CONSOB *POSITION PAPER* ON THE CAPITAL INCREASES WITH SIGNIFICANT DILUTIVE EFFECT*

19 April 2010

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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or on-line via SIPE – Integrated System for External Users

Comments should reach us by 3 June 2010.

* This translation 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 Italian text.

Contents

1. Foreword

In 2009, some issuers whose stock is traded over markets managed and organised by Borsa Italiana S.p.A. ("Borsa Italiana") carried out capital increase operations with similar characteristics, with the purpose, in most cases, of obtaining strategic financial resources to safeguard going concerns. The shared characteristics of these operations was a high ratio between the number of shares issued and the number of shares outstanding, with the purpose of maximising the value of the discount for underwriters relative to the value of shares outstanding ("capital increases with significant dilutive effect").

This document analyses capital increases with significant dilutive effect, highlighting their peculiarities in light of the critical issues noted with respect to the pattern of prices and volumes traded during the period of the offer of the shareholders rights issue (**paragraph 2**). The document also describes the institutional activities carried out by Consob – also in collaboration with the industry – to deal with the issues noted.

Consob moved on two fronts. On one hand, it performed the usual supervisory activities on brokers' operations (**paragraph 3**). On the other hand, in collaboration with the industry, it evaluated possible structural solutions, determining that the most appropriate solution is a change in the operating procedures for the management of capital increases, which would entail the delivery of the shares in one or more delivery windows during the offer period (**paragraph 5**). For a better understanding of the proposed solution, considering that the aforesaid solution is based on a more general plan to change the operating procedures for managing capital increases, the essential points of said plan need to be described (**paragraph 4**). **Paragraph 6** provides an analysis of the regulatory implications of the proposed solution. **Paragraph 7** provides the conclusions.

2. Description of the phenomenon

During the past year, several issuers made use of the capital market, with the stated goal of obtaining new financial resources, in the form of risk capital, mostly to safeguard going concerns.

The aforesaid operations were carried out in the context of a problematic market, both with reference to the primary market, where the possibility of obtaining risk capital, by definition a "scarce resource", was further reduced by the effects of the ongoing economic downturn, and with reference to the greater volatility that characterised trading on secondary markets.

In view of the market situation, issuers that were able to obtain new capital sought to use different levers in order to "entice" their own shareholders to participate in the rights issues. Some of them, in particular, carried out shareholders rights offerings, characterised by sizable quantities of shares to be issued with respect to the number of outstanding shares, with the goal of maximising the value of the discount for potential underwriters relative to the market value of the outstanding shares. The consequence was the dilution of the capital into a very high number of shares, obviously characterised by a correspondingly lower reference price.

Operations with the aforesaid characteristics were carried out by Seat Pagine Gialle S.p.A. (“SEAT-PG”), Pirelli RE S.p.A. (“PIRELLI RE”), Tiscali S.p.A. (“TISCALI”) and Banca Italease S.p.A. (“BANCA ITALEASE”). With reference to the respective “offer periods” (or “subscription periods”), these capital increases exhibit certain common features, which highlight some aspects that are worthy of attention.

First of all, in comparison with the last official price of the *cum* shares (Option right), following the start of the operations, the prices initially showed an extremely positive trend before subsequently realigning with the levels before the offer periods.

Moreover, the traded quantities were extremely sizeable and, in particular, in the final days of the subscription period, already appeared to be correlated to the quantities of the shares involved in the capital increases, rather than to the outstanding shares.

The aforesaid share price pattern, in fact, determined a misalignment between the price of the shares and the price of the option rights (taking into account, clearly, the conversion ratios and subscription prices), which remained substantially in line with the prices of the shares before the offer periods.

The anomalies in the pattern of prices and of the traded quantities had different intensity, because: a) of the relationship between the quantity of shares to be issued and the quantity of shares outstanding (hereafter, “conversion ratio”); b) of the existence of traded derivative financial instruments, having the shares themselves as the underlying assets.

In particular, with regard to Point a), the capital increases that provided a higher conversion ratio were characterised by a greater volatility of the share prices and, at the same time, by a greater misalignment between the prices of the shares and the prices of the rights.

Moreover, in relation to Point b), the capital increases carried out by issuers whose shares represented, during the same period, the underlying asset of derivative financial instruments, in particular stock options traded over the IDEM market, were characterised by mutual influence phenomena between the trading on the MTA and the trading on the IDEM, because of the elements summarised below.

