CONSOB
COMMISSIONE NAZIONALE PER LE SOCIETA' E LA BORSA

CONSULTATION DOCUMENT ON THE REGULATION OF RELATED PARTY TRANSACTIONS (*)

3 August 2009

Interested parties are welcome to submit their comments to the position paper, in English or Italian, and send their responses at the following address:

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Comments should reach us by 31 October 2009.

* The translation of Appendix 1 has been prepared for information purposes only. It is not intended to be nor does it constitute an official version of the text. For all legal purposes reference should be made to the complete Italian consultation document.

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Unofficial English version of the new draft regulation on Related Party Transaction

PART I
LEGISLATIVE SOURCES AND DEFINITIONS

Article 2

Definitions

1. In this Regulation:

.....

h) “related parties” shall mean persons so defined by the international financial reporting standard on related party disclosures, adopted under the procedure referred to in Article 6 of Regulation (EC) 1606/2002;

h-bis) “related party transactions” shall mean transactions so defined by the international financial reporting standard on related party disclosures, adopted under the procedure referred to in Article 6 of Regulation (EC) 1606/2002, including mergers and spin-offs as well as directors’ and key managers’ remuneration;

h-ter) “material related party transactions” shall mean related party transactions identified pursuant to Article x.2, paragraph 1, letter *b)*;

.....

p) “atypical or unusual transactions” shall mean transactions falling outside the normal course of business owing to the size, nature of the counterparty or nature of the transaction as for their specific characteristics with particular regard to the object of the transaction, the purpose, the consideration, the methods for determining the latter as well as the procedures and time for its approval and execution (specifically, transactions approved or to be executed in proximity to the end of the financial year are closely assessed);

q) “conditions equivalent to market or standard conditions” shall mean conditions similar to those usually practised with unrelated parties for transactions of corresponding nature and risk, including those based on regulated rates or on fixed prices and those entered into with counterparty with which the issuer is obliged to contract by law;

r) “independent directors or members” shall mean members of the board of directors, of the management board or of the supervisory board identified as such by the companies in compliance with the requirements identified pursuant to Article x.2, paragraph 1, letter *c)*;

s) “non-related independent directors or members” shall mean the independent directors or members that in a given transactions are neither the counterparty nor are related to it according to the international financial reporting standard referred to in letter *h*).

PART III
ISSUERS

TITLE V-*ter*
RELATED PARTY TRANSACTIONS

Article x.1
Scope of application

1. Without prejudice to the provisions of Articles 2343-*bis*, 2358, 2373, 2391 and from 2497 to 2497-*septies* of the Italian Civil Code, and Articles 53 and 136 of Legislative Decree no. 385 of 1 September 1993 and the relevant implementation rules, this Title defines the principles Italian companies listed on regulated markets in Italy or in other European Union countries and issuers of shares widely distributed among the public (hereinafter in this Title “the companies” as a whole) follow in order to ensure the transparency and the substantial and procedural fairness of related party transactions entered into directly or through subsidiaries.

Article x.2
Adoption of procedures

1. The boards of directors or the management boards of the companies shall adopt, according to the principles indicated in this Title, procedures ensuring the transparency and the substantial and procedural fairness of related party transactions. More specifically, these procedures shall:

a) identify the categories of related parties to which the rules of this Title apply. The companies shall assess whether, for the purposes of this Title, to identify further parties as related parties in addition to those defined as such pursuant to this Regulation. To this end, they shall specifically take into consideration the ownership structure, any significant contractual or charter links for the

purpose of Article 2359, paragraph 1, no. 3) or Article 2497-*septies* of the Italian Civil Code, as well as special legal provisions that may be applied with regard to related parties;

b) identify the categories of transactions to which the rules of this Title apply, and also identify within them the material related party transactions so as to include at least those envisaged in Annex 3I;

c) for the purpose of the procedures, identify the requirements of independence of directors or members, justifying their choice also in light of the requirements provided for by Article 148, paragraph 3, of the Consolidated Law on Finance, by corporate governance codes promoted by regulated markets or by industry associations, and by any regulation applicable by virtue of the company's field of activity;

d) define the procedures pursuant to which related party transactions are instructed and approved, specifying the rules for transactions to be entered into through subsidiaries;

e) specify the information and the documentation to be provided to the independent directors or members who state their opinions on related party transactions, and to the board of directors and board of auditors both before the resolution and during and after its execution;

f) establish the procedures and the timing for the provision of the information and the documentation set forth in letter *e*).

2. Resolutions on procedures and their amendments are approved subject to the justified favourable opinion of a committee, which may be set up on an *ad-hoc* basis, entirely comprised of independent directors. If there are not at least three independent directors, the resolutions are approved subject to the justified favourable opinion of the independent directors that may be present or subject to the opinion of an independent adviser or, for two-tier board companies, subject to the opinion of a committee, which may be set up on an *ad-hoc* basis, entirely comprised of independent members of the supervisory board pursuant to paragraph 1, letter *c*).

3. The procedures provided for by paragraph 1 shall ensure coordination with the procedures for financial information set forth in Article 154-*bis* of the Consolidation Law on Finance.

4. In defining the procedures, the boards of directors and the management boards shall identify which rules require charter amendments and prepare the proposals to submit to the shareholder meeting pursuant to paragraph 2.

5. The board of auditors shall oversee that the procedures adopted by the company are consistent with the general principles set forth in this Title and that the said procedures are complied with. The board of auditors shall also report on the results of its oversight to the shareholder meeting pursuant to Article 2429, paragraph 2, of the Italian Civil Code, or to Article 153 of the Consolidated Law on Finance.

6. The procedures and their amendments are published without delay on the company's website, without prejudice to the obligation to disseminate, also by reference to the same website, in the annual directors' report pursuant to Article 2391-*bis* of the Italian Civil Code. The opinion required under paragraph 2 is published according to the same terms and procedures.

