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Efficiency of Share-Voting Systems: Report on Italy

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Abstract

Institutional shareholders around the world increasingly use active share-voting to protect their portfolio investments and improve corporate governance. However, exercising voting rights involves costly and often arcane country-specific legal rules. This report is one of a series examining the potential for increased harmonization of cross-border share-voting systems and proxy voting in the U.S. and Member States of the European Union (EU). This report describes the share-registration system and voting chain for publicly traded companies in Italy. We highlight voting impediments and examine recent regulatory attempts to make the voting process both more efficient and conforming to the 2007 EU Shareholder Rights Directive. We also provide empirical evidence on how Italian listed firms have adapted to Italy's share-voting system.

Keywords: voting, voting chain, shareownership, shareholder rights, proxy voting, voting impediments

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Report on Italy*

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Abstract

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1 Introduction

1.1 Fundamentals of share-voting

Beneficial owners of common shares in a limited liability company - henceforth "shareholders" or "stockholders" - have only minimal contractual rights. For example, unlike owners of debt contracts, stockholders cannot put the company in bankruptcy, nor can they require company disbursements (such as dividends). Shareholders who are unhappy with the current management of the company have basically two options: sell ("the Wall Street Walk") or exercise voting rights in order to elect directors better able to protect shareholder interests. The first option requires a deep and liquid stock market and is becoming increasingly impractical for large institutional owners such as hedge funds, pension funds, and sovereign wealth funds.

Unfortunately, the second option—voting—is fraught with obstacles and costly impediments. First and foremost, it requires shareholders to be sufficiently informed about company management policies to pass an independent judgement on management and director quality. Arriving at an independent opinion requires committing time and resources which quickly become prohibitive for smaller shareholders. Thus, small shareholders rationally do not exercise their votes.

Furthermore, even many large shareholders have historically elected not to vote—or simply to passively cast their votes in favor of management. This passive approach to voting reflects a number of reasons, ranging from outright regulatory roadblocks on voting facing certain institutional owners, to the classical "free rider" problem: while the cost of voting is borne by the voting shareholder only, the benefits are shared also with shareholders who do not vote, encouraging some shareholders to free-ride on the voting effort of others.

When large blocks of votes passively favor management, the corporate governance system suffers. Poor governance accentuates the potential for costly conflicts of interest between shareholders and their agents (managers and directors), and between large and small shareholders. Such conflicts result in various forms of shareholder wealth expropriation. Firms pay up front for market concerns with wealth expropriation through a higher cost of equity capital, which in turn stifles economic activity. The risk of expropriation generally depends on a country's legal and political system with the associated constraints on various forms of self-dealing.

While all countries find it optimal to allow some form of self-dealing within the law, systems vary

greatly in terms of (1) how such "garden variety" conflicted transactions are flagged and approved up front, (2) which parties are entitled to receive information, and (3) the opportunities for and costs of reversing the transactions through legal action after they occur. Since resorting to the court system is expensive, a more cost-effective approach to minimize the costs of garden-variety self-dealing is often to strengthen the shareholder vote. With this in mind, institutional investors are increasingly exercising their option to vote in stock markets around the world.

1.2 The Tuck share-voting research project

Share-voting requires navigation of often complex and arcane country-specific rules and regulations which likely deter a substantial fraction of shareholders from voting. Tuck's Lindenauer Center for Corporate Governance is therefore undertaking a comprehensive research project addressing issues concerning the efficiency of share-voting systems, with a particular focus on cross-border voting.

The project is undertaken in collaboration with Norges Bank Investment Management (NBIM)—the manager of Norway's $400 billion "Government Pension Fund". The Government Pension Fund, which is best characterized as a sovereign wealth fund (its name notwithstanding, it has no formal pension obligations), receives the bulk of Norway's oil export revenues. NBIM is required by law to invest the entire fund outside of Norway. Moreover, also by decree, NBIM must follow a highly diversified investment policy. As a result, the fund holds shares in a large number (currently eight thousand) of companies listed on the most liquid stock markets around the world.

Over the past decade, NBIM has increasingly implemented a policy of engaging in active share-voting around the world. The project focuses in particular on share-voting systems in countries where NBIM is heavily invested, as measured by the collar value of the country weight in its world portfolio. These countries include France, Germany, Italy, Sweden, Switzerland, the UK, and the US. In addition, because Norway is one of the few countries mandating a centralized share registration system, we include Norway's system in the overall analysis as well although NBIM does not invest there.

For each of these countries, the project produces a detailed technical description on the country's voting system, as described by the existing legal rules and regulations. This description has value in of itself as there is currently no uniform set of system descriptions available in the English language covering all of the countries studied here. Thus, to date, cross-border investors have faced not only

a bewildering set of rules but also the problem of interpreting some of those complex rules through the often idiosyncratic legal jargon of a foreign language.

Our research team, being proficient in the major European languages of English French, German, Italian, Swedish and Norwegian, is providing translations of the core set of the various country rules. While an occasional language issue is inevitable, we believe our English translations accurately capture the original meaning and intent of the original legal terms. If in doubt, the country reports contain frequent references to the original-language sources.

The voting-project (1) studies the efficiency of existing voting systems, (2) provides data on market practices by large publicly traded companies within these systems, and (3) suggests possible areas for systemic improvements. Any analysis of the efficiency of voting systems must contemplate the possibility of "straight-through processing"—the automatization of the entire proxy voting process from start to finish. A key element of straight-through processing system is a centralized share registry (referred to below as the Central Security Depository or CSD). While virtually all modern capital markets operate through a CSD today, the role of the CSD in the voting-chain may sometimes be improved. Another element involves separating the voting chain from the custody chain so as to simplify the distribution of general meeting-related information. Also, direct electronic voting platforms, offered by individual companies rather than by middlemen, may economize on voting costs. Based on the reports of the individual country voting systems, the project integrates its data on market practices with its analysis of the likely efficiency of straight-though voting systems and alternatives. This integration of data into our systemic analysis of cross-border rules and regulations makes the Tuck Share-Voting Project unique in the current literature.

1.3 Report outline

As summarized in Figure 1, a country's share-voting system consists of a set of three key legal and regulatory components: (1) company law, (2) listing rules, and (3) corporate governance codes and principles. Section 2 of this report describes the design of each of these components in Italy.