1. The application of an adjustment coefficient K, defined by Borsa Italiana as a consequence of the changed composition of the issuer’s capital, both to the stock option exercise price and to the number of underlying shares, causes the aforesaid number to be linked to the number of shares to be issued, rather than to the number of outstanding shares;

2. The sizeable share price variations, recorded during the initial trading days of the offer periods, provided the opportunity to profitably exercise stock options of the call type, because they were deep in the money;

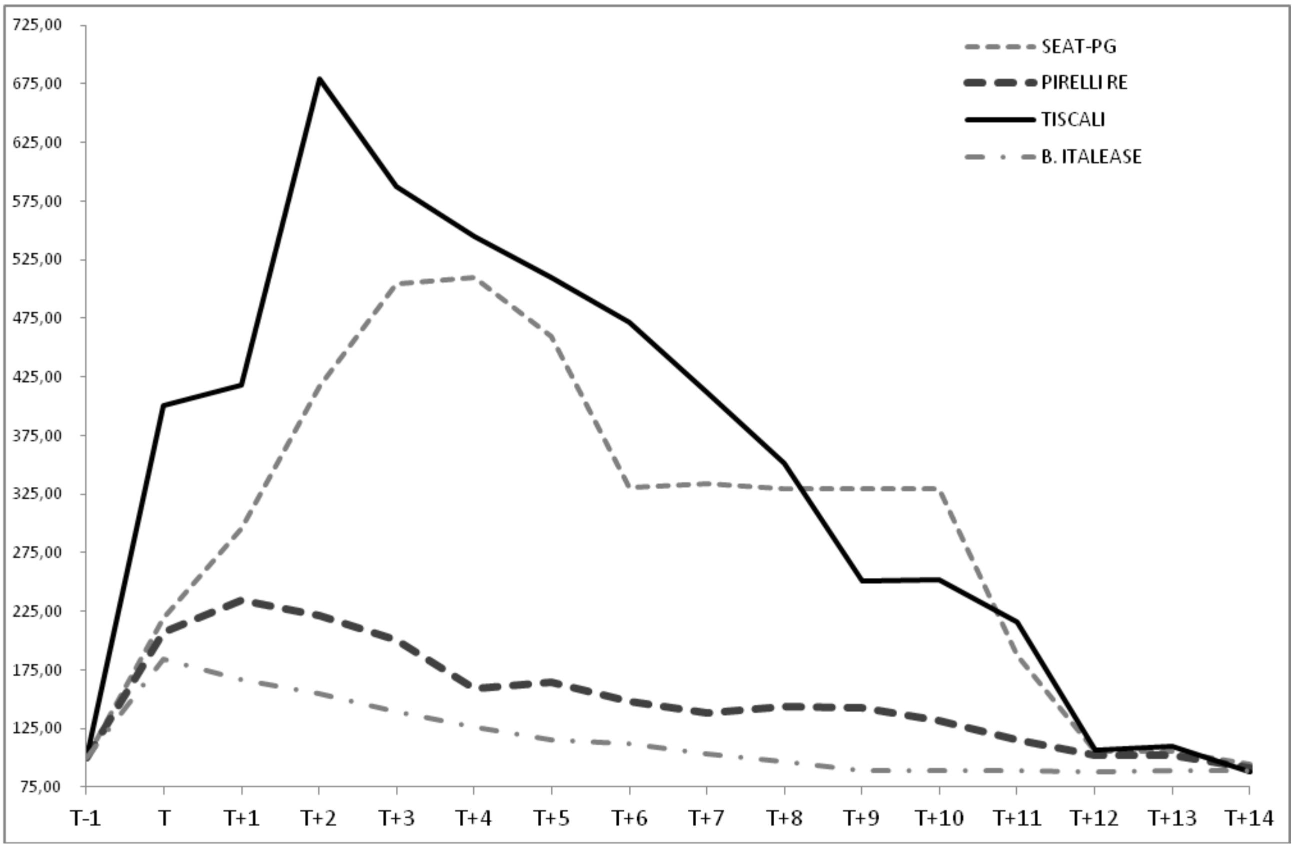
3. The early exercise of the call stock options determined, for the assignee operators, the need to acquire the greatest possible number of shares, through purchases on the MTA; this served to increase pressure on the purchase side, or in turn exercising any options of the same type that may have been in their possession, thus contributing to generating new assignments for other operators.

Table no. 1 summarises the aforesaid elements – i.e. the conversion ratio and simultaneous presence of quoted derivative financial instruments – with reference to the different capital increases analysed. **Chart no. 1**, instead, shows the pattern of share prices during the "Option Period".

Table no. 1

Issuing Company	Conversion ratio (new shares / outstanding shares)	Listed derivative instruments
SEAT-PG	45	YES
TISCALI	29	YES
PIRELLI RE	19	NO
BANCA ITALEASE	10	NO

Chart no. 1: Price pattern for the shares involved in the capital increase



The chart represents the official prices of the different shares in relation to the official price of the day before the start of the operation (T-1), set to 100, during the Option Period (from T to T+14).