7. The entity controlling the company and the other parties indicated in Article 114, paragraph 5, of the Consolidation Law on Finance, which are related parties of a company, shall provide the necessary information to the latter in order to ensure that both related parties and transactions involving related parties are properly identified.

Article x.3

Public disclosure of related party transactions

1. In the event of material related party transactions, also when entered into by Italian or foreign subsidiaries, the companies shall issue a circular drawn up according to Annex 3B.

2. The companies shall also prepare the circular mentioned under paragraph 1 if during the year they conclude with the same related party, or with parties related both to the latter and to the same companies, transactions that, although not material if individually taken, exceed the materiality thresholds set forth in Annex 3I when taken together. For the purpose of this paragraph, transactions carried out by Italian or foreign subsidiaries are considered, while small transactions excluded pursuant to Article x.9, paragraph 1, are not considered.

3. Without prejudice to Article 114, paragraphs 1 and 6, of the Consolidated Law on Finance, the circular mentioned under paragraph 1 shall be made available to the public at the registered office and according to Article 113-*ter*, paragraph 3, of the Consolidated Law on Finance within five days from the approval of the transaction by the competent body or, if the competent body resolves to

present a contractual proposal, from the moment when the contract (being it preliminary or final) is closed according to the applicable law. In the cases of shareholder meeting competence or authorisation, the same circular is made available within five days from the approval of the proposal to be submitted to the shareholder meeting.

4. Where the materiality threshold is crossed by a number of transactions with the same related party or with parties related to it pursuant to paragraph 2, the circular is made available to the public within ten days from the approval of the transaction or from the closing of the contract involving the crossing of the materiality thresholds and shall contain information, also on an aggregated basis for homogeneous transactions, on all of the transactions concluded until that time during the year with the same related party, except for small transactions eventually excluded pursuant to Article x.9, paragraph 1. If the transactions involving the crossing of the materiality thresholds of Annex 3I are performed by subsidiaries, the circular is made available to the public within ten days from the time when the company obliged to prepare it is informed of the transaction's approval or of the completion of the contract involving the crossing of the materiality thresholds. In conformity with Article 114, paragraph 2, of the Consolidated Law on Finance, the company obliged to prepare the circular shall properly instruct its subsidiaries in order to obtain the information it needs to prepare the document; the subsidiary shall promptly communicate the said information.

5. The companies shall make any opinion of independent directors or members and of independent advisers available to the public in the form of an annex to the circular stated in paragraph 1 or on the website. With reference to the opinions of independent advisers, the companies may publish only the elements indicated in Annex 3B, if a justification for the decision not to publish all the information is provided.

6. If the material related party transaction is also a significant transaction pursuant to Articles 70, paragraphs 4 and 5, and 71, the companies can publish a single circular containing the information required by paragraph 1 and by the other relevant provisions. In this case, the circular is made available to the public, at the registered office and according to Article 113-*ter*, paragraph 3, of the Consolidated Law on Finance, within the shortest deadline among those provided for by the applicable rules. Companies publishing the information pursuant to this paragraph in separate documents may incorporate by reference the information already published.

7. Companies issuing listed shares and having Italy as the home member state pursuant to Article 154-*ter* of the Consolidated Law on Finance shall provide analytical information in the half-year financial reports and in the annual directors' reports:

a) on each material related party transaction identified pursuant to Article x.2, paragraph 1, letter *b*), concluded during the relevant period;
b) on any other individual related party transaction concluded during the relevant period which has significantly influenced the balance sheet or the periodic results of the issuer;
c) on any change or development in the related party transactions described in the previous reports which could have a significant effect on the balance sheet or the periodic results of the company.

8. The information about material related party transactions pursuant to paragraph 7 may be incorporated by reference to the circulars published pursuant to paragraph 1, giving any significant updates.

Article x.4

Procedures for related party transactions for traditional or one-tier board companies

1. Without prejudice to the provisions of Article x.5 and to the possibility of applying the procedures therein stated to all or to some of the non-material related party transactions, in order to ensure the transparency and the substantial fairness of related party transactions, the procedures shall at least require:
a) that the transaction be approved subject to the justified, non-binding opinion of a committee, which may be set up on an *ad-hoc* basis, comprised of non-related independent directors;
b) that independent directors mentioned under letter a) have the power to seek the assistance, at the company's expense, of one or more independent advisers of their choice who do not have – both directly and indirectly – any interests in the transaction;
c) an in-depth and documented examination of the grounds for the transaction and the advisability and the substantial fairness of its conditions in the preparatory inquiry and at the resolution stage. If the transaction is entered into at market conditions, the documentation contains objective elements supporting such a conclusion;
d) that the body responsible for approving the transaction and the independent directors mentioned under letter a) be provided with complete and adequate information well in advance of the approval;

e) if there are not at least three non-related independent directors, specific measures ensuring the substantial fairness of the transaction. A suitable measure for this purpose is the provision of a justified non-binding opinion either by the non-related independent directors, if present, or by the board of auditors or by an independent adviser;
f) complete information to the board of directors and to the board of auditors on the progress of the transactions at least on a quarterly basis;
g) that the information required in Annex 3B regarding the transactions approved notwithstanding a negative opinion pursuant to letters a) or e) be disclosed to the public according to Article 113-*ter*, paragraph 3, of the Consolidated Law on Finance at least on a quarterly basis.