As mentioned above, shareholder incentives to vote depend on both the structure of ownership and the nature of shareholder rights. Section 3 characterizes the domestic and foreign ownership structures of Italian listed companies, and it describes important aspects of shareholder rights, in

particular those exercised at the general meeting (GM). Thus, this section discusses the existence of different classes of shares which create opportunities for deviations from the principle of "one share—one vote", voting caps, and other ownership limits. It also highlights important issues addressed by the GM, such as board elections and corporate control transfers.

The report, in Section 4, then explains technical aspects of the share-holding system, introducing the concept of "direct" and "indirect" share-holding, the role of the Central Securities Depository (CSD) and other securities intermediaries in the custody chain, and rules for proper authentication of registered shareholders casting votes at the GM. The shareholding system sets the parameters for—and is therefore intrinsically linked to—the voting system discussed later in the report.

Before detailing the share-voting process itself, Section 5 explains how the Italian system, starting from April 2009, mandates the production, storage, and dissemination of information to the public—so-called "regulated information". Regulated information includes information relevant for exercising shareholder rights, company information on ownership structures (major holdings, shareholder agreement), adoption of code of conduct, protection of minority interests, and financial information. This information is, of course, crucial to the effectiveness of the entire voting system: it forms much of the basis on which shareholders vote.

Sections 6 to 10 describe rules governing the voting process and the exercise of voting rights at the GM. This includes rules governing calling a GM and the control over the GM agenda (Section 6), criteria for participating in the GM including notification and share blocking (Section 7), proxy solicitation and voting by proxy and electronic voting (Section 8), quorum and majority requirements for passing resolutions (Section 9), and post-GM distribution of information to shareholders (Section 10).

Section 11 summarizes the entire voting chain. In sum, shareholders exercise voting rights at the GM directly or indirectly through financial intermediaries, including custodians and investment managers. The company calls the GM, sets the agenda and mails out supporting documents. The country's corporate law, stock exchange listing rules, central securities depository (CSD) regulations, and governance codes regulate this information flow and shareholder solicitation activity. Large shareholders often purchase the advice of proxy voting agencies, and may instruct these and other agencies to cast the vote on their behalf. The legal rules affect both the feasibility of shareholders receiving timely information prior to the GM, and the effectiveness of the voting chain

when it involves several intermediaries.

In Section 12 we identify key impediments to voting Italian shares, in particular from the perspective of cross-border voting by foreign institutional shareholders. Here we make specific recommendations for improvements to Italy's share-voting system, which require changes to Italian Company Law consistent with the EU Shareholder Rights Directive (SRD). The discussion in Section 12 is organized around Italy's *"Legge comunitaria"* ("Community Law") for the year 2008 (Law No.88 of July 7, 2009). This law sets out general criteria for the Legislative Decree that is needed to transpose the SRD into Italian law.

On July 24, 2009, the Italian Ministry of the Economy and Finance (Department of Treasury) launched a second public consultation regarding the implementation of the SRD.[1] The Consultation Document includes the draft Legislative Decree designed to transpose the SRD into Italian law. Several of the key changes proposed by this draft Decree are consistent with our recommendations given earlier in Section 12. To see the consistency, and to provide an up-to-date input to the ongoing consultation process (as of September 18, 2009), we have added Section 13 where we comment on the main changes proposed by the draft Legislative Decree.

Finally, the report contains information on the market practices observed in fiscal year 2008 for a sample of twelve companies listed on the Italian Stock Exchange (Borsa Italiana).[2] The market practice information includes material published by the companies for the GM and how the GM is regulated in the company bylaws (articles of association—*"statuto"*). We are particularly interested in criteria for GM participation and shareholder voting. Relevant aspects of the market practice information is disclosed throughout the report in order to illuminate the technical discussion. Moreover, a full disclosure of the information is given in Section 14 in the form of tables detailing each company studied.

The data and analysis of this report form the Italian input to the ongoing cross-country analysis and recommendations under the larger Tuck Share-Voting project.

[1] *"Attuazione della direttiva 2007/36/CE relativa all'esercizio di alcuni diritti degli azionisti di societá quotate, Seconda Consultazione, 24 July 2009"* (Implementation of the Directive 2007/36/CE regarding the exercise of certain voting rights of the shareholders of listed companies, Second Consultation). The Consultation Document is available at http://www.dt.tesoro.it

[2] The companies are: ENI, UniCredito Italiano, Intesa Sanpaolo, Enel, Assicurazioni Generali, Telecom Italia, Fiat Group, Saipem, Atlantia, Unione di Banche Italiane, Banco Popolare, Banca Popolare Di Milano.

2 Regulatory framework

We describe the Italian share-voting system in terms of the country's company law, listing rules and corporate governance code and principles. As summarized in Figure 1, the regulatory framework determines the rights and obligations of shareholders and their listed companies, as well as the CSD, custodians, and voting service providers. We discuss each of these in turn. To ease the exposition, Table 1 lists references to twenty of the most important elements of Italy's legal framework.

2.1 Company law

The Italian public limited liability company (henceforth "listed company" or simply "company") is regulated by the Civil Code of 1942, as amended and supplemented by several subsequent laws that include the following:

1998: Legislative Decree No. 58 of February 24, 1998 (Consolidated Law on Financial Intermediation - CLFI) introduces a comprehensive set of provisions governing financial intermediaries, investment services and the securities market, and significantly reforms the law related to listed companies. The CLFI provides a mandate to the Italian securities regulator Consob ("Commissione Nazionale per le Società e la Borsa", or "National Commission for the Companies and the Stock Exchange") to issue regulations implementing the CLFI's provisions on intermediaries, markets and issuers.[3] The regulations, rules, and communications issued by the Consob constitute an essential part of the legal system governing Italian companies.

In 1998, the Italian legislature also adopted the so-called Euro Decree (Legislative Decree No. 213 of 1998). This decree contains provisions for the introduction of the EURO into the national legal system, as well as for a mandatory dematerialization of financial instruments traded on public exchanges (more on this in Section 4 below).

2003: A general reform of the Italian corporate governance with the adoption of two legislative decrees (Legislative Decrees N. 5 and 6 of January 17, 2003) which came into force in January 2004. The reform introduced the possibility for Italian companies to select one of three models of corporate governance: the so-called "traditional", "one-tier", and "two-tier" models (details in Section 3.3.1).

[3] Consob regulates and supervises the Italian securities market and the activity of listed companies.