As is readily apparent, the largest variations, relative to the last official price quoted in the period preceding the capital increases, were recorded with reference to TISCALI and SEAT-PG shares, i.e.

the shares whose issuers defined a higher conversion ratio, respectively about 29 and about 45; the same shares, moreover, represented the underlying asset of derivative financial instruments listed on the IDEM (stock options and futures).

Lastly, observing the price pattern it is evident that prices were nearly realigned to the levels before the operations began, starting from the thirteenth day of the Option Period (T+12), which coincided, among other matters, with the market operators' opportunity to sell a greater number of shares, presumably without risking their non-delivery upon settlement, because of the presumable delivery of the shares deriving from the capital increases by the same settlement date.[1]

In other words, since the shares deriving from the capital increase are generally made available to shareholders the first day following the Option Period (T+15), the operators who had exercised, or intended to exercise the related rights could have sold the shares corresponding to those rights, starting from the thirteenth day of the subscription period (T+12), because they counted on the presumable delivery of the shares deriving from the capital increases for the settlement of the aforesaid sales.

These sales, which were particularly sizeable in terms of volumes traded, had a considerable impact on the pattern of share prices, realigning them in fact to the levels recorded in the periods preceding the capital increases.

3. Supervisory activities

Although the phenomenon discussed above had different intensity in the various operations, Consob carried out broad supervisory activities, aimed at both analysing behaviour potentially deriving from market abuse and the detection of operations that may have been carried out in violation of the obligation to act with diligence and correctness in order to assure market integrity, also in consideration of provisions regarding short sales.

In detail, Consob carried out the daily monitoring both of market operations and of the punctual delivery of the shares upon settlement (so-called "fail"), focusing on the more active operators (Italian and foreign).

Based on the results of the oversight activity, the phenomenon of the overvaluing of the shares involved in the capital increases in question seems substantially to depend on a failure to understand the dilutive effects on share prices.

With regard, meanwhile, to the ongoing investigations into the compliance with the obligation to act diligently and correctly in order to assure market integrity, also in consideration of provisions pertaining to short sales at the time of the facts, these investigations cover the operations carried

[1] The sales in question are presumably short sales, i.e. without possession of the shares at the time of the order. This activity was expressly forbidden by the regulations enforced at the time of the events, based on current Consob resolutions.

out, as operators authorised to trade in Italian regulated markets, by 15 Italian brokers and by 15 foreign operators.

In this regard, it is represented that, as matters stand, Consob has initiated 9 different disciplinary proceedings.

4. Enhancement of efficiency of capital increases

In addition to the usual supervision of brokers' operations, Consob evaluated, in collaboration with the industry, possible structural solutions to the issues associated with capital increases with significant dilutive effect.

The better to understand the solution that would be pursued (see paragraph 5) in order structurally eliminate, or at least limit, the problems noted, it is necessary to describe the essential features of a plan to modify capital increases, which is currently in the functional specification definition phase. The aforesaid structural solution is proposed as an extension of the basic model described in this paragraph.

In 2008, Bank of Italy and Consob (the "Authorities") exercising the power provided by Article 82, paragraph 2 of Legislative Decree no. 58 of 24 February 1998, and subsequent amendments and additions (the "TUF") – sent to Monte Titoli S.p.A. ("Monte Titoli"), as authorised company, in accordance with Article 80 of the TUF, to the centralised management of financial instruments, a document containing certain guidelines (the "Guidelines") aimed at increasing the efficiency of the operating procedures for the management of capital increases.

The analysis contained in the Guidelines had been stimulated by the issues emerged in relation to the rights issue involving Gemina S.p.A. common stock ("GEMINA", Option Period from 12 to 30 November 2007), within which Consob authorised, in accordance with Article 94, Paragraph 7 of the TUF[2], the publication of a supplement to the prospectus on 30 November 2007, i.e. the final day of the Option Period.

The issues emerged in relation to the GEMINA rights issue derived from the concomitant circumstances that:

- according to the current operating procedures for the management of capital increases, the payment of the deriving shares, in relation to the subscriptions received by the centralised management company by the next to last day of the Option Period, is carried out between 11.00 a.m. and 12.00 a.m. of the last day of the Option Period;

2 "Any new significant fact, material error or inaccuracy pertaining to the information contained in the prospectus which may influence the evaluation of the financial products or which occurs or is noted between the time of approval of the prospectus and the time when the public offer is definitively closed shall be mentioned in a supplement to the prospectus."

- The publication of a supplement to the prospectus entitles investors, in accordance with Article 95-*bis*, Paragraph 2, of the TUF,[3] to withdraw the previous subscription.