Article x.5

Procedures for material related party transactions for traditional or one-tier board companies

1. Without prejudice to the provisions of Article x.7, as regards material related party transactions, in addition to the provisions of Article x.4, paragraph 1, letters b), c), d) and f), the procedures shall require at least:

a) that the decision-making power rests only with the board of directors;
b) the participation of the non-related independent directors or of some of them in the negotiations and in the preparatory inquiry, possibly organised in a committee, which may be set up on an *ad-hoc* basis, in any case with the right to assign the aforesaid tasks to one or more of them. Participation in the negotiations and in the preparatory inquiry by the independent directors who have been assigned these tasks in any case entails receiving a complete and timely flow of information and the right to request information and put forward observations to the delegated bodies and to the persons in charge of the negotiations or the preparatory inquiry; furthermore, the same independent directors have the right to personally take part in the negotiations;
c) that the board of directors approves the transaction subject to the justified favourable opinion of a committee, which may be set up on an *ad-hoc* basis, entirely comprised of non-related independent directors. Alternatively, other procedures for approving the transaction may be envisaged that grant a key role to the majority of the non-related independent directors;
d) if there are not at least three non-related independent directors, specific measures ensuring the substantial fairness of the transaction. A suitable measure for this purpose is either the provision of a justified favourable opinion by the non-related independent directors, if present, or the provision

of a justified opinion by the board of auditors or by an independent expert or, in conformity with the charter, the closing of the transaction subject to the shareholder meeting authorisation pursuant to Article 2364, paragraph 1, no. 5), of the Italian Civil Code.

2. Without prejudice to the necessary charter provisions according to the law, the procedures may require, if a justification is given for the choice, that the board of directors may approve the material related party transactions notwithstanding the opposite advice of the independent directors, provided that these transactions are authorised, pursuant to Article 2364, paragraph 1, no. 5), of the Italian Civil Code, by the shareholder meeting that adopts the resolution in compliance with the provisions of Article x.7, paragraph 3.

3. If the companies avail themselves of the possibility indicated under paragraph 2, the board of directors shall provide an analytical and adequate justification for the reasons why it does not share the opposite advice of the independent directors in the circular pursuant to Article x.3, paragraph 1.

Article x.5-II

Procedures for related party transactions in two-tier board companies with independent members in the management board

1. In two-tier board companies that have at least one independent member in the management board, the provisions of Articles x.4 and x.5 referring to the board of directors and its members shall apply to the management board and its members, while the provisions referring to the board of auditors shall apply to the supervisory board. Article x.4, paragraph 1, letter e), Article x.5, paragraph 1, letter d) and Article x.5, paragraph 2, do not apply.

2. For non-material related party transactions, the procedures may require that the preliminary, non-binding opinion by the independent members set forth under Article x.4 be released by the supervisory board or by a committee, which may be set up on an *ad-hoc* basis, within the supervisory board and entirely comprised of non-related independent members.

3. For material related party transactions, the procedures may envisage – justifying this choice and without prejudice to the charter provisions that might be necessary pursuant to the law – that the

management board may approve those transactions notwithstanding the opposite advice of the independent members of the management board, provided that:

a) without prejudice to the effectiveness of the said transactions, they are submitted to the advisory vote of the first ordinary shareholder meeting. Within the day following that of the shareholder meeting, the companies make available to the public, according to Article 113-*ter*, paragraph 3 of the Consolidated Law on Finance, the information on the voting results. Votes cast by the shareholders other than the related parties involved in the transaction and other than parties related to both the latter and the companies themselves are given separate evidence;

or, alternatively;

b) the supervisory board or a committee, which may be set up on an *ad-hoc* basis, within the supervisory board and entirely comprised of non-related independent members expresses a justified favourable opinion on the transaction.

4. If the supervisory board is in charge of the resolution on related party transactions pursuant to Article 2409-*terdecies*, letter *f-bis*), of the Italian Civil Code, as regards the negotiations, the preparatory inquiry and the approval by the management board of the proposals to be submitted to the supervisory board, the procedures shall envisage a regulation compliant with Articles x.4.1, letters *c), d)* and *f)* and x.5.1, letters *a)* and *b).* With regard to the supervisory board's resolution stage, the procedures shall envisage at least:
a) that complete and adequate information be provided to the supervisory board well in advance of its decision, without prejudice to the power of its members to ask, either individually or collectively, the management board members for information;
b) that the supervisory board approves the transaction subject to the justified favourable opinion of an internal committee, which may be set up on an *ad-hoc* basis, entirely comprised of non-related independent members. In alternative, other procedures for approving the transaction may be envisaged that grant a key role to the majority of the non-related independent members of the supervisory board. If a justification is given for this choice, the procedures may envisage that the supervisory board can approve the transaction notwithstanding the opposite advice of its non-related independent members or of the internal committee provided that the transaction is submitted to the advisory vote of the first ordinary shareholder meeting. This submission is without prejudice to the transaction's effectiveness and to the charter amendments that may be necessary pursuant to the

law. Within the day following that of the shareholder meeting, the companies make available to the public, according to Article 113-*ter*, paragraph 3, of the Consolidated Law on Finance, the information on the voting results. Votes cast by shareholders other than the related parties involved in the transaction or parties related to both the latter and the companies themselves are given separate evidence;

c) that independent members mentioned under letter *b)* have the power to seek the assistance, at the company's expense, of one or more independent advisers of their choice that do not have – both directly and indirectly – interests in the transaction;

d) that if the supervisory board members have an interest, either personally or on behalf of third parties, in the transaction, they must inform the other board members, specifying the nature, terms, origin and scope of the interest;

e) that the resolution of the supervisory board gives adequate justification for the rationale and the cost-effectiveness of the transaction for the company.

5. The body convening the shareholder meeting indicated in paragraphs 3, letter *a)*, and 4, letter *b)*, shall prepare a report providing an analytical and adequate justification for the reasons why it does not share the opposite advice of the independent members. The said report is made available to the public at least 21 days before the date set for the shareholder meeting at the registered office and according to Article 113-*ter*, paragraph 3, of the Consolidated Law on Finance. The report may be included in the circular described under Article x.3, paragraph 1.