2005: Adoption of the Savings Law (Law No. 262 of 2005). The law offers enhanced protection of minority shareholder rights and regulates financial markets. It amends the CLFI and the Italian Civil Code by introducing important provisions regarding listed companies' governing and controlling bodies and shareholder rights.

2008: The Bank of Italy and Consob jointly issue "Rules Governing Central Depositories, Settlement Services, Guarantee Systems and Related Management Companies" on February 22. These rules provide interested parties with a single and simplified regulatory framework for the settlement, clearing and guarantee of transactions involving financial instruments, the liquidation of market insolvencies, and central depositories.[4] The rules introduce provisions regulating the central depository services for financial instruments and establish specific requirements to be followed by shareholders and intermediaries regarding the criteria for attendance at the shareholder meetings of Italian listed companies (Section 7).

2009: In 2007, Italy implements the EU Transparency Directive of 2004.[5] In April and May of 2009, Consob issues implementing rules significantly modifying Consob Regulations of publicly traded companies.[6] (Section 5.1). In June of 2009, the Italian Parliament approved legislation (*"Legge comunitaria* 2008") which will allow the Italian Government to implement the EU Shareholder Rights Directive of 2007 (EU Directive 2007/36/CE). Member States have until August 2009 to implement this directive which regulates the exercise of shareholder voting rights in listed companies (Section 12.2).[7]

2.2 Listing rules

Listing rules govern companies listed on the Italian stock exchange, Borsa Italiana S.p.A. Borsa Italiana is part of the London Stock Exchange Group plc and controls six other companies: BIT Systems, Servizio Titoli, Cassa di compensazione e garanzia, Monte Titoli, and Piazza Affari Gestione e Servizi S.p.A., and MTS S.p.A. These seven companies compose the Borsa Italiana Group. Borsa Italiana regulates, develops, and manages the Italian stock markets: MTA/MTAX and the

[4] http://www.consob.it/documenti/english/laws/bi_consob_post_trading_20080222.htm

[5] Legislative Decree No. 195 of 2007. The EU Transparency Directive (EU Directive 2004/109/EC) harmonizes transparency requirements governing publicly traded companies in EU Member States.

[6] Consob Regulation N. 11971 of 1999 of issuers.

[7] The legislative effort follows a public consultation process organized by the Italian Ministry of the Economy and Finance (Department of Treasury) in June of 2008.

small-cap market Expandi Market.[8]

MTA, Borsa Italiana's electronic market, trades shares, convertible bonds, warrants and options. Companies traded on MTA are divided into three segments: Blue Chips (with the S&P/MIB and Midex indexes), Star (with the All STARS index), and Standard. The Blue Chip segment includes big companies with a market capitalization exceeding one billion Euro. Companies in the Star segment are medium cap companies (less than one billion) that voluntarily comply with certain strict requirements on liquidity, transparency, and corporate governance.[9] Companies in the Standard market have a capitalization between forty million and one billion Euros.[10]

Companies traded on Borsa Italiana must satisfy the "Borsa Rules" or "Rules of the Markets Organized and Managed by Borsa Italiana".[11] Under the Borsa Rules:

- Financial statements: The company must have filed the annual financial statements dictated by national law for the last three fiscal years. At least the latest financial statement must be accompanied by an auditor's opinion (in accordance with Article 156 of the CLFI or the corresponding applicable provisions of foreign law). Listing may not be granted where the auditing firm has rendered an adverse opinion or a disclaimer.

- Market capitalization: The company's market capitalization must exceed forty million Euro (smaller market capitalization are allowed provided an adequate market for such shares is expected to develop).

- Market depth: The expected fraction of the company's outstanding shares available for trading in the market (the float) must be at least 25%.

- Voting rights: Non-voting shares may not be listed unless the company's voting shares are also listed on the exchange.[12]

[8] Borsa Italiana also regulates and manages the Italian Derivatives market (IDEM), the Securitised Derivatives market (SeDex), the electronic Fixed income market (MOT), the electronic ETFs and ETCs market (ETFplus), and the Electronic Market (MTF) where Close-end Funds are traded.

[9] Under the Borsa Rules, in order to maintain Star listing status, companies must fulfill several corporate governance requirements. These include, among other things, appointing a qualified "investor relations" person; having a minimum of non-executive, independent directors (Articles 2 and 3 of the Corporate Governance Code); following the recommended board committee structure (including internal control) (Articles 5, 8, and 12); and implementing sound principles for executive compensation (Article 7).

[10] http://www.borsaitaliana.it/chisiamo/mercatigestiti/mercatoazionario/mercato-mta.en.htm

[11] See http://www.borsaitaliana.it/documenti/regolamenti/regolamenti/rules300708con.en_pdf.htm.

[12] Shares of banche popolari and cooperative companies authorized to engage in insurance are exempted from this rule. As explained below (Section 3.2.1), Italian cooperative banks (including both "Banche Popolari" and "Banche

- Information disclosure: Listed firms must supply Borsa Italiana with any and all information the exchange deems necessary, on a case-by-case basis, to ensure the proper operation of the market. Moreover, listed firms may be required to disseminate data and news needed to inform the public in accordance to the procedures and deadlines set by Borsa Italiana.[13]

2.3 The Corporate Governance Code and the "comply or explain" principle

Italy's first-generation Corporate Governance Code for listed companies (Listed Companies' Code of Self-Discipline, known as the "Preda Code") was adopted in 1999 and amended in 2002. In March of 2006, Borsa Italiana issued a revised Corporate Governance Code. The Code brought Italy in line with EU Directives and Recommendations, and with domestic reforms of company law. The Code affects director fiduciary duties and powers and suggests board compositions and committees. Furthermore, it enhances the definition and role of non-executive independent directors.[14]

Compliance with the Corporate Governance Code is voluntary, reflecting the "comply or explain" principle. It's voluntary nature notwithstanding, Italian listed companies[15] are required by law to publish annually information on their adherence to the Corporate Governance Code. Specifically, the CLFI requires listed firms to include in the directors' report ("*relazione sulla gestione*") a specific section entitled "Report on corporate governance and ownership structures". This report must include detailed information on the company's equity ownership and corporate governance structures.

The directors' report is a major part of the annual report of Italian listed companies. It normally includes information regarding the company's profile of the year, the company's structure and corporate boards, a letter to shareholders (and often to stakeholders), a summary of the results, the report on corporate governance and ownership structures, a financial review of the company/group as well as an overview of the company's/group's performance and financial position.