To achieve the aforesaid objectives, the document identified three different evolution lines and, among them, it identified as the best option the one consisting of an obligation to settle cash in the gross payment system managed by the Bank of Italy (TARGET2 – Bank of Italy, "TARGET2"). Use of a gross payment system for cash settlement allows for an efficient "brokering" process by Monte Titoli, based on which Monte Titoli is able to: (i) check the accuracy of the payments received from the intermediaries , according to its own evidence; (ii) if they are accurate, transmit the received payments to the issuer and simultaneously assure the availability of the related securities to the intermediaries . At the same time, use of a gross payment system enhances the flexibility of Monte Titoli's operations.

Subsequently, Monte Titoli instituted an internal work group to evaluate the feasibility of the different broad possibilities of changes to the current model, which confirmed that the cash settlement option in the TARGET2 payment system is preferable.

Lastly, in May 2009, Monte Titoli set up a technical round table – which comprises, in addition to Monte Titoli and the Authorities, Borsa Italiana, some intermediaries and issuers and the related industry associations (ABI, ASSOSIM and ASSONIME) – which thoroughly examined all the technical aspects of a new model for the management of capital increases, harmonising the needs of all stakeholders. The Technical Round Table completed the preliminary phase of sharing the operating model.

The following are the main characteristics of the operating model for the management of capital increases, agreed by the Technical Round Table instituted by Monte Titoli:

1. Exercise the option rights by 3.30 p.m. of the last day of the Option Period;

2. As stated previously, cash settlement in the gross payment system managed by the Bank of Italy (TARGET2), between 3.30 p.m. and 4.30 p.m.;

3. Crediting the shares with block, between 4.20 p.m. and 4.30 p.m.;

4. Automatic unblocking of the shares after 6.00 p.m. and availability for the nightly settlement cycle of the following day.

The new operating model makes it possible to overcome the issues that arose in relation to the GEMINA capital increase. On one hand, there is no payment of the shares before the Option Period is closed; on the other hand, use of TARGET2 makes Monte Titoli's operations more flexible with reference, in particular, to the management of the "publication of a prospectus supplement" event. In fact, the new operating model enables to manage the publication of a prospectus supplement until

[3] "Investors who have already agreed to purchase or underwrite the financial products before the publication of a supplement have the right, exercisable within the date indicated in the supplement and in any case within no less than two working days after said publication, to withdraw their acceptance."

3.30 p.m. of the last day of the Option Period. In these circumstances, Monte Titoli will be able easily to suspend the payments and crediting of the shares throughout the period in which the investors are entitled to withdraw their acceptance (per Article 95-*bis*, paragraph 2, of the TUF).[4]

In relation to the new operating model for the management of capital increases, it becomes necessary to modify the prospectus. In particular, with regard to Point 1, relative to the "Period of validity of the Offer and subscription method", the following formulation could be suggested:

The period of validity of the Offer runs from xxxx to xxxx (Option Period).

The option rights, which will make it possible to underwrite the Shares, shall be exercised, or be foregone, in the Option Period through the authorised intermediaries participating in the centralised management system who shall accordingly instruct Monte Titoli no later than 3.30 p.m. on the final day of the Option Period. Therefore, each underwriter shall submit a subscription request in the manner and within the time his/her depositary intermediary will have notified, to assure compliance with the final deadline set out above.

This formulation reflects the circumstance that the new operating model, unlike the current one, provides for a final time (3.30 p.m.), valid for intermediaries participating in centralised management.

The provision of a final time (3.30 p.m.) for the exercise of option rights is a prerequisite for the subsequent phases – i.e. cash settlement (Point 2) and crediting of the shares (Point 3). With regard to Point 2, it is worth restating that use of a gross payment system for cash settlement enables Monte Titoli to oversee the capital increase operation in its entirety. This enables Monte Titoli to credit the shares without the issuer's explicit authorisation, as is the case today, which makes the process faster and, specifically, makes it possible to credit the shares from 4.20 p.m. to 4.30 p.m. (Point 3).

More specifically, Monte Titoli will debit the cash on the intermediaries ' accounts from 3.30 p.m. to 4.20 p.m. and, simultaneously with the crediting of the shares on the intermediaries ' accounts, Monte Titoli will credit the cash on the issuers' account, or on the account of the related collecting banks, from 4.20 p.m. to 4.30 p.m..

With regard to Point 3, some specific characteristics pertaining to the crediting of the shares are stressed. Firstly, all shares arising from the capital increase, for which the intermediaries raised the funds, are credited at a single moment.

Therefore, there is no longer a distinction between first and second term, based on which some investors receive the blocked securities the last day of the Option Period, whilst others receive them, with blocked availability, the following day. The securities are made available only with the

[4] In any case, there is still the possibility that – if the obligation to publish the supplement to prospectus "occurs or is taken over" near the end of the Option Period – the publication shall be made after the Option Period. The occurrence of this eventuality cannot be eliminated, because it is connected to the reception of the necessary authorisation to publish the supplement (Article 11, Paragraph 1, of Consob Regulations on issuers).

issuer's authorisation. As stated previously, in the new operating model there is no reason for the issuer's authorisation to be required.