Article x.5-III

Procedures for related party transactions in two-tier board companies without independent members in the management board

1. The provisions of this article shall apply when there are no unrelated members of the management board. The procedures may also comply with this article when there are not at least three non-related independent members of the management board.

2. For non-material related party transactions, the procedures shall envisage:

a) that, without prejudice to the charter amendments that may be necessary pursuant to the law, the transaction be approved subject to the non-binding justified opinion of the supervisory board or of a

committee, which may be set up on an *ad-hoc* basis, within the board and entirely comprised of non-related independent members of the supervisory board;

b) that the independent supervisory board members mentioned under letter a) have the power to seek the assistance, at the company's expense, of one or more independent advisers of their choice that do not have – both directly and indirectly – interests in the transaction;

c) an in-depth and documented examination of the grounds for the transaction and the advisability and the substantial fairness of its conditions by the management board in the preparatory inquiry and at the resolution stage. If the transaction is entered into at market conditions, the documentation contains objective elements supporting such a conclusion;

d) that complete and adequate information is provided to the management board and to the supervisory board well in advance of their respective resolutions;

e) that if the supervisory board members have an interest, either personally or on behalf of third parties, in the transaction, they must inform the other board members, specifying the nature, terms, origin and scope of the interest;

f) complete information to the management board on the progress of the transactions at least on a quarterly basis.

3. For material related party transactions, the procedures may envisage, in addition to what is stated in paragraph 2, that the management board may approve a transaction notwithstanding the opposite advice of the supervisory board or of the committee indicated under paragraph 2, letter a), provided that such transaction is submitted to the advisory vote of the first ordinary shareholder meeting. The submission is without prejudice to the transaction's effectiveness and to the charter amendments that might be necessary pursuant to the law. Within the day following that of the shareholder meeting, the companies make available to the public, according to Article 113-*ter*, paragraph 3, of the Consolidated Law on Finance, the information on the voting results. Votes cast by shareholders other than the related parties involved in the transaction and other than parties related to both the latter and the companies themselves are given separate evidence.

4. If the supervisory board is in charge of the resolution on related party transactions pursuant to Article 2409-*terdecies*, letter *f-bis*), of the Italian Civil Code, the procedures shall envisage at least rules compliant with the provisions of paragraph 2, letters *c), d)* and *f)* with regard to the management board. With regard to the supervisory board's resolution stage, the procedures shall envisage at least rules compliant with the provisions of Article x.5-II, paragraph 4, concerning said stage.

5. Article 5-II, paragraph 5, applies in the cases provided for by paragraphs 3 and 4.

Article x.6

Regulation for specific types of companies

1. Without prejudice to the provisions set forth in Article x.3, small listed companies, recently-listed companies and issuers of shares widely distributed among the public may, by way of exemption from Article x.5 or Article x.5-III, paragraph 3, apply to material related party transactions a procedure established in compliance with Article x.4 or Article x.5-III, paragraph 2. If the supervisory board is in charge of the resolution on related party transactions pursuant to Article 2409-*terdecies*, letter f-*bis*), of the Italian Civil Code, the above-mentioned companies may, by way of derogation of Articles x.5-II, paragraph 4, letter *b)*, and x.5-III, paragraph 4, envisage a non-binding justified opinion of a committee, which may be set up on an *ad-hoc* basis, within the supervisory board and entirely comprised of non-related independent members. Listed companies controlled, even indirectly, by an Italian or foreign company with shares listed in regulated markets cannot avail themselves of the present paragraph.

2. Small listed companies are companies for which neither the assets of the balance sheet nor revenues, as seen on the latest approved consolidated financial statements, exceed € 500 million.

3. Smaller companies can no longer be qualified as such if they do not jointly meet the requirements set out under paragraph 2 for two consecutive financial years. In this case, the procedures will be brought in line with the provisions derogated from according to paragraph 1 within ninety days from the first renewal of the board of directors or of the management board after the financial year in which the company can no longer qualify as a smaller company ends.

4. For the purposes of paragraph 1, companies are deemed “recently-listed” from the first day of negotiations to the date on which the financial statements for the second financial year subsequent that of listing are approved. After this period, companies are classified as small listed companies if neither the assets of the balance sheet nor revenues, as seen on the latest approved consolidated financial statements, exceed € 500 million. Companies resulting from the merger or spin-off of one or more listed companies that are not recently-listed may not be classified as recently-listed.

Article x.7

Transactions within the scope of authority of shareholder meeting

1. When by law or charter provisions a non-material related party transaction falls within the scope of authority of the shareholder meeting or must be authorised by it, the procedures shall envisage rules compliant with the provisions of Article x.4, x.5-II, paragraphs 1 and 2, and x.5-III, paragraphs 1 and 2, during the preparatory inquiry and the approval of the proposal to be submitted to the shareholder meeting.

2. When by law or charter provisions, a material related party transaction falls within the scope of authority of the shareholder meeting or must be authorised by it, the procedures may comply with the provisions of Article x.5 or, alternatively, with the provisions of Article x.4 during the negotiations, the preparatory inquiry and the approval of the proposal to be submitted to the shareholder meeting.

3. The procedures that, pursuant to paragraph 2, identify rules compliant with the provisions of Article x.5 may allow that the proposal to be submitted to the shareholder meeting is approved notwithstanding the opposite advice of the independent directors. In that case, without prejudice to the provisions of Articles 2368, paragraph 3, and 2373 of the Italian Civil Code and to the charter provisions that may be necessary pursuant to the law, the procedures allow the transaction to be concluded only if there is the favourable vote of the majority of shareholders other than the related parties involved in the transaction and other than parties related both to the involved related parties and to the companies. The companies may require that the said majority represents a given percentage of the share capital. Article x.5, paragraph 2, and the provisions of Articles x.5-II and x.5-III regarding the shareholder meeting do not apply. The same rules are contained, for the cases of a negative opinion of the independent directors, in the procedures that, pursuant to paragraph 2, comply with the provisions of Article x.4.

