositors of the offer's existence in time for acceptance.

4. A copy of the bid document shall be delivered by the bidder and by the appointed intermediaries to anyone who applies. Depositors may obtain the document from their depositories.

5. Any new fact or inaccuracy in the bid document that may influence the evaluation of the financial instruments that occurs or is found in the period between the publication of the document and the end of the acceptance period or any period of reopening envisaged by Article 40-bis shall be the subject of a supplement to be annexed to and published in the same manner as the bid document. The supplement shall be published within three days of its receipt by Consob with any changes the latter may request. A copy of the supplement published shall be sent to Consob and to the issuer in electronic form.

Art. 38-*bis*
(*Recognition in Italy of a bid document approved by the supervisory authorities of other EU Member States*)

1. A bid document approved by the supervisory authorities of another member state of the European Union shall be recognised in Italy on transmittal of the Italian translation of the bid document, accompanied by the measure approving the document issued by the supervisory authority of the home member state.

2. If the bid document is drawn up in a language commonly used in international finance circles, it shall be transmitted, accompanied with a note containing an Italian translation of the parts of the document regarding the essential elements of the bid set forth in subsection 6, subsection 3 of Directive 2004/25/EC, to the extent applicable, as well as the possible section containing warnings and/or risk factors of the transaction.

3. The documents in Italian pursuant to subsections 1 and 2 shall be supplemented by information concerning the subscription methods in Italy, the payment method and the applicable tax regime.

4. The bid documents shall be published, pursuant to Article 36, subsections 3 and 4, and Article 38, after five days from the date of receipt of these documents by Consob. By the publication date, at the latest, the bidder shall issue a press release in Italian containing the elements set forth in Article 37.

5. The issuer's statement, where drawn up, shall be issued to the market translated into Italian. If the statement is drawn up in a language common to the international financial markets, it may be published with an Italian translation of the assessments of the bid and the fairness of the price.

6. This article also applies for the purpose of recognition of bid documents approved by supervisory

authorities in another member state for a bid on financial instruments not admitted to trading in Italian regulated markets.

7. Article 11, subsection 1, letter c), last sentence shall apply to the translations of this article.

Art. 38-*ter*
(*Recognition in Italy of a bid document approved by the supervisory authorities of non-EU countries*)

1. A bid document approved by the supervisory authorities of a non-EU state which Consob has entered into cooperation agreements, shall be recognised in Italy if:

a) the financial instruments concerned by the bid are admitted to trading on a regulated market of the same non-EU State where the issuer is subject to continuous supervision by the relevant authorities;

b) the document contains at least the information on the essential elements of the offer identified by Article 6, subsection 3 of Directive 2004/25/EC, to the extent applicable, as well as the warnings and/or risk factors of the transaction.

2. For the purpose of recognition, the bidder shall send Consob the bid document translated into Italian, accompanied by the measure approving the document issued by the supervisory authority of the Non-EU member state.

3. If the bid document is drawn up in a language commonly used in international finance circles, it shall be transmitted, accompanied with a note containing an Italian translation of the parts of the document regarding the elements set forth in subsection 1, paragraph b).

4. The documents in Italian pursuant to subsections 2 and 3 shall be supplemented by information on the bid in Italy, concerning the subscription methods, the payment method and the applicable tax regime.

5. The bid documents shall be published, pursuant to Article 36, subsections 3 and 4, and Article 38, after ten days from the date of receipt of these documents by Consob. Consob may reduce this term to five days in consideration of the characteristics of the bid. By the publication date of the bid document, at the latest, the bidder shall issue a press release in Italian containing the elements set forth in Article 37.

6. The issuer's statement, where drawn up, shall be issued to the market translated into Italian. If the statement is drawn up in a language common to the international financial markets, it may be published with an Italian translation of the assessments of the bid and the fairness of the price.

7. Article 11, subsection 1, letter c), last sentence shall apply to the translations of this article.

Article 39
(Issuer's statement)

1. The issuer's statement shall:

a) indicate the names of the members of the board of directors and control body present during the meeting for assessing the offer, as well as the names of those absent;

b) indicate any members of the board of directors or the supervisory board who have notified the

fact that they have a possible conflict of interest, their own or of third parties, relating to the offer, specifying the nature, terms, origin and scope thereof;
c) contain all the information serving to evaluate the offer together with the reasoned opinion on the offer and the fairness of the price by the board of directors and the supervisory board, with an indication, where applicable, of its approval by majority vote, the names of those dissenting and abstaining, specifying the reasons for any dissent or abstention. The statement shall also specify, positively or negatively, any participation by any title of the members of the administrative body and supervisory board in negotiations to define the transaction;
d) indicate whether, in forming their opinion on the offer, the issuer made use of independent expert opinions or specific assessment documents. In these latter cases, the methods used and the results of each criteria applied shall be indicated;
e) provide information on material matters not covered in the latest annual report or the latest interim report published;
f) provide information on the issuer's recent performance and prospects if they are not reported in the bid document;
g) contain, for bids on securities other than those pursuant to Article 101-bis, subsection 3 of the Consolidated Law, an assessment of the effects that a successful bid would have on the company's interests, as well as on employment and the location of production sites;
h) where a merger is envisaged that involves the issuer and one of the parties specified by article 39-*bis*, subsection 1, letters a) and b) and that involves an increase in the debt of the issuer, supplies information on the company's debt resulting from the merger; in this case, it also indicates the effects of the transaction on the loan agreements in place and on the related guarantees as well as on the need to stipulate new loan agreements;
i) recalls, for the bids specified in letter g), any provisions of the articles of association pursuant to Articles 104 and 104-*bis* of the Consolidated Law, shareholders' resolutions pursuant to Article 104-*ter* of the Consolidated Law, as well as any decision to convene shareholders' meetings pursuant to Article 104 of the Consolidated Law; where the decision is adopted subsequent to the publication of the statement, it shall promptly be made known to the market;
l) for bids specified in letter g), where the issuer's articles of association derogate from the provisions of Article 104, subsections 1 and 1-bis of the Consolidated Law, indicate whether the issuer has executed, resolved or intends to implement deeds or transactions which could counteract achievement of the aims of the offer.
m) supplies up-to-date information:
- on the direct or indirect possession of financial instruments of the issuer and on the direct or indirect holding of long-term positions on said instruments;
- on the direct or indirect possession of financial instruments of the issuer or of its subsidiaries and parent companies and the direct or indirect holding of long-term positions on said instruments by the members of the administrative board and supervisory board;
n) provide up-to-date information on the remuneration received, under any title and in any form, by the members of the issuer's board of directors and control body and its general managers and any such amounts approved.