Additionally, controlling shareholders are no longer capable of having the shares credited, without availability block, during the Option Period.

Lastly, with the new operating model (Point 4), the securities continue to be credited with availability block. However, the block is only technical in nature and in fact it automatically becomes void, immediately after 6.00 p.m., with the switch to the accounting date of the following day. In this way, the shares are available for the nightly settlement cycle of the following day.

5. The proposed solution

In relation to the problems noted within the scope of capital increases with significant dilutive effect, four possible structural solutions were analysed, in collaboration with the industry:

1. Reduction in the conversion ratio between new shares and old shares;
2. Outright elimination of the prohibition against short selling;
3. Changing the settlement procedures during the Option Period – i.e. temporary replacement of the three-day settlement with a settlement on a given day, subsequent to the end of the Option Period;
4. Change to the operating procedures for the management of capital increases, with daily delivery windows.

While **solution no. 1** (reduction of the conversion ratio between new shares and old shares) is the most effective solution because it reduces the potential demand for loaned securities, to cover short sales, in proportion to the reduction in the conversion ratio, it makes the capital increases of companies that have problems safeguarding going concerns more difficult.

Solution no. 2 was implemented with Consob resolution no. 17078 of 26 November 2009, which limited the prohibition of short sales to the shares of companies undergoing capital raises which were "resolved" as at 30 November 2009. Solution no. 2, by itself, does not enable the issues noted to be solved, given that the option of selling short, i.e. without having possession of the securities at the time of the order, does not exempt market operators from the obligations to deliver the shares within the set times and that, in the given conditions, short sellers would in any case not be able to fulfil share delivery obligations.

Solution no. 3 consists of the introduction, with specific reference to the Option Period, of an account period, at the expiration of which all transactions carried out during the Option Period would be settled; in other words, limited to the Option Period, market transactions would shift from the consolidated rolling settlement (three days), to the old account period, with settlement on a given day subsequent to the Option Period.

This solution is considered too costly and, at the same time, associated with high risks, because of the correspondingly long extension of the settlement interval.

The most effective solution seems to be a variation of **solution no. 4**. As stated, solution no. 4 entails a daily delivery of the shares. The proposed solution is a variation of solution no. 4, because it provides for multiple, and not necessarily daily, windows for the delivery of the shares.

The **proposed solution** consists of an extension of the basic model for the management of capital increases (described in the previous paragraph). In particular, the operating procedures for managing the single delivery window provided in the basic model are replicated in the various delivery windows which may be provided within the solution in question.

This solution would have the effect of rebalancing the ratio between new shares and outstanding shares, making the shares available to arbitragers, who, if the share price is overvalued relative to their theoretical value, in general could:

- Underwrite the capital increase;
- Sell the shares;
- 'Promptly' receive the shares; and, lastly,
- Deliver the sold shares.[5]

Following a meeting with Monte Titoli and Borsa Italiana, and thanks to the technical support provided by the competent departments of Monte Titoli, it was possible to formulate two detailed solutions (solution a and solution b), both compatible with the proposed solution. We recall that **T** represents the first day of trading of the shares ex right and of the rights themselves.

5.1 Solution a)

The minimal objective of the proposed solution is to guarantee the delivery of the securities – in addition to the last day of the Option Period (T+14), as provided in the basic model - also on **T+2**, with availability for the nightly net settlement cycle of T+3. This is because the delivery at T+2, with availability for the nightly net settlement cycle of T+3, enables those who sold at T to promptly fulfil the obligations for the delivery of the sold shares (three-day settlement interval).

On the other hand, the selection of T+2, within the minimal solution, depends on market rules and on international standards, which prescribe that the rights be credited on the basis of the accounting positions existing at the end of the working day of T+2, which represents the last day of settlement of the market transactions on securities *cum* right.

The delivery of the securities at T+2 would allow to increase the number of outstanding shares and thus the stock of securities available for securities lending. On the supply side could the shareholders who intend to underwrite the capital increase, while on the demand side could be the arbitragers (see **Table no. 2**).

[5] This description is general in nature and it requires additional specifications, as better described in paragraphs 5.1, 5.2 and 5.3.

