



ISSUER REGULATION

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

6 October 2010

Comments to this Consultation Paper must be received by 15 November 2010 at the following address:

C O N S O B

Legal Studies Division

Via G. B. Martini, 3

00198 ROME, ITALY

or online using **SIPE – the Integrated System for External Users**

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CONSULTATION PAPER

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

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I. INTRODUCTION

With the revision of Title II, Part II of the Regulation approved by Consob with resolution no. 11971 (hereinafter, the “Issuer Regulation”), Consob implements the legislative changes which have progressively occurred in the pertinent legislation on takeover bids and exchange tender offers.

On 21 April 2004 the Council of Ministers of the European Union approved Directive 2004/25/EC on takeover bids (hereinafter, the “Directive”). The Directive was transposed into Italian law by way of Legislative Decree no. 229 of 19 November 2007, which amended Legislative Decree no. 58 of 24 February 1998 (hereinafter, “Consolidated Law on Finance” or “Consolidated Law”).

Regulations on takeover bids were the subject of subsequent legislative measures:

- Decree Law no. 185 of 29 November 2008, which amended the regulations on the passivity rule and neutralisation;
- Law no. 33/2009 which, in order to strengthen “*instruments to defend against speculative manoeuvres*”, amended the Consolidated Law on the matter of consolidation takeover bids and ownership transparency and amended the Italian Civil Code on the regulation of buyback;
- Legislative Decree no. 146/2009, containing provisions supplementing and correcting the aforementioned Legislative Decree no. 229/2007.

The revision of the regulation on takeover bids was not limited to implementing the EU provisions contained in the Directive and the regulatory powers assigned to Consob by the new provisions in the Consolidated Law on Finance, but took into account the issues which have arisen from the application of the current rules, as well as from the comparative analysis on the matter in the main countries.

The amendments regard both the general provisions on the procedure of the bid and those regarding mandatory takeover bids. Aware of the importance of dialogue with the market, we hereby request that, in their replies to this consultation, the consulted parties provide their assessments and comments. So as to encourage a more methodical assessment of the replies provided, market participants are strongly recommended to reply to this consultation, in any event using the questionnaire, supplemented by additional information and evaluations considered useful.

II. CHANGES AND OBJECTIVES OF THE NEW REGULATIONS

This Consultation Paper sets forth the main changes introduced by the regulatory amendments submitted to consultation and the underlying reasons for such changes.

This set of measures is aimed at achieving the purposes that guided Consob in identifying the proposed amendments to the current regulation. These purposes are based on the general principles underlying Consob's activities in this field, which Article 91 of the Consolidated Law on Finance primarily identifies as the protection of investors and the efficiency and transparency of the market for corporate control and the capital market.

More specifically, the regulatory measures were focused on achieving the following goals:

- 1) strengthening of the protection of minority shareholders;
- 2) efficiency and transparency of the market for corporate control;
- 3) equal treatment for Italian and non-Italian investors and harmonisation with other countries' regulations;
- 4) reduction of compliance costs for bidders.

Below we provide a brief summary of the most significant choices made, grouped according to their correlation with the objections of the aforementioned regulations.

1) Strengthening of the protection of minority shareholders

1.1. The revision of regulations was intended to ensure minority shareholders the highest level of protection in transactions that result in changes in the company's control structure. Therefore, several measures were guided by the intention to answer possible distortions that affect the decision of whether to tender to the bid, to increase the minorities' voice, to close the regulatory gaps originating from the evolution of market practices and financial innovation.

1.2. Firstly, remedies were introduced to counteract the phenomenon known as "pressure to tender", which describes the pressure on shareholders that are the intended recipients of the bid and, though they do not consider the offer price to be fair, subscribe in any event as they are afraid of ending up in possession of securities which are bound to depreciate following the close of the bid. The new provisions that introduce an additional acceptance period [art. 40-*bis* Issuer Regulation] and strengthen the information value and objectivity of the issuer's statement [articles 39 and 39-*bis*], by including opinions from the independent directors, aim at reducing the elements that can alter the decision to subscribe by offerees of a public offering on securities¹ and units of closed-end mutual

¹ Pursuant to Article 101-*bis*, subsection 2 of the Consolidated Law on Finance, "'securities" shall mean financial instruments carrying voting rights, also limited to specific topics, at the ordinary or extraordinary shareholders' meetings".

funds. With a view to calibrating regulatory costs and proportionality of the regulatory measures, these provisions were limited to the cases where a bid is promoted by a party that is already an insider of the company (majority shareholders of a company or of the asset management company (SGR) or directors of a company or SGR, the party holding more than 30% of fund units, etc.), as these are the cases where asymmetric information between the bidder and investors and the risk of conflicts of interest in the board are more severe.

1.3. Secondly, the transparency and fairness provisions which are applicable when a tender offer is carried out were expanded. For example:

- i) a new provision requires the bidder to notify in advance Consob and the market of its intention to sell the tendered financial instruments [Article 41, subsection 2, paragraph *a-bis*];
- ii) transparency on trading during a takeover bid carried out by “interested parties”² was also extended to cash-settled derivatives [Article 41, subsection 2, paragraph *b*);
- iii) these latter instruments are also important for the purpose of applying the best price rule [Article 42, subsection 2]
- iv) the best price rule was extended to the six months following the close of the bid [Article 42, subsection 3] and more limited disclosure obligations were set out for this period on trading transactions [Article 41, subsection 7].

1.4. As an implementation measure of the new legislation introduced by Legislative Decree 149/2009, the cases in which holdings of derivatives trigger the mandatory bid obligation were defined [Article 44-*ter*]. This new regulation is a response to the evolution of the market. In some highly significant cases derivatives have been used in order to circumvent the mandatory bid obligation. The new Article 44-*ter* mirrors the model adopted by the Takeover Code, envisaging that the calculation of the 30% threshold (and the 5% threshold envisaged for consolidation takeover bids) must also include the shares underlying all derivatives or contracts which offer the holder a long position, irrespective of whether there is a cash settlement or physical delivery. The purpose of this wide concept is to cover not only swaps, forward purchase agreements and other contracts with symmetrical payoff structures, but also those taking on long positions using derivatives contracts with asymmetrical structure (i.e. the acquirer of a call option or the seller of a put option).

1.5. Lastly, the involvement of minority shareholders in the regulation of exemptions from the application of mandatory bids was increased, allowing them to express their opinions on the waiver in certain cases outlined by the law and specified by Consob. Approval by the majority of

² “Interested parties” are identified in Article 35 of the IR as the bidder, the issuer, persons linked to them by relationships of control, companies subject to common control, associated companies, members of their boards of directors and internal control bodies and their general managers, and the shareholders of the bidder or the issuer who are parties to a shareholders’ agreement.

independent shareholders³ was set as a condition for the exemption from the obligation to launch a takeover bid in the case where said obligation arises as a result of mergers or spin-offs [Article 49, subsection 1, paragraph *f*)]. Similarly, in the case transactions to bail out a company in crisis - aside from specific cases of verified crisis⁴ which requires only the existence of a recapitalisation of a listed company in difficulty or another measure to strengthen equity - the exemption will be subject to the favourable vote of the majority of independent shareholders [Article 49, subsection 1, paragraph *b*)]. In the cases of mergers or spin-offs exemption, the proposed subordination to the favourable vote of the majority of independent shareholders was already submitted to the market in 2001⁵ and was not adopted after the consultation. The reasons that led Consob to repropose the application of the whitewash mechanisms, extending them also to cases of bailout, primarily originate from the conviction that the persons who could be potentially damaged must be involved in the waiver of an exit, where possible. Moreover, the experience of applying the current rules to the aforementioned cases (bailout and mergers/spin-offs) has shown that the alternative solutions that condition the exemption to the existence of objective elements, are not in and of themselves always effective in discriminating the cases where the purpose of the transaction justifies the minority interests' sacrifice from those where this balance is not achieved. In requiring the involvement of independent shareholders, the solutions proposed are in line with Consob regulation on related party transactions.