1-*bis*. If the offer regards units of closed-end mutual investment funds, the provisions of this article shall apply insofar as they are compatible. The statement shall be drawn up and issued by the Asset Management Company that manages the fund.

2. Should the bid concern bonds or other debt securities, the issuer's statement shall provide the information provided for by subsection 1, letters a), b), c), d), e) and f) and up-to-date information on the direct or indirect possession of the financial instruments concerned by the bid, in addition to the direct or indirect holding of long-term positions on said instruments by the members of the administrative board and supervisory board.

3. The statement and the annexes pursuant to subsection 6 shall be sent to Consob at least three days before the date set for their dissemination. Supplemented with any information requested by Consob, they shall be made known to the market not later than the first day of the acceptance period. Changes in the information published in accordance with the subsections 1 and 2 shall be the subject of a press release.

4. Without prejudice to the provisions of article 101-*bis* subsection 3 of the Consolidated Law, the statement relating to bids concerning securities is also simultaneously disclosed to workers' representatives or, for lack of such, to the workers themselves.

5. The opinion of employee representatives pursuant to Article 103, subsection 3-bis of the Consolidated Law, where issued, shall be promptly sent to the issuer and Consob and shall be disclosed to the market. When received in good time, it shall be disseminated along with the issuer's statement. This shall also be published according to the methods set forth in Article 36, subsections 3 and 4.

6. The issuer shall attach the following to the statement as per subsection 1:
a) the opinion required by Article 39-bis, where applicable;
b) any independent expert opinions.

7. The annexes pursuant to subsection 6, letters a) and b) may be published on the website specified in accordance with article 36 or on another website specified in said statement. For issuers to whom article 65-*bis* applies, subsection 2 of the same article applies.

8. With reference to the documentation pursuant to subsection 6, paragraph b), the issuer may publish only the elements set forth in Annex 4, subsection 2.4, of the regulation adopted by Consob with resolution no. 17221 of 12 March 2010, providing the reasons for said choice.

Art. 39-*bis*
(Independent director opinions)

1. This article shall apply to:

a) offers on securities promoted directly or indirectly by:
   1. parties with shareholdings exceeding the threshold indicated in Article 106, subsection 1 of the Consolidated Law;
   2. subscribers of a shareholder agreement of those holding a total shareholding in excess of the threshold specified by number 1);
   3. directors or members of the management board or supervisory board of the issuer;
   4. persons acting in concert with the parties indicated in points 1, 2 and 3.

b) offers on units of closed-end mutual funds promoted directly or indirectly by:
   1. parties that hold more than thirty percent of fund units;
   2. the party or parties which hold, jointly or severally, control or exercise a significant influence on the Asset Management Company (SGR) that manages the fund;
   3. directors or members of the management board or supervisory board of the Asset Management Company (SGR) that manages the fund;
   4. persons acting in concert with the parties indicated in points 1, 2 and 3;

c) competing bids with those specified at letters a) and b) above.

2. Before approving the issuer's statement, Independent directors who are not related parties of the bidder, where existing, shall draw up a justified opinion containing their assessment of the bid and the fairness of the price, with the right to engage the aid of an independent expert of their choice, at the cost of the issuer. This opinion, where not entirely incorporated by the administrative body, and the opinion of the independent expert where applicable are disclosed in accordance with article 39, subsections 3, 6, 7 and 8.

3. For companies adopting a two-tier system, the opinion envisaged by subsection 2 shall be provided by the independent management board member or members who are not related parties of the bidder, where present, or by a committee composed of independent supervisory board members.

4. For bids promoted by the parties set forth in subsection 1, paragraph a), no. 3, or by parties acting in concert with them, if said parties have contracted debts for the acquisition, the bidder shall promptly notify the independent directors or parties indicated in subsection 3, upon their request, of the information on the bid provided to the lenders, also following the publication of the opinion envisaged by subsection 2. The provisions of article 41 shall remain valid.

Article 40
(Performance of bids)

1. The effectiveness of an offer may not be made subject to conditions whose occurrence depends solely on the will of the bidder.

2. Without prejudice to the provisions of Article 40-bis, subsection 1, the subscription period is agreed with the stock exchange company or, for financial products not admitted to trading in a regulated market, with Consob:
- it shall be not less than fifteen days and not more than twenty-five days for bids promoted pursuant to Article 106, subsections 1 and 3 of the Consolidated Law;
- it shall be not less than fifteen days and not more than forty days for other bids.

3. For bids involving bonds and other debt securities, the minimum duration is reduced to five days.

4. After consulting the bidder and the stock exchange company, Consob may, with a measure justified by the needs of correct implementation of the bid and the protection of investors, extend the bid's duration, more than once, up to a maximum of fifty-five days. Upon grounded request by the bidder, Consob may arrange for an alternative subscription period, in the event of bids held simultaneously in more than one State.

5. The subscription period shall not start before five days have elapsed from the publication of the bid document or, if this already includes the issuer's statement; before the date of such publication.

6. In the event that a shareholders' meeting convened pursuant to Article 104 of the Consolidated Law is to be held in the last ten days of the subscription period, such period shall be extended so that ten days shall pass from the shareholders' meeting.

7. Subscription of the bid shall be accepted at the premises of the bidder, the appointed intermediaries or the depositories, by signing the acceptance form.

8. Subscription of bids may be collected in the regulated market in the manner indicated by the stock exchange company in the rules provided for in Article 62 of the Consolidated Law.

Art. 40-*bis*
(*Re-opening of the term of the bid*)

1. Within five days from the closing of the subscription period, the term of bids on securities promoted by the parties indicated in Article 39-bis, subsection 1, paragraph a) shall be re-opened for five days, when, on publication of the results, the bidder notifies:
a) for bids whose effectiveness is subordinate to the acquisition of a specific percentage of share capital in the issuer, the occurrence or waiver of said condition;
b) for bids other than those pursuant to paragraph a):
   1. of having reached a shareholding of more than half, or, should the initial shareholding of the bidder exceed half and be less than two thirds, of two thirds of the share capital represented by securities; or
   2. the effective purchase of at least half of the securities in each category of the bid.

2. The re-opening of the terms envisaged by subsection 1 shall apply to bids on units of closed-end mutual funds promoted by the parties indicated in Article 39-bis, subsection 1, paragraph b) when, on publication of the results, the bidder notifies:
a) for bids whose effectiveness is subordinate to the acquisition of a specific percentage of units of the fund, the occurrence or waiver of said condition;
b) for bids other than those pursuant to paragraph a), the acquisition at least half of the units of the fund subject of the bid.