4. The companies shall make available to the public, at their registered offices and according to Article 113-*ter*, paragraph 3, of the Consolidated Law on Finance, the circular pursuant to Article x.3, paragraph 1, at least 21 days before the date set for the shareholder meeting called to adopt a resolution on a material related party transaction. If there are significant updates to the circular between the publication pursuant to Article x.3, paragraphs 3 and 4, and the deadline of 21 days

before the shareholder meeting, the companies shall make a new version of the document available to the public at their registered offices and according to Article 113-*ter*, paragraph 3, of the Consolidated Law on Finance. The companies may incorporate by reference the information already published.

5. If explicitly allowed by the charter, the procedures may require that in case of urgency, without prejudice to the provisions of Article x.3, if applicable, related party transactions be concluded by way of derogation to the provisions of paragraphs 1, 2 and 3, provided that the provisions of Article x.9, paragraph 4, letters *b)* and *c)*, are applied to the shareholder meeting convened to adopt the resolution. If the assessments of the board of auditors pursuant to Article x.9, paragraph 4, letter b), are negative, the shareholder meeting shall resolve with the procedures set forth under paragraph 3; otherwise, Article x.9, paragraph 4, letter *d)*, applies.

Article x.8

Framework resolutions

1. If, for specific categories of transactions, the procedures allow for the approval of a single framework resolution regarding a series of homogeneous transactions with the same related parties, these procedures shall envisage at least:

a) rules compliant with the provisions pursuant to Articles x.4, x.5, x.5-II and x.5-III, depending on the foreseeable consideration of the transactions considered as a whole to be performed in the reference period;

b) that the framework resolutions be valid no more than one year and that they refer to sufficiently defined transactions, indicating at least – if it can be determined – the consideration of the transactions to be entered into in the reference period and the justification for the envisaged conditions;

c) a complete disclosure on the execution of the framework resolutions to the board of directors at least on a quarterly basis.

2. The provisions of Article x.3 are applied to the framework resolution if the foreseeable amount of the transactions considered as a whole to be performed during the reference period is material pursuant to the same rule.

Article x. 9

Cases of exclusion

1. The procedures can define criteria for identifying small related party transactions to which the provisions of this Title do not apply, with the grounds for this choice indicated.

2. The provisions of this Title do not apply to the shareholder meeting resolutions pursuant to Article 2389, paragraph 1 of the Italian Civil Code regarding the remuneration due to the members of the board of directors and of the executive committee.

3. By providing adequate justification, the procedures may totally or partially exclude from the application of the provisions of this Title, without prejudice to the provisions of Article x.3, paragraph 7, if applicable:
a) the share-based remuneration schemes approved by the shareholder meeting pursuant to Article 114-*bis* of the Consolidated Law on Finance and its executive transactions;
b) if explicitly allowed by the charter, the transactions that are neither atypical nor unusual and that are concluded at conditions equivalent to those of the market or at standard conditions. In case of derogation from the disclosure obligations provided for under Article x.3, paragraphs 1 to 6, without prejudice to the provisions of Article 114 of the Consolidated Law on Finance, the companies shall inform Consob about the counterparty, the subject and the price of the transactions, which would have otherwise been the subject of the disclosure obligations, by the deadline indicated in Article x.3, paragraph 3. The half-year financial report and the management report carry the same information in the form of a list of transactions concluded during the reference period. For issuers of widely distributed shares, the said information is contained in the annual directors' report with regard to the transactions concluded during the financial year.

4. In the cases in which the transaction does not fall within the scope of authority of the shareholder meeting and does not have to be authorised by it, the procedures can provide – if explicitly allowed by the charter – that in the case of urgency, without prejudice to the provisions of Article x.3, if applicable, the related party transactions be concluded by way of derogation to the provisions of Articles x.4, x.5-II and x.5-III, provided that:
a) these transactions are submitted to the advisory vote of the first ordinary shareholder meeting;

b) the body convening the shareholder meeting prepares a report containing an analytical and adequate justification for the reasons of urgency. The board of auditors or the supervisory board refers its assessments on the existence of the reasons of urgency to the shareholder meeting;
c) the report and assessments required under letter *b)* are made available to the public at least 21 days before the date set for the shareholder meeting at the registered office and according to Article 113-*ter*, paragraph 3, of the Consolidated Law on Finance. These documents may be contained in the circular described under Article x.3, paragraph 1.
d) within the day following that of the shareholder meeting, the companies make available to the public, according to Article 113-*ter*, paragraph 3, of the Consolidated Law on Finance, the information on the voting results. Votes cast by shareholders other than the related parties involved in the transaction and other than parties related to both the latter and the companies themselves are given separate evidence.

5. The provisions required for non-material related party transactions apply to material related party transactions to be carried out on the basis of instructions with aims of stability given by supervisory authorities, or by the parent company in compliance with instructions given by supervisory authorities in the interest of the group's stability. In any case, the provisions regarding related party transactions on which the supervisory board is called to adopt a resolution pursuant to Article 2409-*terdecies*, letter *f-bis*) do not apply. The regulation set forth under Article x.3 applies.

6. Without prejudice to the regulation set forth in Article x.3, if Article 136 of Italian Legislative Decree 385 of 1 September 1993 applies to related party transactions, in defining the procedures the companies do not apply the provisions set forth under Article x.4, paragraph 1, letters a), b), e) and g) or, for material related party transactions, the provisions set forth under Article x.5, paragraph 1, letters a), c) and d) and paragraphs 2 and 3 and the corresponding provisions envisaged for two-tier board companies set forth under Articles x.5-II and x.5-III.