Table no. 2

<table>
<tr><th>T</th><th>T+1</th><th>T+2</th><th>T+3</th></tr>
<tr><td rowspan="2">Sale of the shares by arbitragers</td><td rowspan="2"></td><td>Crediting the option rights</td><td rowspan="2">Loan to arbitragers of securities by shareholders who exercised the option right</td></tr>
<tr><td>Delivery of the shares with block (availability for the nightly settlement cycle of the following day) to the shareholders who exercised the option right</td></tr>
<tr><td colspan="3">Exercising of option rights by the shareholders</td><td>Settlement of the sales of shares</td></tr>
</table>

Alternatively, in the absence of a sufficiently lively securities lending market, arbitragers could purchase on the days preceding the Option Period, in the expectation of a rise in the share price from T-1 to T (as occurred in the rights issues described in paragraph 2; see **Table no. 3**).

Table no. 3

<table>
<tr><th>Up to T-1</th><th>T</th><th>T+1</th><th>T+2</th><th>T+3</th></tr>
<tr><td rowspan="3">Purchase of the cum shares by arbitragers</td><td rowspan="2">Sale of the shares by arbitragers</td><td rowspan="2"></td><td>Crediting the option rights</td><td rowspan="3">Settlement of the sales of shares</td></tr>
<tr><td>Delivery of the shares with block (availability for the nightly settlement cycle of the following day) to arbitragers</td></tr>
<tr><td colspan="3">Exercising of option rights by arbitragers</td></tr>
</table>

This specific case implies:

- A risk of failure to deliver the shares *cum* right;
- A market risk, albeit probably limited.

Solution a) is described in detail in **box no. 1**.

Box no. 1: Solution a)

In general, international standards prescribe a precise relationship between ex-date (“ExD”) and record date (“RD”), which depends on the settlement interval (“IR”):

RD = ExD + (IR-1). (1)

Based on the current three-day settlement interval, RD must be two days after ExD or, which is the same, it must be three days after the last *cum* day.

Since the basic model for the management of capital increases (see the previous paragraph) provides the delivery, with block, of the securities from 4.20 p.m. to 4.30 p.m., it is necessary to credit the rights earlier in this time window. This is because the delivery of the shares cannot be independent of the crediting of the option rights. The rights should be credited earlier, at the closing of the gross settlement cycle relative to market operations. In this way, the entire period of settlement of the market transactions carried out the last day of trading *cum* right (T-1) is exploited.

It should be stressed that, based on the present solution, the right to underwrite the capital increase, for delivery on T+2, with availability for the nightly net settlement cycle of T+3, would be enjoyed only by those who are recorded on the intermediaries ' accounts based on the accounting evidence deriving from the closure of the gross settlement relative to market operations, i.e. only owners of shares *cum* right.

Consequently, the present solution does not make possible arbitraging, which consists of creating a strategy based on the purchase and subscription of the option rights. The purchase of rights at T would be settled at T+3 and it would not allow them to meet their own delivery obligations on the same day.

Based on the present solution, either arbitragers are not able to borrow the shares in time to meet their own delivery obligations at T+3, or they must preventively purchase the *cum* shares, up to T-1, in expectation of a rise in the price of the shares from T-1 to T.

5.2 Solution b)

Solution a) does not make risk-free arbitrage possible, i.e. arbitrage in the strictest sense, which consists of setting up a strategy based on the purchase and subscription of the option rights.

To enable risk-free arbitrage, it is necessary to formulate an alternative hypothesis which enables arbitragers to obtain the shares at T+2, with availability for the nightly settlement cycle at T+3, through the exercise of the option rights purchased at T. This solution is described in detail in **box no. 2** and it is further specified in **Table n. 4**.

Box no. 2: Solution b)

The solution involves:

- Crediting the rights at T+1, instead of T+2; consequently, to meet the relationship (1),
- A two-day settlement interval limited to market transactions on the shares in question, carried out on the last trading day *cum* right (T-1);
- A two-day settlement interval of the market transactions on rights; and, lastly
- Maintaining the first delivery window at T+2.

In this way:

- The rights credited at T+1 could be transferred starting from the nightly net settlement cycle of T+2, for market transactions carried out at T;
- The rights purchased on day T would be settled on T+2;

- Exercising the rights would assure the delivery of the shares at T+2, with block and availability starting from the nightly net settlement cycle of T+3, to fulfil the obligations to deliver the shares at T.

This solution causes T+1 to become the settlement day of two different trading days, T-2 and T-1. In consideration of this, the consequences of a possible reduction of the settlement interval (from three to two days), limited to the market transactions on the shares in question carried out the last trading day *cum* right (T-1), deserve to be evaluated carefully, from the viewpoint of any operating risks.