2) Efficiency and transparency of the market for corporate control

2.1. Several regulatory provisions and amendments were aimed at favouring greater dynamism in the market for corporate control and removing uncertainties in the interpretation of rules which may hold back the activism of bidders and investors.

2.2. The duration of bids were revised and, specifically, the minimum duration of prior bids for the acquisition of control was reduced and aligned with that of other bids (from 25 days, as currently envisaged, to 15 days) [Article 40, subsection 2]. It was considered that defining a longer period for

³ i.e. the shareholders other than: the buyer, the shareholder or shareholders that, even jointly, holds the (even relative) majority interest, and the persons acting in concert with them.

⁴ These are cases of:

- i. admission to one of the bankruptcy proceedings envisaged in Italian Royal Decree no. 267 of 16 March 1942 or in other special laws;
- ii. approval of a debt restructuring agreement entered into with debtors pursuant to Article 182-*bis* of Italian Royal Decree no. 267 of 16 March 1942
- iii. the existence of a reorganisation plan pursuant to Article 67, subsection 3, paragraph d) of Italian Royal Decree no. 267 of 16 March 1942, limited to cases of recapitalisation;
- iv. expression by the statutory auditor of an adverse opinion on going concern assumptions, based on the latest financial statements of the issuer;
- v. the measure complies with requests by a Supervisory Authority for the purpose of safeguarding the sound, prudent management of the company

⁵ Cf. Consultation Document on amendments to the Issuers' Regulation of February 2001, available on the site: http://www.consob.it/main/documenti/Regolamentazione/lavori_preparatori/opa.html.

these bids could upset the balance of competition between potential bidders to the detriment of the initial promoter, which fully incurs the “short” costs of the takeover opportunity.

2.3. On the issue of competing bids, it was attempted to leave the determination of the fundamental elements of the bid as much as possible to market forces, and to reduce asymmetric information between bidders which could prevent the market for corporate control [Article 44]. To achieve this objective, the obligation to offer a price higher than that of the original bid was eliminated⁶, as this could be an obstacle to the launch of bids that are more cost-effective for minority interests in relation to aspects aside from the price. Moreover, a new provisions requires issuers providing information to one of the bidder to promptly notify such information to all other bidders [Article 42, subsection 5].

2.4. In enacting the legislation on the “correction” of the mandatory offer price [Articles 47-*bis*-47-*novies*] and determining the price in the event of sell-out or squeeze-out [Articles 50-50-*quater*] it was decided to limit Consob’s degree of discretion in the assessments to be made. This approach aims at reducing market’s uncertainty during a takeover bid and not introducing distortions on investor and bidder behaviour, such as the expectation of a different offer price.

2.5. In order to reduce the uncertainty regarding the conduct to be considered as acting in concert which could trigger a mandatory takeover bid. On the one hand, we identified the cases where, unless proved otherwise, it is assumed that several parties are acting in concert. On the other, new provisions identify the cases of cooperation among shareholders which are not acting in concert, in order to ensure that uncertainties of interpretation cannot impede the active participation of minority interests in corporate governance [Article 44-*quater*].

2.6. Lastly, on the relevance of treasury shares for calculating the shareholding that triggers mandatory takeover bids, a new regime was defined. It distinguishes the situations where treasury shares were already held by the issuer from those where the potential obligation is triggered following a buyback. In the first case, in order to consider the effective voting power that a party acquires, treasury shares already owned by the company are excluded from the share capital used to calculate the shareholding pursuant to Article 105, subsection 2 of the Consolidated Law on Finance. For the second case, for calculating the major shareholding in the event the issuer purchases treasury shares, we propose to the market two alternatives for regulation. Both proposals, though to a different extent, aim at reconciling the two opposing needs of ensuring that: on one hand, treasury shares are not used as a tool for eluding the mandatory takeover bid regulations, and, on the other hand, companies can implement buyback where this is in the interest of all shareholders [Article 44-*bis*]. The first proposal, based on a subjective criterion, establishes the neutrality of the effects of the buyback on mandatory takeover bid obligations for only those shareholders which do not control the company. The second proposal, based on an objective criterion, extends the neutrality of this transaction to all shareholders, provided that the resolution

⁶ In the proposed text, subsection 1 of the current Article 44 of the Issuer Regulation is eliminated.

authorising the buyback is approved by the majority of independent shareholders.

It is important that the consulted parties express their opinions on the two proposals submitted, suggesting any alternative proposals (cf. Question Q27 on the Questionnaire).

3) Equal treatment for Italian and non-Italian investors and harmonisation with other countries' regulations

3.1. Additional measures are justified by the goal of ensuring equal treatment for Italian and Non-Italian investors and aligning the national regulations to the main international practices, for example on the issue of bids on debt securities.

3.2. To this end, the obligations for cross-border bids were simplified, such as the recognition procedures for documents approved by supervisory authorities in an EU member state or non-EU countries. The cases where a complete translation of the specific documentation into Italian is requested were also limited [Articles 38-*bis* and 38-*ter*].

3.3. Lastly, customised regulations were introduced for public offerings linked to debt restructuring. Legislative Decree 149/2009 intervened on this issue in order to align Italian regulations with prevailing international liability management practices and to allow the rules for public offerings for sale and subscription to be applied to exchange tender offers on debt securities. In New rules were set forth for the procedures to follow to benefit from the exemption from the regime of takeover bids and exchange offers, balancing the need to reduce costs for operators with that of ensuring adequate disclosure to investors [Article 35-*ter*]. Moreover, cases where the takeover bid regulations are not applicable were envisaged in relation to bids on financial instruments other than securities [Article 35-*bis*].

4) Reduction of compliance costs for bidders

4.1. Lastly, several measures fulfil the objective of reducing compliance costs for operators, and speeding up the process of Consob's control.

4.2. Specifically, standardisation of information that must be provided to the market was increased. In this sense, the regulation sets forth the contents of the statements pursuant to Articles 37 and 39 of the Issuer Regulation and of the bid documents in greater detail, as a result of the formalisation of previously requested information elements in the application practice [Articles 37 and 39].

4.3. With regard to the guarantees on payment of the offer price, a new provision was introduced. The provision, while in line with the Directive in ensuring that parties announce bids only after ensuring that they can fulfil in full any cash consideration, substitutes the current obligation to acquire a *statement of commitment to establish* guarantees by an intermediary with the certification

from an authorised intermediary that the bidder can fully cover payment of the offer price [Article 37-*bis*].

III. TEXT

**TITLE II
TAKEOVER BIDS OR EXCHANGE TENDER OFFERS**

**Chapter I
General rules**

Article 35
(Definitions)

1. In this Title:

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

Article 35-bis
(Scope of application)

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

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

instruments.