Article x.10

Management and coordination activity, subsidiaries and associate companies

1. In related party transactions affected by management and coordination activity under Article 2497 of the Civil Code, the opinions required by Articles x.4, x.5, x.5-II and x.5-III must give a precise indication of the reasons and suitability of the transaction, if necessary also in light of the

overall result of the management and coordination activity or of transactions aimed at fully eliminating the damage caused by the single related party transaction.

2. The procedures may envisage that Article x.3, paragraphs 1, 2, 3, 4, 5, 7 and 8, and Articles x.4, x.5, x.7, x.5-II and x.5-III do not fully or partially apply to transactions with or between subsidiaries – both individually and jointly controlled – provided that no other related parties of the company have an interest, deemed as significant by the procedures adopted according to Article x.2, in the subsidiary which is the transaction's counterparty. Interests deriving from the mere sharing between the company and the subsidiary of one or more directors or key executives are not considered as significant.

3. The procedures may require that Article x.3, paragraphs 1, 2, 3, 4, 5, 7 and 8, and Articles x.4, x.5, x.7, x.5-II and x.5-III do not fully or partially apply to transactions with associate companies, provided that, in addition to the condition given under paragraph 2, these transactions are neither atypical nor unusual and are concluded at conditions equivalent to market or at standard conditions.

Article x.11

Transitional and final provisions

1. Companies shall adopt the rules set forth in this Title by the date of the first shareholder meeting following the 90th day from when this regulation enters into force, convened pursuant to Articles 2364, paragraph 1 and 2364-*bis*, paragraph 2, of the Italian Civil Code. If, pursuant to Article x.2, paragraph 4, the board of directors has determined rules which require charter amendments and the competent shareholder meeting does not approve its proposals, the term for adopting the procedure is delayed by 60 days.

2. Companies may postpone the effectiveness of the procedures adopted no longer than 30 days from the resolution to adopt. However, the procedures may require – provided that such a choice is justified – that the provisions issued to implement the provisions pursuant to Articles x.5, x.5-II and x.5-III regarding material related party transactions or transactions resolved by the supervisory board pursuant to Article 2409-*terdecies*, letter *f-bis*), of the Italian Civil Code take effect when the board of directors or the supervisory board and/or the management board is renewed.

3. Companies shall apply the provisions of Article x.3 starting from the 90th day after this Title enters into force. For this purpose, they duly identify the categories of related parties and related party transactions in compliance with Article x.2, paragraph 1, letter a). The companies may postpone the application of the provisions of Article x.3, paragraphs 2 and 4, to start from the 180th day after this Title enters into force.

4. Without prejudice to the publication required by Article x.2, paragraph 6, the companies shall provide the justifications required by paragraph 2 of this article and also by Articles x.5, paragraph 2, x.7, paragraph 3, x.9, paragraphs 1 and 3, and x.5-II, paragraphs 3 and 4, letter b), with a press release published according to Article 113-*ter*, paragraph 3, of the Consolidated Law on Finance.

* * *

Companies subject to management and coordination activity

It is proposed to amend Article 37 of the Market Regulation that, as provided by the authority set forth in Article 62, paragraph 3-*bis*, letter b), of the Consolidated Law on Finance[1], envisages the circumstances forbidding the listing of shares issued by subsidiaries subject to management and coordination activity by other companies, as follows:

Article 37 of the Market Regulation

Inhibitory conditions to the listing of shares of subsidiary companies subject to the management and coordination activity by another company

1. The shares of subsidiaries subject to management and coordination by another company may not be admitted to trading on an Italian regulated market where the subsidiaries:

a) .....

b) .....

c) .....

[1] According to Article 62, paragraph 3-bis, letter b), of the Consolidated Law on Finance: *"Consob establishes under its own regulations:*
.....b) the conditions under which the shares in subsidiary companies subject to management and coordination activity by other companies cannot be listed; …".

d) ~~do not have sufficient numbers of independent directors to guarantee significant weight being given to their opinion in decisions of the board of directors. For the evaluation of independence and adequacy in number terms of the aforementioned directors, reference shall be made to the general criteria established by the management companies of regulated markets, taking into account best practices as governed by codes of conduct prepared by said companies or by industrial associations.~~ do not establish an audit committee comprised of independent directors[2]. Where established, the other committees recommended by corporate governance codes promoted by regulated markets or by industry associations shall also be entirely comprised of independent directors. As regards subsidiaries subject to management and coordination activity by another Italian or foreign company listed in regulated markets, a board of directors comprising a majority of independent directors is also required. For the purposes of this letter d), the directors of the company or entity that exercises management and coordination activity or the directors of its listed subsidiaries cannot be deemed as independent directors of the relevant company. As regards two-tier board companies, an audit committee established within the supervisory board is required and must meet the following requirements: i) at least one member is elected by the minority, if present; ii) all committee members meet the independence requirements established for the members of the supervisory board by any regulation applicable by virtue of the company's field of activity or by corporate governance codes promoted by regulated markets or industry associations to which the company has stated to comply with, pursuant to Article 123-*bis* of the Consolidated Law on Finance.

Article 51 of the Market Regulation

Transitional and final provisions

.....

6. The subsidiaries subject to the management and coordination activity by another company shall adapt to the provisions contained in Article 37, paragraph 1, letter d), within [thirty days] from the first shareholder meeting convened to appoint the board of directors or the supervisory board after […..to be defined…..].

[2]A definition of independent directors the same as that proposed in Article 2 of the Issuers Regulation will also be added to the Market Regulation.

Annex 3I

IDENTIFICATION OF MATERIAL RELATED PARTY TRANSACTIONS

1. The internal procedures shall establish quantitative criteria to identify "material related party transactions" in order to include at least the following categories of transactions.