Table no. 4

<table>
<tr><th>T</th><th>T+1</th><th>T+2</th><th>T+3</th></tr>
<tr><td>Sale of the shares by arbitragers</td><td rowspan="2">Crediting the option rights</td><td>Settlement of the purchases of the option rights</td><td rowspan="3">Settlement of the sales of shares</td></tr>
<tr><td>Purchase of the option rights</td><td>Delivery of the shares with block (availability for the nightly settlement cycle of the following day) to arbitragers</td></tr>
<tr><td colspan="3">Exercising of option rights by arbitragers</td></tr>
</table>

5.3 Comparison between the two solutions

Solution a), compared to solution b), is presumably characterised by lesser disadvantages as well as lesser advantages. In particular with reference to said solution:

1. The delivery of the securities during the Option Period is not in line with the corporate action standards agreed by the European post-trading industry, under the aegis of the European Commission, within the scope of the works for the removal of the so-called Giovannini barriers (this also applies for solution b);

2. Arbitrage opportunities are potentially limited.

Instead, **solution b)**:

1. In addition to point 1, solution b) provides:
   a) a special solution with regard to the settlement interval of the last *cum* trading day (two-day, instead of three-day, settlement interval), with possible increase of the operating risk and of fails; and

   b) a reduction in the settlement interval for the trading of the rights (from three days to two days), which, however, does not appear particularly problematic;
2. It allows for the full exploitation of arbitrage opportunities.

Lastly, with regard to the possibility of providing additional delivery windows – in addition to the one provided at T+2 (**minimal option**) and the one provided at T+14 (basic model) – it is necessary to compare the costs that derive from it for the system (intermediaries , issuers and centralised management companies) with the potential benefits deriving from the arbitrage activity. The benefits depend on the persistence of the described share overvaluing phenomena at T+1 and beyond.

In part, the persistence of the overvaluation of the shares at T+1 and beyond depends on the selected solution. If the selected solution is solution a), then the benefits of an additional delivery window at **T+3**, with availability starting from the nightly net settlement cycle of T+4, perhaps would not be negligible (**extended minimal option**).

To the extent to which solution a) does not allow fully to exploit arbitration opportunities on day T, the provision of an additional delivery window at **T+3** would further facilitate arbitragers' activities. The underlying mechanism is described in detail in **box no. 3** and in **Table no. 5**.

Box no. 3: Provision of an additional delivery window at T+3, within solution a)

The provision of an additional delivery window at T+3, within solution a), would further facilitate arbitragers' activities. They could:

- Purchase the rights at T;
- Sell the shares at T+1;
- Receive the purchased rights at T+3;
- Underwrite the capital increase and receive the securities at T+3, with availability starting from the nightly net settlement cycle of T+4;
- Promptly fulfil their delivery obligations at T+4.

Table no. 5

<table>
<tr><th>T</th><th>T+1</th><th>T+2</th><th>T+3</th><th>T+4</th></tr>
<tr><td rowspan="2">Purchase of option rights by arbitragers</td><td rowspan="2">Sale of the shares by arbitragers</td><td rowspan="2">Crediting the option rights</td><td>Settlement of the purchases of the option rights</td><td rowspan="3">Settlement of the sales of shares</td></tr>
<tr><td>Delivery of the shares with block (availability for the nightly settlement cycle of the following day) to arbitragers</td></tr>
<tr><td colspan="4">Exercising of option rights by arbitragers</td></tr>
</table>

On the contrary, outside the windows explicitly considered– T+2 and T+3 for solution a) and T+2 for solution b) – it is very likely that the benefits of additional delivery windows are negligible. Consequently, it is probably desirable that at first the adopted solution be limited, depending on whether solution a) or solution b) is preferred, to the extended minimal option or to the minimal option. This solution could be revised in light of experience.

In any case, while awaiting a more thorough analysis of the possible solutions to the problems associated with capital increases with significant dilutive effect, the functional specifications relating to the new operating model for the management of capital increases provide in any case the possibility of having multiple delivery windows, from T+2 to T+14, regardless of the final decision that will be made.

6. Legal and regulatory implications

At this point, it is necessary to analyse the legal and regulatory implications of the solutions set out in the previous paragraph. Three potential issues can be discerned. The first one pertains to the scope of the proposals. The second one refers to the interrelations between the proposals and the provisions of the TUF with respect to the publication of a supplement to the prospectus (Article 94, paragraph 7) and of the related withdrawal right (Article 95-*bis*, paragraph 2). The third one involves the issue of the equality of treatment for investors (Article 92, Paragraph 1 of the TUF).

6.1 Scope

At least in an initial phase, which we could define as a testing phase, it is proposed to apply the outlined solution only to capital increases with significant dilutive effect. During the testing phase, it will be possible to assess whether or not it may be preferable to use the extension of the basic model to all capital increases.

The application of the outlined solutions exclusively to capital increases with significant dilutive effect leads to two questions, both of which must be answered. First, which capital increases should be considered to have "significant dilutive effect"? Second, which agency or institution should be tasked to settle the above question?