3. The re-opening of the term shall not apply:
a) when the bidder, at least five days before the end of the subscription period, announces the occurrence of the circumstances pursuant to subsections 1 and 2, paragraphs a) and b);
b) when, for bids on securities, at the end of the subscription period the bidder holds an equity investment pursuant to Article 108, subsection 1, or that pursuant to Article 108, subsection 2 of the Consolidated Law and, in the second case, the bidder has declared its intention not to restore a float sufficient to ensure regular trading;
c) to bids on securities promoted pursuant to Article 107 of the Consolidated Law.
d) to the bids provided for by subsections 1 and 2, other than those promoted in accordance with article 106, subsections 1 and 3 of the Consolidated Law, because:
   1. the bidder has permanently subjected the efficiency of the bid to the approval by the majority of the holders of securities or shares in the fund subscribing the offer; and
   2. the bid receives the approval envisaged by point 1, formulated in a specific section of the subscription sheet. Subscription of the bid shall be equivalent to a statement of approval unless it is accompanied by an express manifestation of will to the contrary. Approval is irrevocable. It is possible to approve more than one competing bid.

4. If the term is re-opened, the price shall be paid:
a) for the securities and units of the fund which were the subject of subscription to the bid prior to the re-opening of the term, on the date originally set in the bid document;
b) for other securities or units of the fund, no later than ten days following the date indicated in paragraph a).

Article 41

(*Transparency rules*)

1. Statements and communications regarding a bid shall indicate the person by whom they are issued and be designed to be clear, complete and knowable by all those to whom they are addressed.

2. During the period between the date of the statement referred to in Article 102, subsection 1 of the Consolidated Law and the due date set for payment of the price:
a) interested parties shall disclose their statements regarding the bid and/or the issuer according to the methods set forth in Article 36. Without prejudice to the provisions of Article 39, issuers with financial instruments admitted to trading in a regulated market shall disclose statements concerning the bid also in compliance with Article 66, subsection 2;
a-bis) the bidder and persons acting in concert with the bidder, should they intend to transfer to third parties, directly, indirectly or through a third party, the financial products concerned by the bid, shall notify Consob and the market no later than the day prior to the date scheduled for the transaction. Members of the bidder's group and that of the parties acting in concert with him shall not be considered as third parties;
b) interested parties shall notify Consob and the market by the end of the day of transactions carried out, directly, indirectly or through nominees:
1) of purchase and sale of the financial products subject of the bid, indicating the agreed prices;
2) on derivatives linked to the products subject of the bid, indicating the essential terms;
c) the bidder and the persons appointed to collect subscriptions shall announce the number thereof at least weekly; in bids on financial instruments admitted to trading in regulated markets, the announcement shall be made daily through the stock exchange company.

3. Any summaries of the bid document disseminated must, in any event:
a) contain the entire "cautions" section of the bid document;
b) provide references for each subject matter to the corresponding sections of the bid document in which the issues are set out in more detail;
c) contain the warning, reproduced using a typeface permitting it to be easily read, that the summary has not been cleared in advance by Consob;
d) indicate where the bid document and the issuers' statement can be obtained.

4. A copy of the summary shall be sent to Consob contemporaneously with its dissemination.

5. Every announcement, however disseminated, intended to promote or deter an offer must be recognizable as such. The information the announcement contains must be clear, correct and give reasons, it must be consistent with that in the documentation already disseminated and must not mislead concerning the characteristics of the operation or the features of the financial instruments involved. A copy of each announcement must be sent to Consob contemporaneously with its dissemination.

6. Before the payment date indicated in the bid document as well as the date envisaged by Article 40-bis, subsection 4 paragraph b), the bidder shall publish, in the same manner as the bid, the results and the necessary indications on the conclusion of the bid and the exercise of the rights provided for in the bid document, as provided for in Annex 2C.

7. In the six months following the final payment date of the offer price, the bidder and the persons acting in concert with them shall notify Consob, on a monthly basis, of the purchase and sale transaction on the financial products pursuant to subsection 2, paragraph b), no. 1 and no. 2, carried out in that month, indicating the essential terms thereof. Information is not required if these transactions have been communicated in accordance with article 152-*octies*.

Article 42
(Proper conduct rules)

1. The interested parties shall adhere to principles of proper conduct and equal treatment of those to whom the offer is addressed, shall promptly complete the activities and formalities relating to the implementation of the bid, shall not carry out transactions on the market with a view to influencing acceptances of the bid and shall abstain from conduct and agreements aimed at altering circumstances affecting the conditions precedent to a mandatory bid or mandatory exchange tender offer.

2. Where, in the period between the date of the notice referred to in Article 102, subsection 1 of the Consolidated Law and the final date of payment of the price, the bidders or persons acting in concert with them acquire, directly or indirectly or through nominees, the financial instruments that are the subject of the bid or take on, directly, indirectly or through nominees, long positions with such products as underlyings, at prices higher than those of the bid, they shall realign the latter with said paid. Article 44-ter, subsection 7 shall apply, insofar as it is applicable.

3. The provisions of subsection 2 shall also apply to purchases of a total quantity in excess of 0.1 percent of the category of financial products concerned by the bid, by bidders and persons acting in concert with them made in the six months following the ultimate payment date. In this case, the obligation to adjust the price to the highest price paid shall be fulfilled by the bidder through the assignment of an adjustment to bid subscribers, in accordance with the methods announced in a specific statement to the market.

4. The following do not apply to purchase and sales transactions implemented at market conditions under the scope of trading on own behalf:
a) subsection 2 if carried out for a total quantity of no more than 0.5 percent of the category of financial products concerned by the bid;
b) subsection 3 if carried out for a total quantity of no more than 1 percent of the category of financial products concerned by the bid.

5. In the event of competing bids, the issuer providing information to one of the bidders shall provide timely communication of the same information to the other bidders presenting specific and circumscribed requests to access said information. The provisions of article 41 shall remain valid.

Article 43
(Amendments of bids)

1. 1. Amendments of bids shall be disclosed via statements disseminated pursuant to Article 36 and are admitted up to the date preceding the date set for the close of the subscription period. The bid cannot be closed in a term of less than three days from the date of publication of the amendment. The bid shall be extended where necessary.

2. Reductions in the quantity requested shall not be permitted.

3. This article does not apply to competing bids.

Article 44
(*Competing bids*)

1. Competing bids shall be published up to five days before the date set for the close of the preceding subscription period, even if extended.

2. Increased bids and other amendments to bids, shall be made by publishing a statement pursuant to Article 36, specifying the nature and size of the increased bid and attesting the issue of the supplementary guarantees. **In the case of increased bids, the quantity requested may not be reduced.**

3. Without prejudice to the right referred to in paragraph 4, increased bids and other amendments must be made within five days of the publication of the competing bid or an earlier increased bid or amendment by another bidder.