1.1. Transactions in which at least one of the following indices of materiality, applicable depending on the specific transaction, is higher than 5%:

a) Consideration index*:* is the ratio between the consideration of the transaction and the shareholders' equity taken from the most recent balance sheet published (consolidated, if drawn up) by the company or, for listed companies, if higher, the average capitalisation of the company's shares in the 12 months prior to commencement of the negotiation or in the shorter listing period.

If the economic conditions of the transaction have been established, the consideration of the transaction is:

i) for cash components, the amount paid to/by the contractual counterparty;
ii) for the components represented by financial instruments, the fair value calculated, at the date of the transaction, according to the international accounting standards adopted with Regulation (EC) No. 1606/2002;
iii) for the loan or granting of guarantees transactions, the maximum amount that can be disbursed.

If the economic conditions of the transaction depend all or part on amounts that are not yet known, the consideration of the transaction is the maximum value receivable or payable under the agreement. If a maximum value is not established and none of the other indices of materiality can be calculated, the transaction is considered material.

b) Assets index*:* is the ratio between the total assets of the entity which is the subject of the transaction and the total assets of the company. The data to be used must be taken from the most recent balance sheet published (consolidated, if drawn up) by the company; if possible, similar data must be used for determining the total assets of the entity or business branch subject of the transaction.

As regards transactions on shares of companies which can modify consolidated accounts, the value of the numerator is the total assets of the investee company, regardless of the percentage of capital subject to the transaction.

As regards transactions on shares of companies that cannot modify consolidated accounts, the value of the numerator is:

i) in case of acquisitions of shares, the consideration of the transaction plus the liabilities of the company acquired that may be taken on by the buyer;
ii) in case of sales of shares, the price of the assets sold.

For transactions to acquire or sell other assets (other than the acquisition of shares), the value of the numerator is:

i) in case of acquisitions, the higher between the price and the book value that will be attributed to the asset;
ii) in case of sales, the book value of the asset.

c) Liabilities index: is the ratio between the total liabilities of the entity which is the subject of the transaction and the total assets of the company. The data to be used must be taken from the most recent balance sheet published (consolidated, if drawn up) by the company; if possible, similar data must be used for determining the total liabilities of the entity or business branch subject of the transaction.

d) Costs and revenues index: is the ratio between the price of goods and services purchases and sales and the company's revenues. The data to be used must be taken from the latest financial statements published (consolidated, if drawn up) of the company. Banks can use the gross income in place of the "company's revenues".

1.2. Transactions with the listed controlling company or with parties related to it that are also related to the company, where at least one of the indices of materiality set forth in paragraph 1.1. exceeds 1%, or 2.5% for small listed companies pursuant to Article x.6.

2. Without prejudice to the quantitative criteria set forth in paragraph 1, the companies shall also establish qualitative criteria to identify material related party transactions, at least considering the related party transactions regarding intangible assets (e.g. trademarks, patents).

3. If the identification of a transaction as "material" according to the indices set forth under paragraph 1 turn out to be clearly unjustified in consideration of specific circumstances, Consob may indicate alternative procedures to follow in calculating the indices upon the company's request. For this purpose, the company informs Consob of the essential characteristics of the transaction and the specific circumstances on which the request is based before commencing negotiations.

Annex 3B

It is proposed to change the model for the circular on material related party transactions contained in Annex 3B of the Issuers Regulation as hereinafter indicated:

Model No. 4: Circular on material related party transactions

In the cases in which the companies listed on regulated markets and the issuers of shares widely distributed among the public (hereinafter "the companies" as a whole) enter into material related party transactions pursuant to Article x.3 of the Issuers Regulation, the circular must contain at least the following information:

Contents

1. Instructions

Point out, in short, the risks associated with the potential conflicts of interest deriving from the related party transaction described in the circular.

2. Information about the transaction

2.1 Description of the characteristics, procedures, terms and conditions of the transaction.

2.2 Indication of the related parties with whom the transaction has been entered into, the nature of correlation and, if information about it has been given to the board of directors, the nature and scope of the interests of the related parties in the transaction.

2.3 Indication of the economic grounds and advisability of the transaction for the company.

2.4 Methods for determining the price of the transaction and assessments regarding its appropriateness with regard to the market values of similar transactions. If the transaction is entered into at market conditions, the documentation contains objective elements supporting such a conclusion. Indicate if there are any opinions of independent advisers supporting the appropriateness of the said price and their conclusions, specifying:

- the bodies and parties that commissioned the opinions and appointed the advisers;
- the assessments made for selecting the independent advisers. In particular, indicate any economic, equity and financial relations between the independent advisers and (i) the company, (ii) the parties controlling the company, its subsidiaries or parties subject to joint control with the company, (iii) the directors of (i) and (ii), taken into consideration for the purpose of qualifying the adviser as independent and the grounds for which said relations have been considered irrelevant in judging the independence. Information about any relations may be provided by attaching a declaration of these independent advisers;
- the terms and subject matter of the appointment given to the advisers;
- the names of the advisers appointed to assess the appropriateness of the price.

State that the opinions of the independent advisers or their essential elements are attached to the circular or published on the company's website, pursuant to Article x.3 of the Issuers Regulation. The essential elements of the opinions that in any case must be published are:

- record of any specific limits the advisers find in carrying out their assignment;
- record of any critical issues reported by the advisers regarding the specific transaction;
- indication of the assessment methods the advisers adopt to express themselves on the appropriateness of the price;

- indication of the relative importance given to each of the assessment methods adopted for the above-specified purposes;
- indication of the values resulting from each assessment method adopted;
- if on the basis of the assessment methods used an interval of values is found, indication of the criteria with which the final value of the price has been established;
- indication of the sources used for determining the significant data the processing concerns;
- indication of the major parameters (or variables) taken as reference for applying each method.