In its corporate governance section, the report must explain the firm's choice of governance code to follow and how the code is implemented. Failure to adhere to any specific part of the code must be explained and rationalized. Furthermore, the report must rationalize any deviations from the

di Credito Cooperativo") are permitted to operate within a unique set of governance rules.

[13] Article 2.6.1 of the Borsa Rules.

[14] For an analysis of the role of independent directors in Italian listed companies and the new independence criteria introduced by the Corporate Governance Code of 2006, see Santella, Paone, and Drago (2006).

[15] Civil Code, Article 2428

code in terms of shareholder voting rights and other rights exercised at shareholder meetings. The company must ensure that the full report is accessible to the public on the company's web site.[16]

A comply-or-explain principle is also contained in "Instructions Accompanying the Rules of the Markets Organized and Managed by Borsa Italiana", effective June 22, 2009.[17] Under these Instructions, Italian listed companies must transmit to Borsa Italiana an annual report that includes information on the company's system of corporate governance and compliance with the Governance Code. Moreover, material deviations from the recommendations of the Code must be explained and rationalized. The report must be made available in time for the annual shareholder meeting. Also, Borsa Italiana is required to make the report available to the public.[18]

Italian listed companies generally adopt the Corporate Governance Code issued by Borsa Italiana in 2006. In fact, as documented in Section 14 below, all of the companies in our sample have adopted the Governance Code and published the required annual report detailing their governance practices.

3 Ownership structure and shareholder rights

In this section, we first briefly characterize foreign and domestic ownership structures of Italian publicly traded firms. We then examine control-aspects of shareownership structure and, in particular, how shareholder rights are played out in the context of the annual GM.

3.1 Ownership structure of Italian listed companies

Although the Italian economy is one of the largest in Europe, the number of companies listed on the Italian exchange is relatively small. At the end of 2008, there were 300 companies listed on the Italian stock exchange (Borsa Italiana) with a market value of total equity of appr. EUR 370 billion (USD 522 billion). These listed firms are characterized by relatively concentrated ownership, and a single shareholder with voting control is common. Controlling shareholders also enhance their

[16] Within 5 days of its publication, the report must be forwarded to the body (market management company or trade association) who issued the Code of Conduct to which the board subscribes. This body must in turn promptly publish the report on a dedicated section of their web sites (Consob Regulation of Issuers, Article 89-bis).

[17] http://www.borsaitaliana.it/documenti/regolamenti/regolamenti/istruzioni/istruzioni.en.htm

[18] Section IA.2.6 ("Information on Compliance with the Recommendations Contained in the Code of Conduct for Listed Companies (the 'Code')") of the "Instructions Accompanying the Rules of the Markets Organized and Managed by Borsa Italiana" effective from June 22, 2009.

power through the use of pyramidal corporate structures, and by issuing nonvoting (saving) shares.

3.1.1 Foreign ownership

Table 2 shows the ownership structure in Italian listed companies as of the end of 2006. Foreign shareownership in Italian listed firms is low relative to other large European stock markets. According to a 2008 report by the Federation of European Securities Exchanges (FESE), at the end of 2007, foreigners held 13.9% of the Italian listed stocks, the second lowest percentage among 27 markets covered.[19] In comparison, at the end of 2007, foreign ownership among European countries averaged 41% of shares outstanding and 37% of equity market capitalization.

Unlike other major European countries, foreign ownership of Italian stocks have increased only slightly over the past decade, from 11.6% in 1995. However, in 2007 as much as 58% of shares in new lists of Italian companies were placed with foreign investors (2007 Consob Annual Report), suggesting increased foreign demand for Italian shares. As is common in all stock markets, the degree of foreign ownership varies cross-sectionally with the size of the company. For larger companies with a relatively deep and liquid market, a foreign ownership of 30% is not uncommon. In smaller companies, the fraction of foreign held shares tend to be very small—producing the small overall average foreign ownership fraction in Italy.

3.1.2 Domestic ownership

As shown in Table 2, at the end of 2006, individual investors held 26.6% of the Italian stock exchange capitalization, the highest percentage among the markets covered by the 2008 FESE report. Over the past decade, while individual investor ownership has decreased substantially in most stock markets outside of Italy, in Italy the size of this investor group has decreased by only 2%. Another large owner group is non-financial companies, which hold 26.6% of the shares in Italy, again one of the highest percentages in the markets covered by the FESE report. Ten years ago this group held 11.9%. In its 2008 report, FESE also shows that there has been a reduction in state ownership over the last 15 years - an important change in the ownership structure of Italian listed companies. Due primarily to state privatizations, state ownership of Italian publicly traded

[19] See the FESE report: "Shareownership Structure in Europe," December 2008, available at http://www.fese.be/_mdb/news/Share%20Ownership%20Survey_2007_Final.pdf.

companies decreased from 29.8% in 1996 to 9.8% in 2006.

Pension funds in Italy have traditionally held a relatively small fraction of their investment portfolios in stocks. This is likely to change with a reform of Italy's pension system, and with increased public acceptance of the stock market as an efficient savings mechanism for retirees. If so, the world-wide trend towards increased pension fund activism in governance matters is likely to occur also in Italy.

3.1.3 Structures influencing control

Shareholder control of Italian companies is maintained through (1) direct ownership stakes, (2) "pyramids" where the controlling shareholder in company A controls the votes in company B through A's direct shareownership in B, (3) issuing of shares with differential voting rights (such as non-voting or "savings" shares), and (4) shareholder agreements. Traditionally, all of these structures are in use and have resulted in Italian listed firms being controlled by a relatively small set of investors, founding families and corporate groups. Important groupings and families are the Agnelli family controlling Fiat, the Pirelli/Olivetti family with large ownership in Telecom Italia, the Pesenti family controlling Italmobiliare and Italcementi, as well as the closely held investment bank Mediobanca and Italy's largest insurance company Assicurazioni Generali which both hold interests in a broad range of companies.

According to Consob (2006 annual report), 75% of the companies (as measured by capitalization) were dominated by a single shareholders either directly, or through pyramid structures or shareholder agreements. Moreover, using a comprehensive sample of 464 listed companies across 16 EU Member States in 2006, the 2007 "Report the Proportionality Principle in the European Union" concludes that 17 of the 20 largest Italian companies featured a controlling pyramid structure and/or shareholder agreement.[20]

In it's 2006 annual report, Consob also shows that the average holding of the largest shareholders in Italian companies has decreased over the past decade, from 50.4% in 1996 to 27.5% at the end of 2006.[21] The role of pyramidal groups is also declining, however, possibly replaced by an increased

[20] "Report on the Proportionality Principle in the European Union" by ISS Europe, ECGI and Shearman & Sterling, 2007. The report was commissioned by the European Commission.