3. The provisions under this Title shall not apply to takeover bids or exchange tender offers involving financial instruments other than securities where:

a) the offers are exclusively targeted to eligible counterparties, professional clients, or professional investors, as defined by Article 6, subsection *2-quater*, paragraph *d*), and subsections *2-quinquies* and *2-sexies* of the Consolidated Law, as well as by Article *34-ter*, paragraph *b*), respectively;

b) financial instruments are issued by an EU member state or by international public bodies which one or more EU member states form part of, or financial instruments which benefit from the unconditional and irrevocable guarantee of said parties, provided that the offers are directly or indirectly promoted by said issuers;

c) the financial instruments the bidder intends to purchase have a minimum unit part value of 50,000 euro;

d) the holders of said instruments are required to approve amendments to the terms, conditions or other clauses in the related regulations or articles of association, and documents are made available to the public in Italian, or in a language commonly used in international finance circles, containing information which suitably allows for an informed opinion on the transaction. Annexed to the documents drawn up in a language commonly used in international finance circles shall be a note in Italian describing the essential elements of the transaction;

e) the financial instruments that the bidder intends to purchase are issued by the European Central Bank or by the national central banks of EU member states, provided that the offers are directly or indirectly promoted by said issuers;

f) the offers regard the purchase of money market instruments issued by banks with a less than 12-month maturity;

g) the offers regard the purchase of open-end collective investment undertakings whose minimum subscription amounts equate to at least 250,000 euro;

h) the offers regard the purchase of financial instruments issued by insurance companies with an initial minimum premium of at least 250,000 euro.

Article 35-ter

(Exchange tender offers on debt securities)

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

2. In the event of exchange tender offers held concurrently in several member states of the European Union, in place of the bid document envisaged by article 38 the bidder may use the prospectus, compliant with Directive no. 2003/71/EC, approved by the supervisory authorities of its home member state. In this case, the draft prospectus transmitted to the competent authorities is annexed to the justified request and the summary note is supplemented with at least the following information:

a) methods and terms of subscription of the bid in Italy;

b) payment method and related tax regime;

c) risk factors significant for the purpose of the decision to subscribe to the bid;

d) existence of potential conflicts of interest of the parties involved in the transaction;

e) essential elements regarding the issue of financial instruments to be exchanged, as well as the

related exchange ratio.

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

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

Article 36

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

1. In this Title information shall be deemed to have been notified or made known to the market where it is contained in a statement promptly sent by Consob to at least two news agencies. Where the issuer is a listed company or the bidder has financial instruments admitted to trading on a regulated market and the statement must be disclosed during the performance of trading, the information shall be transmitted to Consob and to the stock exchange company at least fifteen minutes before its disclosure.

2. If the information contained in a statement is announced to the market by a bidder or an issuer with financial instruments admitted to trading in a regulated market, in derogation of subsection 1, the methods set forth in Part III, Title II, Chapter I shall apply.

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

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

Article 36-bis

(Publication of Consob measures)

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

Article 36-ter

(Notice of the choice of Supervisory Authority)

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

Article 37

(Disclosure of offers)

1. The notice referred to in Article 102, subsection 1 of the Consolidated Law, disclosed to the market and the issuer, shall indicate:

- a) the bidder and its parent companies;
- b) the persons acting in concert with the bidder on the offer;
- c) the issuer;
- d) the category and quantity of financial products in the offer;
- e) the price offered for each category of financial products in the offer, as well as the overall consideration of the offer;
- f) the comparison of the price offered with the recent performance of the security, where admitted to trading in a regulated market;
- g) the requirements and motivations for the offer;
- h) the bidder's plans, with specific regard to its intention to delisting the financial instruments in the bid from trading, and to carry out extraordinary transactions;
- i) the financing methods envisaged;
- j) information on the statement pursuant to Article 37-*bis*, subsection 1, paragraph a), including indication of the authorized intermediary that issued it;
- k) the conditions the bid is subject to;
- l) shareholdings already owned or acquirable by the bidder or persons acting in concert with them in relation to the issuer;
- m) notices or applications for authorisation required by the regulations applicable to the transaction, providing information on the initiation of the related proceedings before the supervisory authorities;
- n) information regarding the effective convocation of the body responsible for issuing the financial products to be offered or regarding the availability of financial products to be offered as payment;
- o) the effective submission to Consob of the petition pursuant to Article 104-*ter*, subsection 3 of the Consolidated Law or the intention to submit such petition;
- p) the effective submission to Consob of the petition pursuant to Article 106, subsection 3, paragraph c) of the Consolidated Law or the intention to submit such petition;
- q) the internet site where the press releases and documents relating to the bid will be published.

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

Article 37-*bis*
(*Guarantees*)

1. Concurrent with the notice pursuant to Article 37, the bidder shall send Consob the following, in addition to their contact and identification information:

- a) a statement issued by an authorized intermediary, as defined by Article 1, subsection 1, paragraph r) of the Consolidated Law, certifying that the bidder is capable of fully covering the payment of the offer price;
- b) for an exchange tender offer:
 - certification of the effective convocation of the body responsible for issuing the financial products to be offered for a price, or
 - certification of the availability of financial products to be offered for a price.

2. By the day before the date planned for the publication of the bid document, the bidder shall send

the following to Consob:

- a) the documentation on the establishment of the performance guarantees; or
- b) a copy of the resolution to issue the financial products offered for a price.

Article 37-ter

(Promotion of the offer)

1. The bidder shall promote the offer by submitting the following to Consob:
 - a) the bid document and any acceptance forms, drawn up in accordance with the models in Annexes 2A and 2B;
 - b) certification of the effective transmission of the notices or applications for authorisation required by the regulations applicable to the transaction to the competent authorities.
2. The documents indicated in subsection 1, paragraph a) may also be sent in electronic form.
3. Promotion of the offers shall be disclosed without delay to the market in a statement to the market and at the same time to the issuer.
4. The bidder shall announce the suspension of the examination pursuant to Article 102, subsection 4 of the Consolidated Law, as well as the subsequent start up of examination.

Article 37-quater

(Petition for determination of equivalence)

1. From the date of the notification pursuant to Article 37 until the day after the dissemination of the issuer's statement, the bidder or issuer may submit to Consob the petition pursuant to Article 104-ter, subsection 3 of the Consolidated Law. The petition shall be accompanied by supporting documentation useful for the purpose of assessment and shall be copied to the issuer or to the bidder. The market shall be promptly notified of the effective submission of the petition.
2. Within five days from the receipt of the documentation, the party receiving the petition may provide Consob with its written observations, supported by suitable documentation.
3. Consob shall make its decision, by way of a justified measure, within twenty calendar days from the date of submission of the petition. If it is necessary to request additional information or documentation, this term shall be suspended once until the reception of said information or documentation.

Article 38

(Bid document)

1. The bid document, approved by Consob and supplemented in accordance with any requests pursuant to Article 102, subsection 4 of the Consolidated Law, shall be sent to Consob and the issuer without delay, also in electronic form.
2. Without prejudice to Article 36, subsections 3 and 4, the document shall be made available with

the appointed intermediaries or disseminated by other means agreed with Consob, which shall ensure that the essential elements of the offer are accessible to all interested parties and the document is suitably disseminated. The method of dissemination of the document shall be announced through simultaneous publication of a notice in newspapers with adequate circulation.