With regard to the elements of the advisers' opinions made public, confirm that said information has been published consistently with the content of the opinions to which reference is made and that, as far as the company is aware, there are no omissions that could make the published information imprecise or misleading.

2.5 An explanation of the economic, equity and financial effects of the transaction, providing at least the applicable indices of materiality. If the transaction exceeds the significance parameters determined by Consob pursuant to Articles 70 and 71 of the Issuers Regulation, point out that proforma financial information will be published in the document, as the case may be, provided for by paragraph 4 of Article 70 or by Article 71 and within the deadlines these rules envisage.

2.6 If the amount of the fees of the members of the board of directors of the company and/or of its subsidiaries is planned to change consequent to the transaction, detailed indications of the changes. If no changes are foreseen, in any case a declaration to this sense is to be included.

2.7 In the case of transactions where the related parties involved are the members of the board of directors or board of auditors as well as company's general managers and key executives, information about the financial instruments of the company held by the parties stated above and their interest in extraordinary transactions, as provided for by paragraphs 14.2 and 17.2 of Annex I to Regulation 809/2004/EC.

2.8 Indication of the bodies or directors that have conducted or taken part in the negotiations and/or instructed and/or approved the transaction, specifying their respective roles, with particular attention to the independent directors, if present. With reference to the resolutions approving the transaction, specify the names of those who have voted in favour or against the transaction, or abstained, specifying the reasons for any disagreements or abstentions. Pursuant to Article x.3 of the Issuers Regulation, indicate that any opinions of the independent directors are attached to the circular or published on the company's website.

2.9 If the materiality of the transaction derives from the aggregation, pursuant to Article x.3, paragraph 3, of the Issuers Regulation, of several transactions entered into during the financial year with the same related party, or with parties related both to the latter and to the company, the information indicated in the foregoing paragraphs must be provided with reference to all aforesaid transactions.

List of the consultation questions

Q1) Do you agree with our decision to confirm the IAS 24 definitions for “related party” and “transaction”?

Q2) Do you agree with our decision to delegate to the companies the definition of directors’ independence requirements?

Q3) Do you agree with the amendments to the materiality thresholds set forth in Annex 3I?

Q4) [to the companies] According to the new draft regulation, how many related party transactions, among those entered into in the last 12 months, would have been deemed as material?

Q5) Do you agree with the definitions of “atypical or unusual transactions” and “conditions equivalent to market or standard conditions”?

Q6) [to the companies] According to the definitions set forth in Article 2, paragraph 1, letters p) and q), how many related party transactions, among those entered into in the last 12 months, would have been deemed as atypical or unusual and/or concluded at “conditions equivalent to market or standard conditions”?

Q7) Do you agree with the amendments to the disclosure provisions regarding the timing and the contents of the circular?

Q8) Do you agree with the provisions of periodic disclosure of related party transactions (Article x.3, paragraph 7)?

Q9) Do you agree with the provisions regarding the general procedure for (non-material) related party transactions?

Q10) Do you agree with the amendments to the special procedure for material related party transactions?

Q11) Do you agree with the involvement of independent directors during the negotiation and in the approval of material related party transactions?

Q12) In case of a negative opinion of independent directors, do you agree with the possibility of recurring to shareholders for the authorization of the material transaction?

Q13) Do you agree with the amendments to the “regulation for specific types of companies”, and specifically with the definition of “small listed companies”?

Q14) Do you agree with the new provision which ensure a coordination with banks’ legislation and with the provisions established for companies subject to management and coordination activity?

Q15) Do you agree with the amendments to the provisions regarding transactions falling within the scope of authority of the shareholder meeting?

Q16) Do you agree with our decision to delegate to the companies the identification of the percentage of non-related shareholders necessary for the whitewash mechanisms to apply?

Q17) Do you agree with the amendments to the procedures envisaged for two-tier board companies?

Q18) Do you agree with the possibility to exclude, also partially, from the application of this regulation the transactions that are neither atypical nor unusual and that are concluded at conditions equivalent to those of the market or at standard conditions?

Q19) Do you agree with the decision to make the application of the exclusion for the transactions that are neither atypical nor unusual and concluded at conditions equivalent to those of the market or at standard conditions conditional to an *ad hoc* charter provision?

Q20) Do you agree with the disclosure obligation envisaged for material related party transactions that are neither atypical nor unusual and concluded at conditions equivalent to those of the market or at standard conditions (specifically, notification to Consob and synthetic description in the half-year or annual report)?

Q21) Do you think that the transactions subject to the possibility of exclusion under Article x.9, paragraph 3, letter b) are properly identified? If no, what amendments should eventually be needed?

Q22) Do you agree with the introduction of the possibility of exclusion for the related party transactions concluded in the case of urgency?

Q23) Do you agree with the decision to make the application of the exclusion for the transactions concluded in the case of urgency conditional to an *ad hoc* charter provision?

Q24) Do you agree with the provisions applying when a transaction concluded in the case of urgency has been excluded from the application of the fairness regulation?

Q25) Do you agree with the extension of the case of exclusion envisaged for transactions with subsidiaries?

Q26) Do you agree with the introduction of the case of exclusion for transactions with associates?

Q27) Do you agree with the possibility to exclude, also partially, from the application of this regulation the share-based remuneration schemes approved by the shareholder meeting? And do you agree with the exclusion established for shareholder meeting resolutions regarding the remuneration due to directors and members of the executive committee?

Q28) Do you agree with the amendments to Article 37 of the Market Regulation regarding the listing requirements for companies subject to management and coordination activity?

Q29) Do you agree with the transitional and final provisions envisaged for the disclosure and fairness regimes?

Q30) Do you agree with the transparency regime set forth in Article x.11, paragraph 4?