To provide certainty for operators, it is deemed that the operations to be considered to have significant dilutive effect should be determined in general terms, establishing that all capital increases for which the conversion ratio between new and old shares exceeds a given threshold must be considered to have significant dilutive effect. With regard, instead, to the second question – i.e. the agency or institution tasked with setting the significant threshold of the conversion ratio – it seems preferable to assign responsibility for setting the significant threshold of the conversion ratio to the listing market, in consideration of the fact that this threshold can be considered a technical factor, having a significant impact on the regular determination of the prices.

6.2 Supplement to the prospectus and withdrawal right

The issues connected with the publication of a supplement to the prospectus and with the related withdrawal right, as stated (see paragraph 4), constituted the element that induced the Authorities to formulate the Guidelines, aimed at enhancing the efficiency of the operating procedures for the management of capital increases.

With reference to the extension of the basic model to provide multiple windows for the delivery of the securities involved, it is evident that the validity of the outlined solutions must be assessed in light of the interrelations with the aforesaid issues. More specifically, the feasibility of the outlined solutions depends on the circumstance that, simultaneously with the publication of a supplement to the prospectus, the withdrawal right provided by Article 95-*bis*, paragraph 2, of the TUF does not apply to investors to whom the shares have *already* been delivered in the intermediate delivery windows.

Article 95-*bis*, Paragraph 2, provides:

"Investors who have *already agreed* to purchase or underwrite the financial products before the publication of a supplement have the right, exercisable by the date indicated in the supplement and in any case no less than two working days after said publication, to withdraw their acceptance."

The letter of the rule refers to investors who have *agreed* to underwrite the capital increase, not also to investors who, having already received the securities deriving from the capital increase, have for all intents and purposes underwritten the capital increase.

In other words, the Article 95-*bis*, Paragraph 2, seems to refer to a phase of the subscription process that precedes the delivery of the securities. Consequently, it seems reasonable to argue that the withdrawal right does not apply to investors to whom the shares have already been delivered in the intermediate delivery windows.

On the other hand, it should be recalled that investors who have an interest in receiving delivery of the shares within the intermediate delivery windows are not interested in exercising the withdrawal right. Additionally, they could not exercise the withdrawal right. They are also generally interested in any difference between the market price and the total price paid for the purchase of the rights and for the subscription. If a supplement to the prospectus is published, they could not exercise the withdrawal right because they would no longer be in possession of the shares (the shares would already have been sold in the arbitrage operations described in paragraph 5).

Concerning the generality of investors, the prospectus shall take care to advise them of the consequences of exercising the option right for delivery in the intermediate delivery windows.

6.3 Equal treatment

It could also be argued that because of the non-applicability of the withdrawal right to investors to whom the shares have already been delivered in the intermediate delivery windows could be incompatible with the principle of the equality of treatment of investors provided by Article 92, Paragraph 1, of the TUF.

Article 92, Paragraph 1, provides:

“Listed *issuers* and listed issuers having Italy as their Member State of origin assure the same treatment to all bearers of the listed financial instruments who are in identical conditions.”

The rule places a burden on *issuers* to assure equal treatment to all investors. The outlined solutions, insofar as they place all investors on the same level, fulfil Article 92, Paragraph 1. Investors who want to guarantee their withdrawal right up until the last day of the Option Period simply have to use the last window for the delivery of the shares, the one provided by the basic model (see Paragraph 4). In fact, with the exception of arbitragers, the aforesaid behaviour constitutes the rational behaviour.

Nothing changes, on the other hand, with regard to the time interval within which investors may underwrite the capital increase, which continues to be the entire Option Period. More specifically, an investor’s will to receive delivery of the securities at the end of the Option Period does not set any restriction in relation to the moment when the same investor may exercise the option right.

Pragmatically, a default option could be provided, whereby the shares are delivered at the end of the Option Period, unless the investor expresses the will to use one of the intermediate delivery windows.

7. Conclusions

This document has evaluated the issue of capital increases with significant dilutive effect. In particular, after a brief description of the phenomenon and of the oversight activity carried out by Consob on brokers’ operations, the document focused on the possible structural solutions to the critical issues noted. From a general point of view, the proposed solution, identified in collaboration with the industry, consists of a change to the operating procedures for the management of capital increases, which provides the delivery of the shares in one or more delivery windows during the offer period.

Within the aforesaid general solution, two detailed solutions were identified. The first one consists of the introduction of two delivery windows – in addition to the one provided by the basic model for the management of capital increases, at the end of the Option Period – the third and the fourth day of the Option Period, respectively. The second solution provides the introduction of a delivery window – in addition to the one provided by the basic model – the third day of the Option Period, together with the reduction to two days of the settlement interval of the last *cum* settlement of the shares involved in the capital increase and of the settlement interval of market trading of the option rights.

Consob hereby invites all interest parties to provide all useful suggestions, in order to reach the most appropriate solution.