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

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

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

Article 38-bis

(Recognition in Italy of a bid document approved by the supervisory authorities of other EU Member States)

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

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

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

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

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

6. This article also applies for the purpose of recognition of bid documents approved by supervisory authorities in another member state for a bid on financial instruments not admitted to trading in Italian regulated markets.

Article 38-ter

(Recognition in Italy of a bid document approved by the supervisory authorities of non-EU countries)

1. A bid document approved by the supervisory authorities of a non-EU state which Consob has entered into cooperation agreements, shall be recognised in Italy if:
 - a) the financial instruments in the offer are admitted to trading in a regulated market of the same non-EU country;
 - b) the document contains at least the information on the essential elements of the offer identified by Article 6, subsection 3 of Directive 2004/25/EC, to the extent applicable, as well as the warnings and/or risk factors of the transaction.
2. For the purpose of recognition, the bidder shall send Consob the bid document translated into Italian, accompanied by the measure approving the document issued by the supervisory authority of the Non-EU member state.
3. If the bid document is drawn up in a language commonly used in international finance circles, it shall be transmitted, accompanied with a note containing an Italian translation of the parts of the document regarding the elements set forth in subsection 1, paragraph *b*).
4. The documents in Italian pursuant to subsections 2 and 3 shall be supplemented by information on the bid in Italy, concerning the subscription methods, the payment method and the applicable tax regime.
5. The bid documents shall be published, pursuant to Article 36, subsections 3 and 4, and Article 38, after ten days from the date of receipt of these documents by Consob. Consob may reduce this term to five days in consideration of the characteristics of the bid. By the publication date of the bid document, at the latest, the bidder shall issue a press release in Italian containing the elements set forth in Article 37.
6. The issuer's statement, where drawn up, shall be issued to the market translated into Italian. If the statement is drawn up in a language common to the international financial markets, it may be published with an Italian translation of the assessments of the bid and the fairness of the price.

Article 39

(Issuer's statement)

1. The issuer's statement shall:
 - a) indicate the names of the members of the board of directors and control body present during the meeting for assessing the offer, as well as the names of those absent;
 - b) indicate any members of the board of directors or the supervisory board who have notified the fact that they have a possible conflict of interest, their own or of third parties, relating to the offer, specifying the nature, terms, origin and scope thereof;
 - c) contain all the information serving to evaluate the offer together with the reasoned opinion on the offer and the fairness of the price by the members of the board of directors and the supervisory

board, with an indication, where applicable, of its approval by majority vote, the names of those dissenting and abstaining, specifying the reasons for any dissent or abstention. The statement shall also indicate whether or not the members of the board of directors and the supervisory board participated, for any reason, in negotiations for the settlement of the transaction and in the search for competing bids;

d) indicate whether, in forming their opinion on the offer, the issuer made use of independent expert opinions or specific assessment documents. In these latter cases, the methods used and the results of each criteria applied shall be indicated. If the issuer decided not to use an independent expert, the reasons for this decision shall be provided;

e) provide information on material matters not covered in the latest annual report or the latest interim report published;

f) provide information on the issuer's recent performance and prospects if they are not reported in the bid document;

g) contain, for bids other than those pursuant to Article 101-*bis*, subsection 3 of the Consolidated Law, an assessment of the effects that a successful bid would have on the company's interests, as well as on employment and the location of production sites;

h) in the event of a merger involving the issuer, with an increase in the company's indebtedness, provide information on the company's indebtedness resulting from the merger. Moreover, in this case, it shall indicate the effects of the transaction on outstanding loan agreements and the related guarantees, as well as any need to enter into new loan agreements;

i) indicate the identity of the persons acting in concert with the issuer and, where known, their relations with the bidder;

l) make known any provisions of the articles of association pursuant to Articles 104 and 104-*bis* of the Consolidated Law, shareholders' resolutions pursuant to Article 104-*ter* of the Consolidated Law, as well as any decision to convene shareholders' meetings pursuant to Article 104 of the Consolidated Law; where the decision is adopted subsequently, it shall promptly be made known to the market;

m) where the issuer's articles of association derogate from the provisions of Article 104, subsections 1 and 1-*bis* of the Consolidated Law, indicate whether the issuer has executed, resolved or intends to implement deeds or transactions which could counteract achievement of the aims of the offer.

n) provide up-to-date information on the direct or indirect possession of the company's financial instruments by the issuer and members of the board of directors and supervisory board, including those of subsidiary and parent companies, and on shareholders' agreements referred to in Article 122 of the Consolidated Law regarding the issuer and the parent company;

o) provide up-to-date information on the remuneration received, under any title and in any form, by the members of the issuer's board of directors and control body and its general managers and any such amounts approved;

2. If the subject of the offer consists of bonds or other debt securities, the issuer's statement shall provide the information referred to in paragraphs *a)*, *b)*, *c)*, *d)*, *e)*, *f)* and *i)* of subsection 1 and up-to-date information on the direct or indirect possession of the subject securities by the issuer and members of the board of directors and supervisory board.

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

3. The statement and the annexes pursuant to subsection 6 shall be sent to Consob at least three days

before the date set for their dissemination. Supplemented with any information requested by Consob, they shall be made known to the market not later than the first day of the acceptance period. Article 65 *bis*, subsection 2 shall apply to the annexes to the statement. Changes in the information published in accordance with the subsections 1 and 2 shall be the subject of a press release.

4. Without prejudice to Article 101-*bis*, subsection 3 of the Consolidated Law, the statement shall be concurrently made known to the workers' representatives or, in their absence, to the workers.

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

6. The issuer shall attach the following to the statement as per subsection 1:

- a) the opinion required by Article 39-*bis*, where applicable;
- b) any independent expert opinions.

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

Article 39-*bis*
(*Independent director opinions*)

1. This article shall apply to:

a) offers on securities promoted by:

- 1. parties with shareholdings exceeding the threshold indicated in Article 106, subsection 1 of the Consolidated Law;
- 2. participants in a shareholders' agreement between parties with a total shareholding greater than the threshold indicated under paragraph *a*);
- 3. directors or members of the management board or supervisory board of the issuer;
- 4. persons acting in concert with the parties indicated in points 1, 2 and 3.

b) offers on units of closed-end mutual funds promoted by:

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

c) offers competing with those indicated in paragraphs *a*) and *b*).

2. Independent directors who are not related parties of the bidder, where existing, shall draw up a justified opinion containing their assessment of the bid and the fairness of the price, with the right to

engage the aid of an independent expert of their choice, at the cost of the issuer. This opinion and any opinion of the independent expert shall be disclosed according to the methods set forth in Article 39, subsections 3, 6 and 7.

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

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

Article 40

(Performance of bids)

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

2. Without prejudice to the provisions of Article 40-*bis*, subsection 1, the subscription period is agreed with the stock exchange company or, for financial products not admitted to trading in a regulated market, with Consob:

- it shall be not less than fifteen days and not more than twenty-five days for bids promoted pursuant to Article 106, subsections 1 and 3 of the Consolidated Law;
- it shall be not less than fifteen days and not more than forty days for other bids.

For bids involving bonds and other debt securities, the minimum duration is reduced to five days. After consulting the bidder and the stock exchange company, Consob may, with a measure justified by the needs of correct implementation of the bid and the protection of investors, extend the bid's duration, more than once, up to a maximum of fifty-five days.