[21] However, ownership concentration in recently listed companies is greater. See the 2007 Report on the Proportionality Principle in the European Union.

use of shareholder agreements. In 2006, 22.3% of the market cap of ordinary shares listed on the Italian stock exchange/MTA market were covered by a shareholder agreement.

Shareholder agreements cover multiple corporate control aspects, including the exercise of voting rights (in the company and its parent company), "drag along" and "tag along" rights in new share issues, preemptive rights and limits on share transfers and block trades, and rights in control change transactions. The CLFI places certain restrictions on the disclosure, term, and renewal of shareholder agreements:

- Disclosure: The agreement must be disclosed to Consob within 5 days and filed with the Company Registry. A summary of the agreement must be published in a national newspaper and sent to the company and to the Italian stock exchange.

- Duration and expiry: The term in fixed-term agreements cannot be more than 3 years and cannot be automatically renewed. Parties to agreements with no stated term have the right to withdraw at six months notice.

If these requirements are not met, the agreements are void and voting rights attached to the shares covered by the agreement are not exercisable.[22]

Finally, another important structural ownership change involves the government. Privatizations of state-owned firms have steadily reduced the ownership role of the state over the past two decades. Nevertheless, the Italian state is still a major owner in some large companies. For example, the state holds controlling/golden shares in ENI, Enel, Finmecannica, and Telecom Italia, both directly and through pyramid structures. Moreover, the state has special rights in some of these companies, including the right to veto decisions to dissolve or split up the company, and to change or modify some parts of the articles of association. In some companies, the Minister of Finance has the right to appoint a non-voting board member.

3.2 Deviations from "one share-one vote"

Voting rights for holders of ordinary shares are generally based on the one share one vote principle, and companies are not allowed to issue shares with multiple voting rights. Companies may, however, issue preferred stock with voting rights limited to particular matters on extraordinary meetings, as

[22] Articles 122 and 123 of the CLFI. See also Articles 127-129 of the Consob Regulation of Issuers.

well as non-voting shares ("*azioni di risparmio*" or saving shares), provided these types of shares do not, in total, represent more than half of the share capital, among other restrictions.

Saving shares may be issued by Italian companies with ordinary shares listed in Italy or in any other EU regulated markets only in the event of an increase in capital or to redeem ordinary or other shares. Holders of saving shares are entitled to higher dividends than the dividend paid on ordinary shares. Moreover, holders of saving shares have no right to participate and vote at shareholder meetings, except at special meetings to decide on issues which directly affects the interests of this share class. Examples are approval of mergers, the dissolution of the company, and the conversion of savings shares into ordinary shares. At such special meetings, a "representative of holders of saving shares" is appointed and speaks on behalf of the share class.[23]

According to the 2007 Report on the Proportionality Principle in the European Union, a majority (about 3/4) of the outstanding share capital of Italian listed companies represents ordinary (single vote) shares, with recent, new lists tending to issue ordinary shares only. Among the twelve companies in our sample 7 have issued only ordinary shares, 4 both ordinary and saving shares and one company has issued ordinary, savings and preference shares with some voting rights. Finally, also according to the Report on the Proportionality Principle, among the 20 largest Italian companies, 6 companies have issued savings shares.

3.2.1 Ownership limits and voting caps

Ownerships limits and voting caps also play an important role in the firm's ownership/control structure. Ownership ceilings limit the ownership stake a single shareholder may hold and is normally set between 3-5% of the outstanding ordinary (voting) shares. Some companies, like Apulia Prontoprestito, operate with a "reversed" ownership limit by requiring a certain minimum percentage ownership by one shareholder, implying an upper limit on the possible ownership of other shareholders. Voting caps prohibit shareholders from voting above a certain threshold irrespective of the number of voting shares they hold. Normally the voting cap is expressed as a percentage of all outstanding voting rights.

According to the 2007 Report on the Proportionality Principle, among the 20 largest Italian

[23] CLFI, Articles 145-147. Note also that Italian listed companies mostly issue ordinary registered shares. Bearer shares are allowed only in the form of saving shares.

companies, 6 have ownership ceilings and 2 have voting caps. Among our sample of companies, 5 operate with ownership limits (of these, two are cooperative banks) and 2 operate with voting caps (one of which is a cooperative bank).

Some of the large Italian banks are cooperative banking groups, which operate within a legal and regulatory framework that differs somewhat from ordinary banks and corporations. For example, each shareholder of an Italian cooperative bank has only one vote ("one shareholder, one vote") irrespective of the value of the share capital or number of shares owned. Company bylaws may grant more than one vote to shareholders who are legal entities but no more than 5. In addition, there is an upper limit on ownership of cooperative banks: the general rule is 0.5% of the share capital for individuals, while the Undertakings for Collective Investment in Transferable Securities may hold a higher percentage of capital but cannot exceed the limit established in their specific regulations.[24]

3.3 Shareholder rights and the power of the general meeting

Although Italian corporate law and accounting standards have been substantially reformed and modernized in recent years, the potential for expropriation of minority shareholders remains a concern among investors. Avenues for expropriation include asset sales and transfer pricing favorable to the controlling shareholder ("tunneling"), excessive executive compensation, personal loan guarantees, dilutive share issues, minority freeze-outs, and insider trading.[25]

3.3.1 Governance structures

The Italian corporate governance reform of 2004 introduced two alternative governance systems for Italian companies (Ghezzi and Malberti, 2007). As a result, firms now have three possible governance structures from which to choose. The three structures differ among other things in their standards for board composition, audit control, and committee formations:

(1) The Traditional Governance System:

- The GM appoints a board of directors that includes both executive and non executive directors.

[24] Civil Code, Article 2538 and Consolidated Banking Law, Article 30. For an analysis of the structure and features of the Italian cooperative banking sector see Gutièrrez (2008).

[25] See, e.g., Kruse (2005).

- The company is required to have a board of statutory auditors ("*collegio sindacale*") appointed by the GM and which has a supervisory function vis-a-vis the board of directors.

- Provided permission is also granted by the company's bylaws or by the GM, the board of directors may delegate some of its functions to an executive committee (consisting of some of the board's members) or to one or more of its members.[26] The board of directors of Italian listed companies normally appoints a CEO.