4. Increased bids may not be made beyond the fifth day preceding the close of the preceding subscription period. On the last valid day all bidders, except for those for which the deadline referred to in paragraph 3 has already expired, may make another increased bid, subject to its being notified to Consob. No further amendments to the bid are permitted.

5. The subscription period for bids and the date for the publication of the results shall be aligned with those of the last competing bid unless the earlier bidders notify Consob and the market within five days of the publication of the competing bid that they intend to keep the original expiration unchanged; where they do so, they may not make increased bids.

6. 4. Article 6, subsection 6, shall apply.

7. Following publication of a competing bid or an increased bid, acceptances of the other bids shall be revocable. In the five days following the publication of the results of the winning bid, such bid may be accepted, following revocation of the acceptance, for financial products for which other bids had been accepted.

8. From the date of notification of competing bids until the close of the subscription period bidders may not acquire, directly or indirectly or through nominees, the financial instruments that are the subject of the bid or the right to acquire them at a later date at prices higher than the highest price of the bids notified.

Chapter II
Mandatory takeover bids

Art. 44-*bis*
(Treasury share regime)

1. Treasury shares held by the issuer, even indirectly, are excluded from the share capital used to calculate the equity investment for the purpose of Article 106, subsections 1 and 3, paragraph b) of the Consolidated Law.

2. Subsection 1 shall not apply if the threshold indicated therein is exceeded as a result of buyback by the issuer carried out in execution of a resolution which, without prejudice to Articles 2368 and

2369 of the Italian Civil Code, was also approved with the favourable vote of the majority of shareholders attending the shareholders' meeting, other than the shareholder or shareholders that, jointly or severally, possess a (also relative) majority shareholding.

3. In the situations established by subsection 2, the reports on the items on the agenda envisaged by article 125-*ter* of the Consolidated Law must contain detailed information on the efficiency exempting the mandatory takeover bid deriving from the approval of the resolution in accordance with the methods specified by this article.

4. For the purpose of calculating the thresholds indicated in subsection 1, treasury shares purchased for the purpose of payment plans approved pursuant to Article 114-bis of the Consolidated Law are not excluded from the share capital used to calculate the shareholding.

5. Treasury shares held by the issuer, even indirectly, are not excluded from the share capital and are added to the equity investment for the purpose of calculating the thresholds envisaged by Articles 108 and 111 of the Consolidated Law.

Art. 44-*ter*
(Derivatives)

1. For the purpose of calculating the thresholds envisaged by Article 106, subsections 1 and 3, paragraph b) of the Consolidated Law, derivatives held directly or indirectly, through trustees or nominees, which offer a long position on the securities indicated in Article 105, subsection 2 of the Consolidated Law, are calculated in the amount of the total number of underlying securities. If the number of underlying securities is variable, reference is made to the maximum quantity envisaged by the financial instrument.

2. For the purposes of subsection 1, derivatives which offer a long position are not calculated when:
a) these instruments are traded on regulated markets;
b) these instruments have underlying future issue securities;
c) exceeding the threshold is due to the calculation of derivative financial instruments concerned by agreements contained in a shareholders' agreement and aimed at resolving any situations of decision-making problems, or envisaged for cases of breach of the clauses of the pact;
d) exceeding the threshold is determined by derivative financial instruments held by an authorized intermediary as defined by Article 1, subsection 1, paragraph r) of the Consolidated Law, for the purpose of hedging a customer's position.

3. If the purchase of the underlying securities is subject to authorisations pursuant to the law, the long position acquired shall be relevant for the purpose of exceeding the thresholds set forth in subsection 1, when the authorisation is granted.

4. For the purpose of calculating the thresholds indicated in subsection 1, long positions shall be offset with short positions on the same security limited to those deriving from the same type of financial instruments with equal conditions and the same counterparty.

5. References to the purchase of securities in Section II, Chapter II, Title II, Part IV of the Consolidated Law and in this Chapter are understood as extended, insofar as compatible, to purchases of financial instruments which offer long positions on securities.

6. To determine the price pursuant to Article 106, subsection 2 of the Consolidated Law, the price

contractually attributed to the securities underlying the financial instrument and the amounts paid or received for the acquisition of the long position shall be considered.

Art. 44-*quater*
(Persons acting in concert)

1. The following are considered persons acting in concert, unless they prove that the conditions pursuant to Article 101-bis, subsection 4 of the Consolidated Law are not in place:

a) a party, his/her spouse, cohabiting partner, persons related by consanguinity or affinity, and direct relatives and relatives up to the second degree, and children of his/her spouse or cohabiting partner;

b) a party and its financial advisors for transactions relating to the issuer, where said advisors or companies belonging to their group, after awarding the appointment or in the month prior, had made purchases of issuer securities outside the trading on own behalf carried out according to ordinary operations and at market conditions.

2. The following cases of cooperation between several parties shall not in and of themselves be classified as acting in concert pursuant to Article 101-bis, subsection 4 of the Consolidated Law:

a) coordination between shareholders for the purpose of implementing the actions and exercising the rights attributed to them by Articles 2367, 2377, 2388, 2393-bis, 2395, 2396, 2408, 2409 and 2497 of the Italian Civil Code or by Articles of 126-bis, 127-ter and 157 of the Consolidated Law;

b) agreements for the submission of lists of candidates for the election of the corporate bodies pursuant to Articles 147-ter and 148 of the Consolidated Law, provided that said lists include a number of candidates that is less than half of the members to be elected or are by design preset for the election of representatives of minority interests;

c) cooperation between shareholders to prevent the approval of a resolution of the extraordinary shareholders' meeting or a resolution of the ordinary shareholders' meeting on:

1) remuneration of the members of corporate boards, remuneration policies and compensation schemes based on financial instruments;

2) related party transactions;

3) authorisations pursuant to Article 2390 of the Italian Civil Code or Article 104 of the Consolidated Law.

d) cooperation between shareholders to:

1) favour the approval of a shareholder meeting resolution regarding the responsibility of the members of corporate boards or a proposed item for the agenda pursuant to Article 2367 of the Italian Civil Code or Article 126-bis of the Consolidated Law;

2) gain votes for a list which presents a number of candidates that is less than half of the members to be elected, or is by design preset for the election of representatives of minority interests, also through the solicitation of voting proxies for the purpose of voting for said list.

Article 45
(Indirect takeover)

1. Acquisition, singly or in concert, of an equity investment that allows more than thirty per cent of the shares of a listed company which grant voting rights for matters specified in Article 105 of the Consolidated Law to be held or that gives control of an unlisted company shall determine the obligation to make a tender offer, pursuant to Article 106, subsection 3, paragraph a) of the Consolidated Law, where the acquirer comes to hold, indirectly or as a result of the sum of direct

and indirect equity investments, more than thirty per cent of the securities of a listed company which grant voting rights for matters specified in Article 105 of the Consolidated Law.