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

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

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

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

Article 40-*bis*

(Re-opening of the term of the bid)

1. Within five days from the closing of the subscription period, the term of bids on securities promoted by the parties indicated in Article 39-*bis*, subsection 1, paragraph *a*) shall be re-opened for five days, when, on publication of the results, the bidder notifies:
 - a*) for bids whose effectiveness is subordinate to the acquisition of a specific percentage of share capital in the issuer, the occurrence or waiver of said condition;
 - b*) for bids other than those pursuant to paragraph *a*):
 1. the achievement of a percentage equity investment greater than one-half or two-thirds of the share capital represented by shares with voting rights in the ordinary shareholders' meeting; or
 2. the effective purchase of at least half of the securities in each category of the bid.
2. The re-opening of the terms envisaged by subsection 1 shall apply to bids on units of closed-end mutual funds promoted by the parties indicated in Article 39-*bis*, subsection 1, paragraph *b*) when, on publication of the results, the bidder notifies:
 - a*) for bids whose effectiveness is subordinate to the acquisition of a specific percentage of units of the fund, the occurrence or waiver of said condition;
 - b*) for bids other than those pursuant to paragraph *a*), the acquisition at least half of the units of the fund subject of the bid.
3. The re-opening of the term shall not apply:
 - a*) when the bidder, at least five days before the end of the subscription period, announces the occurrence of the circumstances pursuant to subsections 1 and 2, paragraphs *a*) and *b*);
 - b*) when, for bids on securities, at the end of the subscription period the bidder holds an equity investment pursuant to Article 108, subsection 1, or that pursuant to Article 108, subsection 2 of the Consolidated Law and, in the second case, the bidder has declared its intention not to restore a float sufficient to ensure regular trading;
 - c*) to bids on securities promoted pursuant to Article 107 of the Consolidated Law.
4. If the term is re-opened, the price shall be paid:
 - a*) for the securities and units of the fund which were the subject of subscription to the bid prior to the re-opening of the term, on the date originally set in the bid document;
 - b*) for other securities or units of the fund, no later than ten days following the date indicated in paragraph *a*).

Article 41

(Transparency rules)

1. Statements and communications regarding a bid shall indicate the person by whom they are issued and be designed to be clear, complete and knowable by all those to whom they are addressed.
2. During the period between the date of the statement referred to in Article 102, subsection 1 of the Consolidated Law and the due date set for payment of the price:
 - a*) interested parties shall disclose their statements regarding the bid and/or the issuer according to the methods set forth in Article 36. Without prejudice to the provisions of Article 39, issuers with financial instruments admitted to trading in a regulated market shall disclose statements concerning the bid also in compliance with Article 66, subsection 2;
 - a-bis*) the bidder and those acting in concert with them, when they intend to sell the financial products subject of the bid, shall notify Consob and the market of this by the day before the

transaction;

b) interested parties shall notify Consob and the market by the end of the day of transactions carried out, directly or through nominees:

1) of purchase and sale of the financial products subject of the bid, indicating the agreed prices;

2) on derivatives linked to the products subject of the bid, indicating the essential terms;

c) the bidder and the persons appointed to collect subscriptions shall announce the number thereof at least weekly; in bids on financial instruments admitted to trading in regulated markets, the announcement shall be made daily through the stock exchange company.

3. Any summaries of the bid document disseminated must, in any event:

a) contain the entire "cautions" section of the bid document;

b) provide references for each subject matter to the corresponding sections of the bid document in which the issues are set out in more detail;

c) contain the warning, reproduced using a typeface permitting it to be easily read, that the summary has not been cleared in advance by Consob;

d) indicate where the bid document and the issuers' statement can be obtained.

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

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

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

7. In the six months following the final payment date of the offer price, the bidder and the persons acting in concert with them shall notify Consob, on a monthly basis, of the purchase and sale transaction on the financial products pursuant to subsection 2, paragraph b), no. 1 and no. 2, carried out in that month, indicating the essential terms thereof.

Article 42

(Proper conduct rules)

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

2. Where, in the period between the date of the notice referred to in Article 102, subsection 1 of the Consolidated Law and the final date of payment of the price, the bidders or persons acting in

concert with them acquire, directly or indirectly or through nominees, the financial instruments that are the subject of the bid or take on, directly, indirectly or through nominees, long positions with such products as underlyings, at prices higher than those of the bid, they shall realign the latter with said paid. Article 44-ter, subsection 7 shall apply, insofar as it is applicable.

3. The provisions set forth in subsection 2 shall also apply to purchases by the bidders and the persons acting in concert with them which are carried out in the six months following the final payment date. In this case, the obligation to adjust the price to the highest price paid shall be fulfilled by the bidder through the assignment of an adjustment to bid subscribers, in accordance with the methods announced in a specific statement to the market.

4. The provisions pursuant to subsections 2 and 3 shall not apply to trading transactions performed at market conditions as part of dealing for own account, for a total quantity not exceeding 0.5% of the category of financial products subject of the bid.

5. In the event of competing bids, issuers providing information to one of the bidders shall promptly notify such information to all other bidders. The provisions of article 41 shall remain valid.

Article 43
(Amendments of bids)

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

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

Article 44
(Competing offers)

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

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

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

4. Increased bids may not be made beyond the fifth day preceding the close of the preceding subscription period. On the last valid day all bidders, except for those for which the deadline referred to in paragraph 3 has already expired, may make another increased bid, subject to its being notified to Consob.

5. The subscription period for bids and the date for the publication of the results shall be aligned

with those of the last competing bid unless the earlier bidders notify Consob and the market within five days of the publication of the competing bid that they intend to keep the original expiration unchanged; where they do so, they may not make increased bids.

6. In the event that a shareholders' meeting convened pursuant to Article 104 of the Consolidated Law is to be held in the last ten days of the subscription period for offers indicated in subsection 4, the subscription period shall be extended by ten days.

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

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

Chapter II

Mandatory takeover bids

Article 44-bis

(Regime of shares lacking voting rights)

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

PROPOSAL 1

2. Subsection 1 shall not apply if the threshold indicated therein is exceeded as a result of buyback by the issuer and the parties that the obligation would apply to do not, even in concert, hold sufficient votes to exercise a dominant influence in the issuer's ordinary shareholders' meeting.

PROPOSAL 2

2. Subsection 1 shall not apply if the threshold indicated therein is exceeded as a result of buyback by the issuer carried out in execution of a resolution which, without prejudice to Articles 2368 and 2369 of the Italian Civil Code, was also approved with the favourable vote of the majority of shareholders attending the shareholders' meeting, other than the shareholder or shareholders that, jointly or severally, possess a (also relative) majority shareholding, and the persons acting in concert with them.

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

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

Article 44-ter
(*Derivatives*)

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

2. For the purposes of subsection 1, derivatives which offer a long position are not calculated when:

- a) they are the subject of covenants included in a shareholders' agreement, aimed at resolving possible deadlocks or provided in the event of breach of clauses of the agreement;
- b) they are held by an authorized intermediary as defined by Article 1, subsection 1, paragraph *r*) of the Consolidated Law, for the purpose of hedging a customer's position.

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

4. For the purpose of calculating the threshold envisaged by Article 106, subsections 1 and 3 of the Consolidated Law, derivatives which offer a long position are not significant when they concern securities to be issued.