(2) The "One-Tier" Governance System:

- The GM appoints a board of directors where at least 1/3 of the members must be independent.

- The board appoints a number of directors to a "Management Control Committee" ("*comitato per il controllo sulla gestione*") composed of independent directors.

- At least one member of the management control committee must be a certified accountant.

(3) The "Two-Tier" Governance System:

- The GM appoints a supervisory board ("*consiglio di sorveglianza*") which in turn appoints a management board ("*consiglio di gestione*").

- At least one member of the supervisory board must be a certified accountant.

- The company's bylaws may establish specific requirements of integrity, experience, and independence for the members of the supervisory board.[27]

The "one-tier" system is intended for smaller and closely controlled companies, while the "two-tier" system is a model more appropriate for larger listed companies with numerous shareholders. Whichever model is chosen, accounting control and review, including auditing, must be carried out by an independent auditor/auditor firm. In the "two-tier" system, most of the decisions normally taken by the ordinary shareholder meeting are transferred to the supervisory board with little involvement of the shareholders. In the "one-tier" system, the management control committee has the duty to supervise the management and has much the same powers as is attributed to the statutory board of auditors in the traditional model. One big difference though is that the members

[26] Civil Code, Article 2381.
[27] Civil Code, Article 2409-duodecies.

of the management control committee are elected by the board of directors among its own members, meaning the supervised body appoints the supervising body.

The Corporate Governance Code recommends establishing separate committees for internal control, executive compensation, and for director nomination. Moreover, the Code sets standards for committee composition, member competencies, and require a majority of committee members to be independent. In our sample (Section 14), all companies have board committees, and most have both a compensation and an internal control committee. The governance reform generally increases the responsibility and involvement of directors, and decreases the administrative burden of calling shareholders meetings. Also, shareholder rights to bring claims against directors were strengthened.

The predominant structure for listed companies remains the traditional system. In our sample, no companies have adopted the new one-tier structure, only three of the companies follow the two-tier governance structure, while the rest follow the traditional model.

3.3.2 Resolutions for the ordinary and extraordinary GM

A company's governance structure impacts how the annual general meeting operates. In companies with the traditional or the one-tier governance structure (i.e., without a supervisory board), the ordinary GM (hereafter OGM) must:

- approve the annual financial statements;
- elect (and revoke) the board of directors;
- elect (and revoke) the board of auditors, and if required, the external auditor;
- determine the compensation of directors and auditors;
- deliberate on the liability of directors and auditors;
- decide on other matters that by law must be decided by the GM and on the authorizations required under the company bylaws with regard to specific acts to be executed by the directors (who do remain responsible for these acts);
- and approve the functioning rules of the GM.[28]

[28] Civil Code, Article 2364.

In companies with a two-tier board structure, the OGM has less power compared to the OGM of traditional and one-tier companies. Here the annual meeting must:

- approve allocation of income;
- elect (and revoke) the supervisory board;
- elect external auditors;
- determine the compensation of members of the supervisory board;
- deliberate on the liability of the supervisory board's members.[29]

Shareholder approval is also required in an extraordinary GM (EGM) for the following non-routine items:

- amendments to the company's bylaws;
- election, substitution, and powers of the liquidators;
- any other matter expressly attributed by the law to the extraordinary general meeting.[30]

In the following, we comment on several of these actions.

3.3.3 Election of directors and statutory auditors

Members of company boards (either the board of directors or the supervisory board in the case of a two-tier company) and the board of statutory auditors are elected by simple majority. To make this process more transparent, the company law adopted in 2005 (Law No. 262 of 2005) requires listed companies to use the "*voto di lista*" (slate vote) mechanism for the election of the board of directors and the board of statutory auditors. That is, the articles of association of a company must provide for members of the board of directors or statutory auditors to be elected on the basis of a list of candidates presented by shareholders. The bylaws must define the minimum share capital required to present a list. The share capital requirement cannot be above 2.5% (or a different percentage established by Consob in a regulation).[31]

[29] Civil Code, Article 2364-bis.

[30] Civil Code, Article 2365.

[31] Article 147-ter of the CLFI. The definition of the share capital required to present a list of candidates must take into account capitalization, free float, and ownership structures of listed companies. Under Consob Regulation

Moreover, companies are required to assign at least one board seat to a director and a statutory auditor elected from the minority list that has received the largest number of votes at the meeting and is not linked in any way—directly or indirectly—to the shareholders who presented or voted for the list which received the majority vote.[32] According to Zingales (2008), the appointee of minority shareholders on the Telecom Italia board, this regulation provides better minority shareholder protection than even the 2003 U.S. Securities and Exchange Commission proposal to grant certain large shareholders access to the company's proxy voting material. While it is too early to infer the effectiveness of this Italian regulation, the exprerience to date appears encouraging (Zingales, 2008).

In the notice convening the GM called to appoint the members of the board of directors (or supervisory board) or of the board of statutory auditors, companies are obliged to specify the shareholding required for the submission of lists.[33] In order to be allowed to present a list of candidates for the election of the board of directors (or board of statutory auditors) shareholders must prove the ownership of the required percentage of share capital within the deadline set by the company in its GM notice and block the corresponding shares.[34]

The companies in our sample require shareholders to deposit the list of candidates at the company's registered office at least 10 to 15 days before the ordinary shareholder meeting to be held in first call. Companies set different deadlines for shareholders to prove the ownership of the required percentage of share capital: 4 companies require shareholders to present a copy of the communica-

No. 11971 of 1999 (Articles 144-quater and 144-sexies), the shareholding required for the submission of the lists of candidates for the election of the board of directors and the board of statutory auditors, without prejudice to the lower percentage provided for in the bylaws, must be in the amount of: 0.55% of the share capital for companies with a market capitalization greater than 20 billion Euros; 1% of the shares capital for companies with a market capitalization greater than 5 billion Euros and less than or equal to 20 billion Euros; 1.5% of the share capital for companies whit a market capitalization greater than 2 billion and 5 hundred million Euros and less than or equal to 5 billion Euros; 2% of the share capital for companies whit a market capitalization greater than 1 billion Euros and less than or equal to 2 billion and 5 hundred million Euros; 2.5% of the share capital for companies whit a market capitalization greater than 5 hundred million Euros and less than or equal to 1 billion Euros. A lower shareholding and special conditions are established for companies with a market capitalization equal to or lower than 5 hundreds Euros. As for cooperative companies, the shareholding shall amount to 0.5% of the share capital, without prejudice to the lower percentage provided for in the bylaws; the bylaws must also permit the submission of lists by a minimum number of shareholders, in any case not exceeding five hundred, regardless of the overall percentage of share capital held.