2. An indirect equity investment for the purposes of subsection 1 shall exist where the assets of the company whose securities are held consist prevalently of equity investments in listed companies or in companies that prevalently have equity investments in listed companies.

3. For the purposes of subsections 1 and 2, prevalence shall exist where at least one of the following conditions is met:
a) the book value of the equity investments represents more than one third of the balance sheet assets and exceeds that of every other fixed asset shown in the balance sheet of the investor company;
b) the value attributed to the equity investments represents more than one third and constitutes the principal component of the purchase price of the securities of the investor company.

4. Where the assets of the company referred to in subsection 2 consist prevalently of equity investments in a plurality of listed companies, the obligation to make a public offering only regards the securities of the companies whose value represents at least thirty per cent of the total of such shareholdings.

Article 46
(*Consolidation of equity investments*)

1. The mandatory bid obligation referred to in Article 106, subsection 3, paragraph b) of the Consolidated Law shall arise from the acquisition, including indirect acquisition as defined in Article 45, of more than five percent of the capital represented by securities that grant voting rights for matters specified in Article 105 of the Consolidated Law as a result of purchases made in the twelve months.

Article 47
(*Consideration in the form of financial instruments*)

…repealed…

Art. 47-*bis*
(Procedure for reducing the price of mandatory takeover bids)

1. The bidder or the persons acting in concert shall promptly notify the decision to submit a petition to Consob for the reduction of the price of a mandatory takeover bid pursuant to Article 106, subsection 3, paragraph c) of the Consolidated Law.

2. The petition for a price reduction, possibly accompanied by supporting documentation, shall be submitted to Consob by the bidder or the persons acting in concert with them within five days from the notification pursuant to Article 37.

3. The petition must indicate the following, otherwise it will be impossible to proceed:
a) the occurrence of one of the circumstances pursuant to Article 106, subsection 3, letter c) of the Consolidated Law;
b) the facts which are the basis of the petition;
c) the effects on the offer price, if known.

4. Consob shall make its decision by way of a justified measure, within the term indicated by Article 102, subsection 4 of the Consolidated Law. If it is necessary to request additional information or documentation, this term shall be suspended once until the reception of said information or documentation. The information or documentation required shall be provided within the term set by Consob, which shall be no more than fifteen days.

Art. 47-*ter*
(*Price reduction in the event of exceptions*)

1. The offer price shall be decreased by Consob pursuant to Article 106, subsection 3, paragraph c), no. 1, first part of the Consolidated Law in the event of an exceptional or unforeseeable event which results in a temporary, significant rise in market prices, resulting in a higher price paid by the bidder to purchase securities in the same category.

2. The decreased bid price coincides with the greater of:
- the highest price paid for the purchases of securities of the same category by the bidder or persons acting in concert with the bidder, in the twelve-month period pursuant to article 106, subsection 2, first sentence of the Consolidated Law, not affected by the event itself; and
- the average weighted market price referring to a period corresponding to fifteen days prior and fifteen days subsequent to the verification of the exceptional event, with the exclusion of market prices relating to sessions affected by the actual event.

3. In the presence of securities traded on various regulated markets, the prices recorded on the market with the highest trading volumes shall be considered.

Art. 47-*quater*
(Price reduction in the event of manipulation)

1. The offer price shall be decreased by Consob pursuant to Article 106, subsection 3, paragraph c), no. 1, first part of the Consolidated Law where there are grounds to suspect manipulation which resulted in a temporary rise in market prices, resulting in a higher price paid by the bidder to purchase securities in the same category.

2. For the purpose of this article, there are grounds for suspicion in the event of:
a) transmission of the reasoned report pursuant to Article 187-decies, subsection 2 of the Consolidated Law to the Public Prosecutor;
b) enactment of one of the cautionary measures indicated in Article 187-octies of the Consolidated Law;
c) notice of charges due to breach of Article 187-ter of the Consolidated Law;
d) exercise of the criminal action pursuant to Article 405 of the Italian Code of Criminal Procedure;
e) implementation of a cautionary measure against the person being investigated or the accused.

3. The Consob decreased bid price coincides with the greater of:
- - the highest price paid for the purchases of securities of the same category by the bidder or persons acting in concert with the bidder, in the twelve-month period pursuant to article 106, subsection 2, first sentence of the Consolidated Law, not affected by the manipulative behaviour; and
- - the average weighted market price referring to a period corresponding to fifteen days prior and fifteen days subsequent to the verification of the manipulative behaviour, with the exclusion of market prices relating to sessions affected by the manipulative behaviour.

4. For the purposes of this article, in the presence of securities traded on various regulated markets, the prices recorded on the market with the highest trading volumes shall be considered.

Art. 47-*quinquies*
(*Price reduction in the event of specific trading transactions*)

1. The offer price shall be decreased by Consob pursuant to Article 106, subsection 3, paragraph c), no. 2 of the Consolidated Law if the highest price paid by the bidder or the persons acting in concert with them is the price of sales transactions:
a) performed at market conditions as part of dealing for own account, for a total quantity not exceeding 0.5% of the category of financial products subject of the bid;
b) that have benefitted from the exemptions pursuant to article 49, subsection 1, letters b) and f) and that could have benefitted from the exemptions pursuant to article 49, subsection 1, letter b), number 1.

2. The offer price adjusted downwards by Consob shall not consider the price of the trading transactions pursuant to subsection 1, paragraphs a) and b).

Art. 47-sexies
(*Procedure for increasing the price of mandatory takeover bids*)

1. The procedure for increasing the price of mandatory takeover bids is automatically launched by Consob in the presence of one of the circumstances envisaged by Article 106, subsection 3, paragraph d) of the Consolidated Law, or on petition from interested parties.

2. The petition pursuant to subsection 1 shall be submitted to Consob within the ten days following the notification pursuant to Article 102, subsection 1 of the Consolidated Law.

3. The petition must indicate the following, otherwise it will be impossible to proceed:
a) the occurrence of one of the circumstances pursuant to Article 106, subsection 3, letter d) of the Consolidated Law;
b) the facts which are the basis of the petition;
c) the effects on the offer price, if known.

4. Consob shall inform the bidder of the automatic launch of the procedure or the effective submission of the petition.

5. Within five days from the reception of the statement pursuant to subsection 4, the bidder or the persons acting in concert with them may provide Consob with written comments and documents.

6. Consob shall make its decision by justified measure by the close of the bid. If it is necessary to request additional information or documentation during the investigation pursuant to Article 102, subsection 4 of the Consolidated Law, the term of said investigation shall be suspended, once, until the reception of said information or documentation. The information or documentation required shall be provided within the term set by Consob, which shall be no more than fifteen days. During the subscription period, Consob may suspend the bid when it is necessary to carry out investigations.

