



## **Warning Notice n. 1/23 of 13 January 2023**

### **Subject: Supervision of corporate governance and related party transactions in the context of offer and admission to trading prospectuses: Warning**

As part of the amendments to the provisions of the Issuers' Regulation on the prospectus adopted by Resolution no. 22423 of 28 July 2022 – with the aim of optimising the approval procedures for prospectuses and simplifying their regulations, as well as making access to capital markets more efficient for companies, without affecting the investor protection safeguards – the documents and information that must be attached to the prospectus for admission to listing pursuant to Annex 1C of the aforementioned Regulation do not include the draft procedure on related party transactions ("OPC Procedure") and information on the relevant relationships for the independence of the members of the issuer's corporate bodies<sup>1</sup>, as they are not required by Delegated Regulation (EU) 2019/980 on the directly applicable prospectus.

With this in mind, the Commission invites issuers and other parties involved in the listing process to pay attention so that the aspects of corporate governance, such as the OPC procedure and the independence requirements for the members of the corporate bodies that will take up position on the date of commencement of negotiations, are in line with the rules governing listed companies. In particular:

- with reference to the procedures adopted on related party transactions, attention is drawn to the importance of verifying, before listing, the compliance of these procedures with the provisions of Consob Regulation No. 17221 of 12 March 2010 ("OPC Regulation") as well as the consistency of the optional choices made by the issuer, which the OPC Regulation remits to statutory autonomy;
- with specific reference to the requirements of independence of the members of the board of directors and internal control bodies, attention is drawn to the need to verify the compliance of the composition of the corporate bodies with the regulations of the listed companies with particular regard to these requirements; the finding of criticality after the listing could in fact entail, with regard to the members of the supervisory bodies, an obligation for Consob to declare their forfeiture, in the event of inaction on the part of the board of directors (pursuant to article 148, paragraph 4-quater of Legislative Decree 58/1998, "Tuf") and, with regard to the members of the board of directors, the need to request information supplements on the assessments carried out by the company and the involvement of the supervisory body on the correctness of these assessments.

In the light of the market surveillance powers of Consob in matters of corporate governance, the attention of the issuers is therefore drawn to the fact that such checks are carried out before the listing; this in order to avoid any costs deriving, for example, from the need – in the event of an established lack of the requirement of independence for a member of the corporate bodies – to convene, after the listing, a meeting aimed at integrating the corporate body, and the reputational costs deriving, for example, from the adoption, after the admission to listing, of forfeiture measures

---

<sup>1</sup> In this regard, it is recalled that, in the document for consultation concerning the aforementioned amendments to the Issuers' Regulation, it was proposed to include in the Attachment 1C of the same Regulation "additional documents and information that are normally required by Consob - to verify the completeness of the information given in the prospectus on the procedure relating to transactions with related parties and on the independence requirements of the members of the administrative and control bodies". Following the consultation, with a view to further simplification, these documents and information were not included.



by Consob of members of the control body declared independent in the listing prospectus.

However, it remains possible for issuers to submit to Consob, even during pre-filing, any issues relating to the above in relation to which it would be necessary to carry out a preliminary discussion with the Authority; in this regard, it should be noted that Consob is fully available to provide clarifications on any requests received, according to a timing that takes into account the needs of the issuer and the effectiveness and efficiency of the overall management activity.

THE CHAIRMAN  
*Paolo Savona*