[32] Articles 147-ter and 148 of the CLFI (as amended by Law No.262 of 2005) and Article 144-sexies of the Consob Regulation of Issuers.

[33] Article 144-septies of Consob Regulation N.11971 of 1999.

[34] Share blocking, i.e., preventing shareholders who wish to participate and vote at the GM from selling their shares prior to the meeting, imposes costs on investors. As discussed in Section 7, Italy has recently moved to abolish share blocking by introducing a so-called record date system.

tion issued by the intermediary demonstrating entitlement when the list of candidates is deposited; the remaining companies set this deadline 10, 5, or 2 days before the GM. The cooperative banks in our sample permit the submission of lists by a minimum number of shareholders or by shareholders representing at least 0.5% of the share capital provided that they have been registered for at least 90 days on the company's register of shareholders: the certification attesting the ownership must be presented with the list which must be deposited at the company 15 days before the date of the meeting to be held in first call.

Therefore, all of the companies in our sample require shareholders to file at the company's registered office a copy of the notification for attendance sent by the intermediary as a proof of ownership of the required capital. Companies do not explicitly set a share blocking requirement in their bylaws or GM notice. However, shareholders who want to submit a list of board nominees, must have their shares blocked in order to obtain the certification of ownership required for the deposit of the list.[35]

In the public consultation process for the implementation of the EU Shareholder Rights Directive, the Italian association of the investment fund and asset management industry (Assogestioni) warns that this share-blocking requirement represents a serious obstacle to the exercise of the right to present list of candidates to the board of directors or statutory auditors.[36] Accordingly, Assogestioni recommends that the Italian legislature intervenes to create a mechanism allowing shareholders to deposit lists of nominees without share blocking. As a proof of ownership, rather than filing a certification of ownership in paper form with the company, Assogestioni proposes that shareholders be allowed to have their intermediaries notify the company electronically (like the notification for attendance at the shareholder meeting). This is sufficient for the company to know the amount of shares held by shareholders who intend to present a list of nominees. Moreover, it allows shareholders to modify anytime (and until the expiration of the deadline to deposit the lists set by the company) the amount of shares blocked through following corrective notifications.

While the law does not establish any deadline for shareholders to deposit the list of candidates for the election of the board of directors (and companies are free to set a deadline), in the case of the election of members of the board of statutory auditors, the lists must be filed at the company's

[35] Article 85 (paragraph 4) of the CFLI and Articles 21 and 22 of the joint Regulation issued by the Bank of Italy and Consob.

[36] www.dt.tesoro.it/Aree-Docum/Regolament/Consultazi11/index.htm

registered office at least fifteen days prior to that date set for the shareholders meeting called to approve the appointment of the statutory auditors.[37]

Publicly traded Italian companies are required to make the list of candidates submitted by the shareholders available to the public at their registered office, on their web site, and at the Italian stock exchange, "without delay and in any case at least ten days prior to the date set for the shareholder meeting called to approve the appointment of the administrative and control bodies" together with other regulated information and documentation.[38]

Market practice example From the GM notice of Telecom Italia:

> "For the purpose of appointing the Board of Directors, shareholders who alone or together with other shareholders hold a total number of shares representing at least 0.5% of the voting share capital may submit slates, subject to their proving the required shareholding needed for the presentation of slates at least two days prior to the date set for the ordinary shareholder meeting on the first call. (...) The slates must be filed at the registered office of the Company and published in at least one Italian daily newspaper with national circulation at least fifteen days prior to the date set for the ordinary shareholder meeting on first call."

3.3.4 Director independence

Italian corporate law and the governance code require a certain degree of independence by directors. For example, for one-tier companies, the law requires at least 1/3 of the directors to meet specific requirements of independence.[39] If required by the company bylaws, the members of the board of directors must also respect the additional independence requirements established in codes of conduct (such as the Corporate Governance Code) drawn up by Borsa Italiana or other management companies of regulated markets or by trade associations.[40] Finally, in one-tier companies, the member elected from the minority list must satisfy specific requirements of integrity, experience and independence.[41]

[37] See Article 144-sexies of the Consob Regulation 11971.
[38] Article 144-octies of the Consob Regulation 11971.
[39] Independence requirements for the board of statutory auditors are established by Article 2399 (1st paragraph) of the Civil Code.
[40] Article 2409-septiesdecies of the Civil Code.
[41] Article 147-ter of the CLFI.

In a two-tier company, when the members of the management board are more than 4, one of them must meet specific requirements of independence. In the same ways as for one-tier companies, two tier-companies may specify in their bylaws independence requirements established in codes of conduct drawn up by management companies of regulated markets or by trade associations.[42] In companies with a traditional governance structure, at least one of the members of the board of directors, or two if the board of directors is composed of more than seven members, should satisfy specific independence requirements, as well as the additional requirements provided for in the article of association.[43] The company bylaws may set out independence requirements and the adoption of such requirements is strongly recommended by the Corporate Governance Code. Most of the companies in our sample have included requirements on independence of board members in their bylaws.

As for independence between board chairman and CEO, there are no rules requiring separation of these functions. The Corporate Governance Code does, however, include as principles under Article 2 that it is appropriate to avoid the concentration of corporate offices in one single individual and that when the board of directors has delegated management powers to the chairman, all adequate information on the reasons for such organizational choice should be given in the report on corporate governance. In its comments concerning Article 2 of the Code, the committee states that the separation of the roles may strengthen the characteristics of impartiality and balance that are required from the chairman of the board of directors, but acknowledges the existence of situations, in particular in issuers of smaller size, where a combination of the two roles in one individual may be valuable and sufficient. Should this be the case, it recommends that the role of a lead independent director should be created.[44]

None of the companies in our sample have combined the two roles within the same individual.

3.3.5 Removal of directors and action against directors

In the traditional system of corporate governance, members of the board of directors may be removed at any time by the general meeting (no court approval of a removal resolution is required).

[42] Article 147-quarter of the CLFI.
[43] For information on independence requirements, see Article 148 of the CLFI.
[44] See Corporate Governance Code (pages 17-19).