Art. 47-*septies*
(*Price increase in the event of securities purchase agreements*)

1. The offer price shall be increased by Consob pursuant to Article 106, subsection 3, paragraph d), no. 1 of the Consolidated Law if the bidder or the persons acting in concert with them has agreed to purchase securities at a higher price than that paid to purchase securities in the same category. In this case, the offer price is the price agreed for the purchase of the securities.

Art. 47-*octies*
(*Price increase in the event of collusion*)

1. The offer price shall be increased by Consob pursuant to Article 106, subsection 3, paragraph d), no. 2 of the Consolidated Law if a higher price than that declared by the bidder is paid as a result of verified collusion between the bidder or the persons acting in concert with them and one or more sellers. In this case, the offer price is equal to the verified price.

Art. 47-*novies*
(*Price increase in the event of manipulation*)

1. The offer price shall be increased by Consob pursuant to Article 106, subsection 3, paragraph d), no. 4 of the Consolidated Law if there are grounds to suspect manipulation which resulted in a temporary reduction in the market price, resulting in a higher price paid by the bidder.

2. The offer price increased by Consob matches the average weighted market price referring to a period equal to fifteen days prior and fifteen days following the occurrence of the manipulative conduct, excluding the market prices relating to the sessions influenced by said conduct.

3. For the purposes of this article, in the presence of securities traded on various regulated markets, the prices recorded on the market with the highest trading volumes shall be considered.

4. 4. Article 47-*ter*, subsection 2, shall apply.

Article 48
(*Procedure for approval of prior partial bids*)

1. Approval of a bid provided for in Article 107 of the Consolidated Law shall be given by a statement made on a special form prepared by the bidder, which may be annexed to the bid document. Subscription of the bid shall be equivalent to a statement of approval unless it is accompanied by an express manifestation of will to the contrary.

2. Statements shall be sent by the close of the bid to the address indicated by the bidder via the depository of the shares, which shall attest to the ownership thereof.

3. Approval is irrevocable. It is possible to approve more than one competing bid.

Article 49
(Exemptions)

1. An acquisition shall not give rise to the mandatory bid obligation provided for in Article 106 of the Consolidated Law where:
a) another shareholder or other shareholders jointly hold the majority of voting rights exercisable in the ordinary shareholders' meeting;

b) it is carried out in the presence of:

1) a recapitalisation of the listed company or another measure to strengthen equity, and the company is in difficulty, proven by:
   (i) admission to a bankruptcy proceeding envisaged in Italian Royal Decree no. 267 of 16 March 1942 or in other special laws;
   (ii) approval of a debt restructuring agreement entered into with debtors pursuant to Article 182-bis of Italian Royal Decree no. 267 of 16 March 1942, disclosed to the market;
   (iii) the measure complies with requests by a Supervisory Authority for the purpose of safeguarding the sound and prudent management of the company;

2) a recapitalisation of the listed company and company in a crisis situation certified by:
   (i) existence of a restructuring plan, disclosed to the market, pursuant to article 67, subsection 3, letter d) of Royal Decree no. 267 dated 16 March 1942;
   (ii) expression by the statutory auditor of an adverse opinion on going concern assumptions, based on the latest financial statements of the issuer.

3) a crisis situation which is not attributable to the situations described in points 1) and 2) of this paragraph, provided that:
   (i) should the transaction be the competence of the shareholders' meeting, also in accordance with article 2364, subsection 1, number 5 of the Italian Civil Code, the related resolution, without prejudice to the provisions of articles 2368, 2369 and 2373 of the Italian Civil code shall be approved without the contrary vote of the majority of the shareholders attending the meeting, other than the buyer, the shareholder or shareholders holding, individually or jointly, the absolute or relative majority shareholding;
   (ii) when the transaction is not subject to a shareholders' meeting resolution, it is approved by the favourable vote of the majority of shareholders other than the parties indicated in point 2.i) above, who cast their vote by way of declaration contained in a specific voting papers prepared and made available by the company. These voting papers shall be sent to the acquirer, via the depository of the securities, which shall attest to the ownership thereof, by the date and to the address indicated by the acquirer;

c) the equity investment is acquired as a result of a transfer between companies in which the same person or persons hold, singly or jointly and directly or indirectly through a subsidiary company pursuant to Article 2359, first paragraph, point 1, of the Italian Civil Code, the majority of voting

rights exercisable in the ordinary shareholders' meeting, or is acquired as a result of a transfer between a company and such persons;

d) the threshold is exceeded as a result of exercise of the pre-emption, subscription or conversion rights originally attributed;

e) the thresholds envisaged by Article 106, subsections 1 and 3, paragraph b) of the Consolidated law are exceeded by not more than 3 percent and 1 percent and the acquirer undertakes to dispose of the excess securities within twelve months and not to exercise the related voting rights. Should it be a qualified investor who exceeds the threshold envisaged by article 1, subsection 5, letter c) of the Consolidated Law, assuming guarantees under the scope of a capital increase or security listing transaction, the above limits shall not apply and terms for the transfer of the excess shares shall be eighteen months, without prejudice to the commitment not to exercise the relevant voting rights;

e-bis) the thresholds envisaged by article 106, subsections 1 and 3, letter b) of the Consolidated Law are exceeded by virtue of the acquisition of derivative financial instruments and the buyer undertakes to transfer the excess derivates or securities to unrelated parties within six months and, during this same period, not to exercise voting rights in excess of the threshold exceeded;

f) it is consequent to mergers or spin-offs approved by meeting resolution of the company whose securities would otherwise need to be subject to bid and without prejudice to the provisions of articles 2368, 2369 and 2373 of the Italian Civil code, without the contrary vote of the majority of the shareholders in attendance, other than the shareholder acquiring the shareholding that exceeds the major threshold and the shareholder or shareholders or jointly or individually hold an absolute or relative majority shareholding.

g) the obligation is the result of inheritance or free-of-charge deeds between living individuals.

1-*bis*. Statutes may provide for, in accordance with subsection 1, letter f), the majority of shareholders voting against, as specified therein, precluding exemption only where at least a given share of the share capital with voting rights is represented, in any case of no more than 7.5 percent.

1-*ter*. In the situations provided for by subsection 1, letter b), number 3) and letter f), reports on the agenda as established by article 125-*ter* of the Consolidated Law must contain detailed information on the efficiency expected of the mandatory takeover bid deriving from the approval of the transaction in accordance with the methods specified by this article or by the failure to reach the minimum threshold specified by the statute in accordance with subsection 1-*bis*. In the situation specified by subsection 1, letter b) no. 3), ii), this same information shall be supplied by the administrative board of the company and shall be made available together with the voting sheet and published on the company's website.