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

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

7. To determine the price pursuant to Article 106, subsection 2 of the Consolidated Law, the price contractually attributed to the securities underlying the financial instrument and the amounts paid or received for the acquisition of the long position shall be considered.

Article 44-quater
(*Persons acting in concert*)

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

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

cohabiting partner;

- b) a party, its financial consultants for transactions regarding the issuer, provided that said consultants, or companies belonging to the same group, have purchased securities of the issuer outside of their management of ordinary operations, starting from the month prior to the granting of the assignment;
- c) parties submitting a list of candidates for the election of the majority of the members of the board of directors or the supervisory board, or who jointly promote the solicitation of voting proxies aimed at voting for said list.

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

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

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

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

- 1) remuneration of the members of corporate boards, remuneration policies and compensation schemes based on financial instruments;
- 2) related party transactions;
- 3) authorisations pursuant to Article 2390 of the Italian Civil Code or Article 104 of the Consolidated Law.

d) cooperation between shareholders to:

- 1) favour the approval of a shareholder meeting resolution regarding the responsibility of the members of corporate boards or a proposed item for the agenda pursuant to Article 2367 of the Italian Civil Code or Article 126-*bis* of the Consolidated Law;
- 2) gain votes for a list which presents a number of candidates that is less than half of the members to be elected, or is by design preset for the election of representatives of minority interests, also through the solicitation of voting proxies for the purpose of voting for said list.

Article 45

(Indirect takeover)

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

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

3. For the purposes of subsections 1 and 2, prevalence shall exist where at least one of the following conditions is met:

a) the book value of the equity investments represents more than one third of the balance sheet assets and exceeds that of every other fixed asset shown in the balance sheet of the investor company;

b) the value attributed to the equity investments represents more than one third and constitutes the principal component of the purchase price of the securities of the investor company.

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

Article 46

(Consolidation of equity investments)

1. The mandatory bid obligation referred to in Article 106, subsection 3, paragraph b) of the Consolidated Law shall arise from the acquisition, including indirect acquisition as defined in Article 45, of more than five percent⁷ of the capital represented by securities that grant voting rights for matters specified in Article 105 of the Consolidated Law as a result of purchases made in the twelve months.

Article 47

(Consideration in the form of financial instruments)

...*omissis*...

Article 47-bis

(Procedure for reducing the price of mandatory takeover bids)

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

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

3. The petition must indicate the following, otherwise it will be impossible to proceed:

a) the occurrence of one of the circumstances pursuant to Article 106, subsection 3, letter c) of the

⁷ It is noted that Article 46 of the IR was most recently amended by Consob resolution no. 16893 of 14 May 2009, which raised the threshold from three percent to five percent, thereby adjusting the regulatory provision to that set forth in Article 106, subsection 3, paragraph b), as amended by Law no. 33/2009.

Consolidated Law;

b) the facts which are the basis of the petition;

c) the effects on the offer price, if known.

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

Article 47-ter

(Price reduction in the event of exceptions)

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

2. The decreased offer price shall match the higher of the highest price paid by the bidder or persons acting in concert with them to purchase securities in the same category, in the twelve months pursuant to Article 106, subsection 2, first paragraph of the Consolidated Law, not influenced by said event, and the average weighted market price for a period equal to fifteen days prior and fifteen days following the occurrence of the exceptional event, excluding the market prices relating to the sessions influenced by said event.

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

Art. 47-quarter

(Price reduction in the event of manipulation)

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

2. For the purpose of this article, there are grounds for suspicion in the event of:

a) transmission of the reasoned report pursuant to Article 187-*decies*, subsection 2 of the Consolidated Law to the Public Prosecutor;

b) enactment of one of the cautionary measures indicated in Article 187-*octies* of the Consolidated Law;

c) notice of charges due to breach of Article 187-*ter* of the Consolidated Law;

d) exercise of the criminal action pursuant to Article 405 of the Italian Code of Criminal Procedure;

e) implementation of a cautionary measure against the person being investigated or the accused.

3. The offer price decreased by Consob shall match the higher of the highest price paid by the bidder or persons acting in concert with them to purchase securities in the same category, in the

twelve months pursuant to Article 106, subsection 2, first paragraph of the Consolidated Law, not influenced by the manipulative event, and the average weighted market price for a period equal to fifteen days prior and fifteen days following the occurrence of the manipulative conduct, excluding the market prices relating to the sessions influenced by said event.

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

Article 47-quinquies

(Price reduction in the event of specific trading transactions)

1. The offer price shall be adjusted by Consob pursuant to Article 106, subsection 3, paragraph c), no. 2 of the Consolidated Law if the highest price paid by the bidder or the persons acting in concert with them is:

a) the price of the trading transactions performed at market conditions as part of dealing for own account, for a total quantity not exceeding 0.5% of the category of financial products subject of the bid;

b) the price of trading transactions which would have benefited from the exemption pursuant to Article 49, subsection 1, paragraph b).

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

Article 47-sexies

(Procedure for increasing the price of mandatory takeover bids)

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

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

3. The petition must indicate the following, otherwise it will be impossible to proceed:

a) the occurrence of one of the circumstances pursuant to Article 106, subsection 3, letter d) of the Consolidated Law;

b) the facts which are the basis of the petition;

c) the effects on the offer price, if known.

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

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

6. Consob shall make its decision by justified measure by the close of the bid. If it is necessary to request additional information or documentation during the investigation pursuant to Article 102,

subsection 4 of the Consolidated Law, the term of said investigation shall be suspended, once, until the reception of said information or documentation. The information or documentation required shall be provided within the term set by Consob, which shall be no more than fifteen days. During the subscription period, Consob may suspend the bid when it is necessary to carry out investigations.

Article 47-septies

(Price increase in the event of securities purchase agreements)

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

Article 47-octies

(Price increase in the event of collusion)

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

Article 47-novies

(Price increase in the event of manipulation)

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

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

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

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

Article 48

(Procedure for approval of prior partial bids)

1. Approval of a bid provided for in Article 107 of the Consolidated Law shall be given by a statement made on a special form prepared by the bidder, which may be annexed to the bid document. Subscription of the bid shall be equivalent to a statement of approval unless it is accompanied by an express manifestation of will to the contrary.
2. Statements shall be sent by the close of the bid to the address indicated by the bidder via the depository of the shares, which shall attest to the ownership thereof.
3. Approval shall be irrevocable. It is possible to approve more than one competing bid.

