29 November, 2019

To: CONSOB – Divisione Strategie Regolamentari.

Consultation on the proposed amendments to the regulation of related party transactions, the market regulation and the issuers' regulation following the transposition of the European Directive 2017/828 on the long-term commitment of shareholders

Glass, Lewis & Co. ("Glass Lewis") appreciates the opportunity to comment on the proposed amendments to the Consob regulations following the transposition of the Shareholder Rights Directive (EU Directive 201/828).

About Glass Lewis

Founded in 2003, Glass Lewis is the leading independent provider of global governance services, helping institutional investors understand and connect with the companies they invest in. More than 1,300 institutions rely on Glass Lewis' research and vote management services to drive value across the entire life cycle of their investments.

Institutional investor clients around the world use Glass Lewis research and data to help inform proxy voting decisions and engage with companies before and after shareholder meetings. In addition, Glass Lewis' vote management service provides investor clients with the means to receive, reconcile and vote ballots according to custom voting guidelines and recordkeep, audit, report and disclose their proxy votes.

From its offices in the UK and Europe, North America and Australia, Glass Lewis' 360+ person team provides research and voting services to institutional investors globally that collectively manage more than US$35 trillion. Glass Lewis is a portfolio company of the Ontario Teachers' Pension Plan Board ("OTPP") and Alberta Investment Management Corp. ("AIMCo"). Glass Lewis operates as an independent company separate from OTPP and AIMCo. Neither OTPP nor AIMCO is involved in the day-to-day management of Glass Lewis' business. Moreover, Glass Lewis excludes OTPP and AIMCo from any involvement in the formulation and implementation of its proxy voting policies and guidelines, and in the determination of voting recommendations for specific shareholder meetings.

GLASS LEWIS

Glass Lewis Views on the Proposed Amendments

Having reviewed the new amendments to be made to the Consob regulations of related party transactions, the market regulation and the issuers' regulation, we would like to comment on those items where we feel we can add value to the discussion.

1. Definition of "related party" to be applied to directors

Current regulations provide that "directors involved in a related party transaction" will have to abstain from voting on such transaction when this is discussed during board meetings. However, the current definition was deemed too vague, and five alternative definitions were proposed.

Having reviewed the options and the possible scenario of application of such definitions, our preference would fall on option 4. In our view, the independence of a non-executive director is compromised whenever there is a material relationship between such director and the company (or the related party with which the company is contemplating a transaction), in this case a consulting contract. In alignment with generally accepted global best practice we consider a relationship material when its value exceeds: (i) €50,000 (or 50% of the total remuneration paid to a board member, or where no amount is disclosed) for board members who personally receive remuneration for a professional or other service they have agreed to perform for the company, outside of their service as board members; or (ii) €100,000 for those board members employed by a professional services firm such as a law firm, investment bank or large consulting firm where the firm is paid for services but the individual is not directly remunerated. In the proposed example, the consultancy contract would lead us to consider a non-executive director as a non-independent director when those materiality thresholds were exceeded. As such, we would consider it appropriate if such directors were explicitly required to abstain from voting on any such transaction in which they had a personal interest.

Further, on the scenario proposed by option 5, in order to ensure that all shareholder interests are always placed above the interests of a particular shareholder, we believe that a lookback period of two years may be appropriate when a related party is the executive's former employer, especially where the related party is the controlling company or a significant shareholder. This is especially relevant in Italy, where a majority of

companies are controlled or have significant reference shareholders.

2. **Anti hold-out clause in case of whitewash**

We recognise the value in ensuring that significant decisions regarding a company's strategy and operations serve minority shareholders' interests while also ensuring that no single shareholder (whether a majority or minority shareholder) can dictate decisions affecting shareholder value. We note that no case of mandatory application of the whitewash provision was recorded since 2011, demonstrating that it is only used in exceptional cases. In our experience, participation of minority shareholders at general meetings has been growing in recent years. Nevertheless, overall participation rates remain relatively low. As such, where a controlling shareholder owns well over 50% of a company's share capital, a 10% threshold for issued shares determining an anti-hold out clause may be an unnecessarily high bar. In the rare case where independent directors are already concerned by a transaction with a controlling shareholder, thereby triggering a whitewash, and where a general meeting is called in accordance with relevant legal requirements at least 21 days before the meeting, a requirement for simple majority approval by shareholders unaffected by the transaction should offer sufficient protection for minority shareholders without causing undue burden to the company.

3. **Ex-post disclosure on performance targets**

In our view, clear and comprehensive disclosure of targets is key in evaluating the extent to which the Company strives to align long-term executive compensation with performance. However, we recognise companies' desire to limit such disclosure when they feel it may harm their competitive position. We acknowledge that specific targets may be commercially sensitive; however, we believe shareholders should reasonably expect disclosure of the targets ex-post once they are no longer commercially sensitive, or, at least, disclosure on actual performance and percentages of achievement of targets for each metric.

We recognise that in the Italian market targets are usually not disclosed ex-ante for competitive reasons. However, looking at examples from other European markets such as France and the UK, ex-post disclosure of targets for the previous year has become common market practice after the introduction of regulations.

Other comments

Regarding the introduction of Article 143-*octies* on the transparency of proxy advisors, we would like to highlight that we comply with the Best Practice Principles for Providers of Shareholder Voting Research & Analysis (the "BPP", as outlined in our annual statement of compliance (http://www.glasslewis.com/best-practices-principles/). The BPP was most recently updated in July 2019 to account for the requirements of SRD II, among other updates (https://bppgrp.info/). Glass Lewis was a founding signatory of the BPP Group, which introduced the BPP in 2014.

Thank you in advance for your consideration and please do not hesitate to contact us if you would like to discuss any aspect of our submission in more detail.

Respectfully submitted,

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