2. The acquirer:
a) in the case referred to in subsection 1, paragraph a), shall promptly notify Consob and the market of the non-existence of agreements or plans in common with the other shareholders referred to therein;
b) in the situation provided for by letters e) and e-bis), communicates to the market the intent to apply the exemption and the commitment not to exercise voting rights and to transfer excess securities within the terms established. If it does not comply with the obligation to make the disposal, shall promote the bid at the highest price resulting from the application of Article 106, subsection 2 of the Consolidated Law to the twelve months prior and subsequent to the acquisition.

Article 50
(Commitment to buy)

1. Persons held to the commitment to buy pursuant to article 108, subsection 2 of the Consolidated Law shall notify Consob and the market within ten days whether it intends to restore the float. This notification is not required where it is already included in the bid document which was followed by the exceeding of the significant threshold.

1-*bis*. The sale of securities with the concurrent purchase of financial instruments which offer long positions on the same securities shall not be considered restoration of the float.

2. With regard to the obligations envisaged by Article 108, subsection 2 of the Consolidated Law, the stock exchange company shall:
a) inform Consob of the companies for which, applying general criteria established by the latter, it is possible to adopt a threshold higher than ninety per cent, taking account of the need to ensure regular trading;
b) announce the restoration of the float.

3. Without prejudice to the provisions of Article 108, subsection 3 of the Consolidated Law, if the commitment to buy arises as a result of a voluntary tender offer, Consob determines the price as the amount equal to the price of the bid, when it involves:
a) a takeover bid promoted in accordance with article 107 of the Consolidated Law or article 40-*bis*, subsection 3, letter d);
b) a full takeover bid subject to the term re-opening regulations pursuant to Article 40-bis, subsection 1, or voluntarily subjected such regulations by the bidder, provided that, in both cases, in the first phase of duration of the bid, at least fifty percent of the securities in the bid were contributed to it.

4. In the other cases where the commitment to buy arises following a public offering, Consob shall determine the price of the commitment to buy, taking into account:
a) the price of the previous offering, also in light of the subscription percentage;
b) the average weighted market price of the securities subject to the offering in the six month period identified in accordance with article 108, subsection 4 of the Consolidated Law;
c) the value attributed to the securities or to the issuer by any valuation reports, drawn up by independent experts according to criteria generally used in financial analysis, not prior to six months before the triggering of the commitment to buy;
d) any other purchases of securities in the same category in the last twelve months by the party held to the commitment to buy or the party operating in concert with them.

5. In the event that the previous bid should envisage a price represented entirely or partly by securities, the value of this price for the purpose of subsections 3 and 4 is determined by measuring the securities offered in exchange on the basis of the official price noted on the bid payment date. In the case where the securities offered in exchange are unlisted, for the purposes herein, the same valuation indicated by the bidder during the previous bid shall be applied.

6. In the case where the commitment to buy has not arisen following a public offering, Consob shall establish the price on the basis of the higher of the following:
i) the highest price set forth for the purchase of securities in the same category in the last twelve months by the party held to the commitment to buy or the party operating in concert with them;

ii) the average weighted market price of the last six months prior to the triggering of the commitment to squeeze-out.

7. Should at least two of the elements specified in subsection 5 not be available, or should even one of the elements specified in subsection 6 not be available, the price is determined on the basis of the shareholders' equity adjusted to the current value and the trend and income prospects of the issuer.

8. For the purpose of determining the price pursuant to the previous subsections:
a) the percentage of subscriptions to the bid is determined:
- subtracting, both from the number of securities in the bid and from the number of securities contributed to the bid, the securities contributed by related parties of the bidder in the period from the date the bid was announced to the date of conclusion of the bid;
- also calculating any purchases by the bidder outside of a full takeover bid during the subscription period, provided that the provisions of Articles 41 and 42 were complied with;
b) the average market price may be calculated with reference to a different period which Consob deems suitable when circumstances arose during the six months which reduced the significance of the prices recorded on the market.

9. The party held to the commitment to buy shall send the following to Consob, within ten working days from the time the commitment arises:
i) a request for determination of the price, also indicating the number of subscriptions to any previous bid from parties which can be classified as related parties pursuant to subsection 8;
ii) in the cases pursuant to subsection 5, the valuation reports pursuant to paragraph c), where existing;
iii) in the cases pursuant to subsections 4 and 6, a summary of the transactions carried out in the twelve months prior to the triggering of the commitment to buy;
iv) in the cases pursuant to subsection 7, a valuation of the issuer, referring to a date no more than six months before the commitment to buy was triggered, drawn up by the party held to the commitment to buy according to criteria generally used in financial analysis, which are suitable to the specific characteristics of the issuer and its sector of operation. Said valuation shall be accompanied by an analysis of the methods used, the related results, the underlying assumptions and the value attributed to the various parameters.

10. Consob shall determine the price by way of resolution within 30 working days from receipt of the elements pursuant to subsection 9. If the elements provided are incomplete or additional elements are required, this term shall be suspended up to the date on which Consob receives the missing or supplementary elements.

Art. 50-*bis*
(Determination of the price entirely or partly comprising securities)

1. The provisions of this article apply to the determination of the price in accordance with article 108, subsection 4 of the Consolidated Law in the situation where the price itself consists entirely or partially of securities in application of article 108, subsection 5 of the Consolidated Law.

2. In the situations provided for by article 50, subsections 3 and 5, the price shall take the same form as that of the bid and the proportion of securities and cash shall remain unaltered.

3. In the situations provided for by article 50, subsections 4 and 5, the price shall take the same form as that of the bid and the proportion of securities and cash shall remain established, starting from the

value determined in monetary terms in accordance with article 50, on the basis of the average of the official daily prices of securities offered in exchange, weighted for the quantities traded, noted on the market in the month prior to Consob determining the price. In the case where the securities offered in exchange are unlisted, for the purposes herein, the same valuation indicated by the bidder during the previous bid shall be applied.

Art. 50-*ter*

(Conversion into cash of the price upon request by the security holder)

1. The entity of the payment to be made in cash, upon request by the holder of the securities in accordance with article 108, subsection 5 of the Consolidated Law is determined:

a) in the hypothesis where the payment shall equal that of the previous bid in accordance with article 108, subsection 3 of the Consolidated Law or article 50-*bis*, subsection 2, measuring the securities offered in exchange on the basis of the official price noted on the date of payment of the previous bid. In the case where the securities offered in exchange are unlisted, for the purposes herein, the same valuation indicated by the bidder during the previous bid shall be applied;

b) in the case where Consob shall determine, in accordance with article 50-*bis*, subsection 3 as equal to the measurement in monetary terms performed by Consob.