Article 49

(Exemptions)

1. An acquisition shall not give rise to the mandatory bid obligation provided for in Article 106 of the Consolidated Law where:
 - a) another shareholder or other shareholders jointly hold the majority of voting rights exercisable in the ordinary shareholders' meeting;
 - b) it is carried out in the presence of:
 - 1) a recapitalisation of the listed company or another measure to strengthen equity, and the company is in difficulty, proven by:
 - i. admission to a bankruptcy proceeding envisaged in Italian Royal Decree no. 267 of 16 March 1942 or in other special laws;
 - ii. approval of a debt restructuring agreement entered into with debtors pursuant to Article 182-*bis* of Italian Royal Decree no. 267 of 16 March 1942, disclosed to the market;
 - iii. the existence of a reorganisation plan, disclosed to the market, pursuant to Article 67, subsection 3, paragraph *d*) of Italian Royal Decree no. 267 of 16 March 1942, limited to cases of recapitalisation;
 - iv. expression by the statutory auditor of an adverse opinion on going concern assumptions, based on the latest financial statements of the issuer;
 - v. the measure complies with requests by a Supervisory Authority for the purpose of safeguarding the sound and prudent management of the company;
 - 2) a crisis situation which is not attributable to the situations described in point 1) of this paragraph, provided that:
 - i. when the transaction is the responsibility of the shareholders' meeting, without prejudice to that set forth in Articles 2368, 2369 and 2373 of the Italian Civil Code, the resolution is approved with the favourable vote of the majority of shareholders attending the shareholders' meeting, other than the shareholder or shareholders that,

jointly or severally, possess a (also relative) majority shareholding, and the persons acting in concert with them;

- ii. when the transaction is not subject to a shareholders' meeting resolution, it is approved by the favourable vote of the majority of shareholders other than the parties indicated in point 2.i) above, who cast their vote by way of declaration contained in a specific voting papers prepared by the issuer. These voting papers shall be sent to the acquirer, via the depository of the shares, which shall attest to the ownership thereof, by the date and to the address indicated by the acquirer;

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

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

e) the thresholds envisaged by Article 106, subsections 1 and 3, paragraph b) of the Consolidated law are exceeded by not more than 3 percent and 1 percent and the acquirer undertakes to dispose of the excess shares within twelve months and not to exercise the related voting rights. When the threshold is exceeded by an authorised person that provides a guarantee for a share capital increase, the aforementioned limits shall not be applied and the term for disposing of the excess shares is eighteen months, without prejudice to the commitment not to exercise the related voting rights;

f) the obligation is the result of mergers or spin-offs approved by shareholders' meeting resolution of companies whose shares should otherwise be the subject of bids, and, without prejudice that set forth in Articles 2368, 2369 and 2373 of the Italian Civil Code, with the favourable vote of the majority of shareholders attending the shareholders' meeting, other than the shareholder purchasing the equity investment exceeding the significant threshold or the shareholder or shareholders that, jointly or severally, possess a (also relative) majority shareholding, and the persons acting in concert with them;

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

2. The acquirer:

a) in the case referred to in paragraph a), shall promptly notify Consob and the market of the non-existence of agreements or plans in common with the other shareholders referred to therein;

b) ...*omissis*...

c) in the case referred to in paragraph e), if it does not comply with the obligation to make the disposal, shall promote the bid at the highest price resulting from the application of Article 106, subsection 2 of the Consolidated Law to the twelve months prior and subsequent to the acquisition.

Article 50

(Commitment to buy)

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

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

2. With regard to the obligations envisaged by Article 108, subsection 2 of the Consolidated Law, the stock exchange company shall:

a) inform Consob of the companies for which, applying general criteria established by the latter, it is possible to adopt a threshold higher than ninety per cent, taking account of the need to ensure regular trading;

b) announce the restoration of the float.

3. Without prejudice to the provisions of Article 108, subsection 3 of the Consolidated Law, if the commitment to buy arises as a result of a voluntary tender offer, Consob determines the price as the amount equal to the price of the bid, when it involves:

a) a public offering promoted pursuant to Article 107 of the Consolidated Law;

b) a full takeover bid subject to the term re-opening regulations pursuant to Article 40-*bis*, subsection 1, or voluntarily subjected such regulations by the bidder, provided that in the first phase of duration of the bid, at least 50% of the securities in the bid were contributed to it.

4. In the other cases where the commitment to buy arises following a public offering, Consob shall determine the price of the commitment to buy, taking into account:

a) the price of the previous offering, also in light of the subscription percentage;

b) the average weighted market price of the securities subject to the offering in the six month period identified in accordance with article 108, subsection 4 of the Consolidated Law;

c) the value attributed to the securities or to the issuer by any valuation reports, drawn up by independent experts according to criteria generally used in financial analysis, not prior to six months before the triggering of the commitment to buy;

d) any other purchases of securities in the same category in the last twelve months by the party held to the commitment to buy or the party operating in concert with them.

5. In the case where the commitment to buy has not arisen following a public offering, Consob shall establish the price on the basis of the higher of the following:

(i) the highest price set forth for the purchase of securities in the same category in the last twelve months by the party held to the commitment to buy or the party operating in concert with them;

(ii) the average weighted market price of the last six months prior to the triggering of the

commitment to squeeze-out.

6. When at least two of the elements indicated in subsections 4 and 5 above are unavailable, the price is also determined based on the shareholders' equity adjusted to current value and the performance and income-earning prospects of the issuer.

7. For the purpose of determining the price pursuant to the previous subsections:

a) the percentage of subscriptions to the bid is determined:

- subtracting, both from the number of securities in the bid and from the number of securities contributed to the bid, the securities contributed by related parties of the bidder in the period from the date the bid was announced to the date of conclusion of the bid;

- also calculating any purchases by the bidder outside of a full takeover bid during the subscription period, provided that the provisions of Articles 41 and 42 were complied with;

b) the average market price may be calculated with reference to a different period which Consob deems suitable when circumstances arose during the six months which reduced the significance of the prices recorded on the market.

8. The party held to the commitment to buy shall send the following to Consob, within ten working days from the time the commitment arises:

(i) a request for determination of the price, also indicating the number of subscriptions to any previous bid from parties which can be classified as related parties pursuant to subsection 7;

(ii) in the cases pursuant to subsection 4, the valuation reports pursuant to paragraph c), where existing;

(iii) in the cases pursuant to subsection 5, a summary of the transactions carried out in the twelve months prior to the triggering of the commitment to buy;

(iv) in the cases pursuant to subsection 6, a valuation of the issuer, referring to a date no more than six months before the commitment to buy was triggered, drawn up by the party held to the commitment to buy according to criteria generally used in financial analysis, which are suitable to the specific characteristics of the issuer and its sector of operation. Said valuation shall be accompanied by an analysis of the methods used, the related results, the underlying assumptions and the value attributed to the various parameters.

9. Consob shall determine the price by way of resolution within 30 working days from reception of the elements pursuant to subsection 8. If the elements provided are incomplete or additional elements are required, this term shall be suspended up to the date on which Consob receives the missing or supplementary elements.

Art. 50-bis

(Determination of the price following exchange tender offer)

1. In the case where the price of the previous bid was represented fully or partially by securities, for the purposes of Article 50, subsection 4, the value of price of the previous bid pursuant to paragraph a) of the same subsection shall be determined by pricing the securities offered in exchange on the

basis of the official price recorded at the bid payment date. In the case where the securities offered in exchange are unlisted, for the purposes herein, the same valuation indicated by the bidder during the previous bid shall be applied.

2. Where Article 108, subsection 5 of the Consolidated Law applied, the price for execution of the commitment to buy shall be determined by firstly defining the monetary value of each security of the issuer, then converting this value into the same form as the price of the previous bid.

3. For the purposes of subsection 2, the price determined using the elements set forth in Article 50, subsection 4, is differentiated into securities and cash in the same proportions envisaged for the price of the previous bid. This transformation is performed on the basis of the average official daily prices of the securities offered in exchange, weight for the quantities traded, recorded on the market in the month prior to Consob's determination of the price. In the case where the securities offered in exchange are unlisted, for the purposes herein, the same valuation indicated by the bidder during the previous bid shall be used.