Art. 50-*quater*

(Price for the exercise of the right to buy)

1. Without prejudice to the provisions of Article 108, subsection 3 of the Consolidated Law, the price for the exercise of the right to buy shall be determined based on the provisions of Articles 50, 50-*bis* and 50-*ter*.

2. In the cases indicated in Article 108, subsection 5 of the Consolidated Law, in the event that the owner of the securities does not opt for payment in cash as part of the procedure pursuant to Article 108, subsection 1 of the Consolidated Law, the price for the exercise of the right to buy shall take the same form as that of the previous bid.

Art. 50-*quinquies*

(*Term and procedures for the commitment and right to squeeze-out*)

1. The duration of the period for submitting seller applications linked to the fulfilment of the commitment to buy pursuant to Article 108, subsections 1 and 2 of the Consolidated Law and any payment in cash shall be agreed with the stock exchange company between a minimum of fifteen and a maximum of twenty-five days.

2. The bidder shall issue a statement pursuant to Article 36, containing the necessary information for fulfilling the commitment to buy pursuant to Article 108, subsections 1 and 2 of the Consolidated Law and for exercising the right to buy pursuant to Article 111 of the Consolidated Law.

3. If, following the final date for payment of the price, new events occur or elements unknown to the market arise which capable of affecting the valuation of the securities in the bid, for the purposes of disclosure obligations linked to the commitment to buy pursuant to Article 108,

subsections 1 and 2 of the Consolidated Law, the bidder shall publish a specific information document pursuant to Article 36, subsections 3 and 4, and Article 38.

4. Should the exceeding of the major threshold for the purpose of the application of article 108, subsection 2 of the Consolidated Law not occur following a takeover bid and/or tender exchange offer, the bidder must publish a document in the ways specified by articles 36, subsections 3 and 4 and 38. Insofar as they are compatible, the provisions of this Title shall apply.

5. Subsequent to the fulfilment of the right of squeeze-out pursuant to article 108, subsection 2 of the Consolidated Law, the bidder shall issue a statement in accordance with article 36, whereby he discloses the following to the market:

a) the outcome of the compliance with the right of squeeze-out;
b) the total shareholding held in the issuer's capital;
c) if the criteria envisaged for the right of squeeze-out in accordance with article 108, subsection 1 of the Consolidated Law and for the exercise of right of squeeze-out pursuant to article 111, subsection 1 of the Consolidated Law, specifying the methods for implementation:
d) the additional information available on the revocation of the securities from listing.

6. Should, upon the outcome of the legal compliance with the right of squeeze-out, in accordance with article 108, subsection 1 of the Consolidated Law, the bidder intend to restore the floating capital, he discloses a statement in accordance with article 36, establishing the terms and conditions for said restoration.

7. In the period running from the date on which the major thresholds for the purpose of the application of article 108, subsections 1 and 2 and of article 111 of the Consolidated Law and the date specified for payment of the price, articles 41 and 42 shall apply.

IV. QUESTIONNAIRE

Q1) Do you agree with the changes aimed at widening and clarifying the cases of inapplicability of takeover bid regulations to bids concerning financial instruments other than securities (art. 35-*bis*)?

Q2) Do you agree with the changes made to Annex 2 and, in particular, to the contents of the bid document?

Q3) Do you agree with the amended regime for the constitution of guarantees whereby the bidder himself, rather than a qualified party, issues at the time of the announcement the declaration certifying that the bidder is able to meet his payment commitments (art. 37-*bis*)?

Q4) Do you agree with the change to the provision regarding the opinion of the independent directors in the case of bids promoted by insiders, aiming to coordinate this opinion with the assessment of the bid by the issuer board of directors (art. 39-*bis*)?

Q5) Do you agree with the new provision that excludes the obligation to reopen the terms for tendering in the event that the bidder should made the bid conditional to the approval of the majority of subscribers (art. 40-*bis*, subsection 3, letter d)? Do you consider the new measure effective in correcting pressure to tender?

Q6) Do you agree with the "softening" of the best price rule in the six months subsequent to bid closure (art. 42, subsections 3 and 4)?

Q7) Do you agree with the choice to limit the issuer's obligation to disclose the information supplied to one bidder to all the other bidders so that this obligation would only apply to situations where a bidder presents specific, circumscribed requests (art. 42, subsection 5?.

Q8) Do you agree with the choice made not to consider the purchase of treasury shares in terms of potentially exceeding thresholds when resolved with the approval of the minority shareholders (art. 44-*bis*)? Do you believe that the combination of the solutions proposed for the acquisition by a shareholder in the presence of treasury shares, on the one hand, and the acquisition of treasury shares by the issuer on the other, can facilitate a "defensive" use of treasury shares? Do you prefer, with regards to purchases of treasury shares by the issuer, a solution that considers them always relevant for the controlling shareholder, with exemptions for "ordinary" acquisitions, specifically defined? If so, how should these acquisitions be identified?

Q9) Do you agree that the risk of the use of derivative financial instruments traded on regulated markets for the purpose of eluding takeover bid regulations is sufficiently low and that these instruments can therefore be excluded from calculating shareholdings pursuant to art. 105, subsection 2 (art. 44-*ter*, subsection 2, letter a)?

Q10) Do you agree with the exemption proposed in the event of exceeding the major thresholds for mandatory takeover bids following temporary acquisitions of derivative instruments (art. 49, subsection 1, letter e-*bis*)?

Q11) Do you agree with the elimination of the presumption of acting in concert for parties that present a list aiming to elect the majority of the company bodies or that jointly promote a proxy solicitation aimed at voting said list? Do you also agree with the amendment concerning the assumption of acting in concert in relation to the advisors (art. 44-*quarter*,

subsection 1)?

Q12) Do you agree with the choice to allow the issuers to establish in their by-law a *quorum* for the effectiveness of the contrary vote of independent shareholders for the exemption from the mandatory takeover bid consequent to mergers or spin-offs (art. 49, subsection 1, letter f) and subsection 1-*bis*)? And do you share the choice not to introduce such a mechanism for the hypothesis of exemption in cases of a crisis situation as envisaged by art. 49, subsection 1, letter b) no. 3?

Q13) Do you share the choice to require that, in the presence of an adverse opinion of the independent auditor on the going concern assumption a, a recapitalisation of the company must be envisaged in order to allow for the bailout exemption (art. 49, subsection 1, letter b)?

Q14) Do you agree with the changes made to the criteria by which prices are determined in the event of sell-out and squeeze-out (arts. 50-50-*quater*]?

Q15) Do you agree with the proposed transitory regime? Do you believe it should specifically address further hypotheses?

Q16) Do you have any comments on the other changes made to the draft regulation in consultation?