4. For the purposes of Article 108, subsection 5 of the Consolidated Law, the amount of the price in cash is equal to the monetary valuation performed pursuant to subsection 2 in cases where the price is determined by Consob; or, pursuant to Article 108, subsection 3 of the Consolidated Law, the price is equal to the price of the previous bid, said price shall be transformed to cash based on the weighted average of official prices of the securities offered in exchange recorded on the market in the month prior to the closing date of the bid.

Art. 50-ter

(Price for the exercise of the right to buy)

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

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

Art. 50-quarter

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

1. The duration of the period for submitting seller applications linked to the fulfilment of the commitment to buy pursuant to Article 108, subsections 1 and 2 of the Consolidated Law and any

payment in cash shall be agreed with the stock exchange company between a minimum of fifteen and a maximum of twenty-five days.

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

3. If, following the final date for payment of the price, new events occur or elements unknown to the market arise which capable of affecting the valuation of the securities in the bid, for the purposes of disclosure obligations linked to the commitment to buy pursuant to Article 108, subsections 1 and 2 of the Consolidated Law, the bidder shall publish a specific information document pursuant to Article 36, subsections 3 and 4, and Article 38.

IV. QUESTIONNAIRE

General questions

- Q1) Do you consider that Consob should adopt additional policy objectives in guiding its regulatory decisions? If yes, what additional purposes should be pursued?
- Q2) Do you consider that Consob has identified all the areas on which to enact regulatory amendments? If no, what additional areas should be considered?

Strengthening of the protection of minority interests

Remedies for limiting the pressure to tender

- Q3) Do you agree with the decision to include the obligation to re-open the term if the bid is “successful”? Do you consider that conditions defining success have been correctly identified? If no, what additional or alternative conditions should be identified [Article 40-*bis*]?
- Q4) Do you agree with the decision to require an opinion from independent directors [Article 39-*bis*]?
- Q5) Do you agree with the decision to limit the re-opening of the term and the opinion of the independent directors to bids promoted by insiders?

Increasing transparency during takeover bids

- Q6) Do you agree with the transparency regime envisaged for bidders intending to sell the financial instruments that are part of the bid [Article 41, subsection 2, paragraph *a-bis*]?
- Q7) Do you agree with the decision to extend the transparency rules during takeover bids to cash-settled financial instruments [Article 41, subsection 2, paragraph *b*]?

Derivatives triggering mandatory takeover bids

- Q8) Do you consider it appropriate to deal with the problem of the use of derivatives in order to elude the takeover bid regulations by extending the notion of equity investment pursuant to Article 105, subsection 2 of the Consolidated Law on Finance? [Article 44-*ter*]?
- Q9) What are the main cost components that should be verified in order to assess the regulatory option outlined for derivatives?
- Q10) Do you agree with the extension of the case pursuant to Article 105, subsection 2 of the Consolidated Law on Finance to all derivatives, also including cash-settled

derivatives and those with asymmetrical payoff structures [Article 44-ter]?

- Q11)** Do you consider it appropriate to propose extensions of the case pursuant to Article 105, subsection 2 of the Consolidated Law on Finance in addition to those proposed [Article 44-ter]? If yes, what options do you suggest?
- Q12)** Do you consider the mechanism proposed for calculating the takeover bid price in the presence of derivatives to be appropriate [Article 44-ter, subsection 7]?
- Q13)** Do you consider it correct to calculate the long position by also referring to the notional amount of the options, or do you consider it preferable to weight the shares under option by the delta [Article 44-ter]?
- Q14)** Do you agree with the exemption for long positions deriving from clauses in shareholders' agreements in consideration of the content and purpose thereof [Article 44-ter, subsection 2, paragraph a)]? If yes, for what reasons?
- Q15)** Do you agree with the "client serving" exemption [Article 44-ter, subsection 2, paragraph b)]? If yes, for what reasons?
- Q16)** Do you believe that additional exemptions are needed beyond those envisaged by Article 44-ter, subsection 2?

Votes of independent shareholders on exemptions

- Q17)** Do you agree with the decision to subject the exemption from the mandatory takeover bid for mergers or spin-offs to the favourable vote of independent shareholders [Article 49, subsection 1, paragraph f)]?
- Q18)** Do you agree with the new provision for applying the exemption for transactions to bail out a company in crisis? Do you consider that cases of crisis have been effectively identified? If not, what other solutions do you prefer? Do you agree with the decision, in other situations, to subject the exemption to the approval of the independent shareholders [Article 49, subsection 1, paragraph b)]?

Efficiency and transparency of the market for corporate control

Measures to favour dynamism in the market for corporate control

- Q19)** Do you agree with the amendments to the offer period and, in particular, with the reduction of the minimum duration of prior bids [Article 40, subsection 2]?
- Q20)** Do you agree with the elimination of the obligation to promote competing offers at a higher price than that of the original bid?
- Q21)** Do you agree with the introduction of the obligation for issuers providing information to one of the bidder to notify the same information to any other bidders [Article 42, subsection 5]?

- Q22)** Do you agree with the provisions on correction of the mandatory bid price? Specifically, do you agree with the methods used to govern the cases of reduction of the mandatory bid price [Article 47-*bis*-47-*quinquies*]? And do you agree with the methods for enacting the legislation for cases of increase in the offer price [Article 47-*sexies*-47-*novies*]?
- Q23)** Do you agree with the regulatory decisions taken with regard to the criteria for determining the price in cases of sell-out and squeeze-out [Articles 50-50-*quater*]?
- Enactment of legislation on acting in concert and treasury shares*
- Q24)** Do you agree with the assumptions regarding acting in concert identified in the regulatory proposal [Article 44-*quater*, subsection 1]?
- Q25)** Do you agree with the cases of cooperation identified which do not classify, in and of themselves, as acting in concert [Article 44-*quater*, subsection 2]?
- Q26)** Do you consider that additional assumptions relating to acting in concert and/or additional cases of cooperation which do not classify in and of themselves as acting in concert should be considered? If yes, which ones?
- Q27)** Do you agree with the regime for calculating the major shareholding for the purpose of mandatory takeover bid where treasury shares are part of the issuer's capital? Which of the two solutions proposed for buyback do you prefer [Article 44-*bis*] (please provide your reasons)? Do you consider that other solutions should be assessed? If yes, which ones?

Equal treatment for Italian and non-Italian investors and harmonisation with other countries' regulations

- Q28)** Do you agree with the provisions on obligations in the event of cross-border bids? Specifically, do you agree with the decision to limit the cases where the obligation to fully translate the bid documentation into Italian is applied [Articles 38-*bis* and 38-*ter*]?
- Q29)** Do you agree with the provisions on exchange tender offers on debt securities [Article 35-*ter*]? Do you consider it appropriate to require a customised model bid document for these tender offers?
- Q30)** Do you agree with the cases where the takeover bid regulations are not applicable for bids on financial instruments other than shares [Article 35-*bis*]?

Reduction of compliance costs for bidders

- Q31)** Do you agree with the standardisation of the content of statements and bid documents [Article 37]?

- Q32)** Do you agree with the new regulations on the establishment of performance guarantees on payment of the offer price [Article 37-*bis*]?
- Q33)** Do you agree with the amendments to the publication regime for the bid document, statement and subsequent notices [Articles 36 and 38]? Do you consider the fulfilments required to be effective in ensuring that investors have easy access to information? If no, what other solutions do you prefer?