However, removed directors are entitled to damages if removed without a cause.[45] The same rule applies to the one-tier system for the removal of directors (with no distinction between directors who sit on the management control committee and the other directors.) While in the one-tier model the members of the controlling body (directors elected by the GM) may be removed without the approval of a court, the members of the board of auditors and the external auditor in the traditional system (and the external auditor in the two-tier system) may not be removed by a simple resolution of the shareholder meeting. In these latter cases, the resolution of the shareholder meeting must be approved by a court and there must be a cause (Ghezzi and Malberti, 2007).

In the two-tier system, the supervisory board's members can be removed by the general meeting at any time with a resolution adopted by one fifth (20%) of the share capital. However, if they are removed without a cause they are entitled to damages. The supervisory board's members may remove the management board's members at any time but, if removed without a cause, they too are entitled to damages.[46]

In the traditional system, the general meeting has the power to launch a legal action against directors. If the resolution is approved by shareholders representing at least one-fifth (20%) of the company's share capital, the mandate of such directors is revoked and the GM nominates new directors. In terms of such directors' liability, the resolution regarding it may be approved during the discussion of the financial statement even if it is not an item on the GM agenda.[47] The same rule applies to the legal action launched by the general meeting against the members of the board of directors in the one-tier system.[48]

Moreover, shareholders representing one fortieth (2.5%) of the share capital (or a smaller percentage of share capital established by company bylaws) may launch a legal action ("*azione sociale di responsabilità*") against the board of directors.[49] Note that the shareholders who decide to launch a legal action against directors are, in fact, acting on behalf of the company, therefore, any compensation obtained is payable to the company, not to the shareholders.

In the two-tier system, the legal action of responsibility against the members of the management board can be launched by the general meeting or shareholders under the same rules that apply to

[45] Article 2383 of the Civil Code.
[46] Articles 2409-duodecies and 2409-novies of the Civil Code.
[47] Article 2393 of the Civil Code.
[48] Article 2409-noviesdecies of the Civil Code.
[49] Article 2393-bis of the Civil Code.

the traditional system.[50] The same action can be launched also by the supervisory board if the resolution is approved by the majority of its members. When the resolution is approved by two thirds of the supervisory board's members, the mandate of the members of the management board against whom the action is launched is revoked and the GM nominates new directors.

3.3.6 Attendance rates

Not surprisingly, the attendance rate at general meetings of Italian companies is impacted by the high level of ownership concentration. The number of attending shareholders is relatively low as compared to other markets with more dispersed ownership. Consob reports in its 2006 annual report that major shareholders (ownership above 2%) tend to be represented at the GM (on average 84%). On the opposite end, domestic minority shareholders, both retail and institutional, tend not to vote. Moreover, typically less than 20% of foreign shareholders tend to vote.[51]

The GM attendance rate is also impacted by the law that, until a few years ago, required shareholders to deposit and block shares to be able to vote. A number of companies have voluntarily removed the blocking requirement. However, most custodians still operate with share blocking across the Italian market, and their clients still see their shares blocked from the custodian's side even if they are not from the companies' side. The reasons for this practice are likely two-fold: (1) the custodians want to be on the safe side since Italian companies have varying provisions in their articles of association with regard to share blocking, and (2) for a custodian to follow share blocking on an individual company basis requires a high level of sophistication and flexibility in the custodian's systems and processes.

Some Italian listed companies whose bylaws do not require share blocking try to counter custodian-level blocking by announcing in their GM notice that the company does not require shareholder to block their shares in order to participate in the GM. An example is the following quote from the GM Notice of Telecom Italia:

> "Pursuant to Article 19.1 of the bylaws, ordinary shareholders for whom the Company has received the notification specified by law at least two days before the date set for each shareholder's meeting are entitled to attend the meeting. The Company does not

[50] Article 2409-decies of the Civil Code.

[51] The average number of participants at the general meetings in the S&P/Mib Index (large caps) was 179 in 2006.

require shareholders to block their shares to be eligible to attend a meeting, instead they must deposit them, i.e. give the intermediary that keeps the relevant accounts instructions to make the necessary notifications to the Company at least two days before the date of the meeting. This does not prevent subsequent withdrawal of the shares; but if they are withdrawn, the earlier deposit ceases to be effective for the purpose of entitlement to attend the meeting. Any requests for advance notice to perform the relevant formalities in good time or unavailability of shares to be deposited as a consequence of intermediaries' market practices may not be imputed in any way to the Company."

3.3.7 Corporate takeovers

A fundamental shareholder right is the right to trade shares freely—including selling to the highest bidder in a corporate control contest and to participate in a control premium in a open-market controlling block trade. A corporate takeover bid almost always cause the share price of the target firm to rise, reflecting market capitalization of the sizable control premium. This control premium averages 40% in the U.S. (**?**) and is typically large also in Italian corporate control transactions. A well-functioning and orderly market for corporate control creates value by redirecting corporate resources to their highest-valued use. Efforts by corporate insiders to thwart takeovers in order to protect and prolong their private benefits of control therefore hurts not only individual shareholders but also the economy as a whole.

Important rules on takeovers aimed at protecting minority shareholders of Italian companies were introduced in Italy in 1998 by the CLFI. In 2007, the Legislative Decree No. 229 of November 19, 2007 implemented the EU Directive on Takeover Bids and amended the CLFI.[52] For example, Italy now has a "mandatory bid rule": an investor acquiring 30% or more of the shares of an Italian listed company must make a bid for all remaining outstanding shares.[53] Also, as of April 2009, a shareholder who holds more than 30% of the shares but less than a majority of the votes, must launch a bid for all shares each and every time the shareholder acquires additional 5% of the

[52]Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on Takeover Bids.

[53]CLFI, Article 106. "Italian listed companies" here means "Italian companies with securities admitted to trading on a regulated market in Italy or in any other EU Member State".

outstanding voting stock.[54]

Moreover, under the adopted "passivity rule", the directors of a company which receives a takeover bid are restricted from taking actions that could prevent the success of the offer, unless explicitly approved by shareholders in a shareholder meeting.[55]

Along with the passivity rule comes a "reciprocity rule": if the bidder (individual investor or company) is not subject to the passivity rule (because it is a foreign company), the target board is not bound by the general passivity rule in Italy. However, in this case, any defensive measure to be taken by the target board must be expressly authorized by the GM within eighteen months preceding the takeover bid.[56]

4 The Italian shareownership registration system

4.1 Basics of registration systems

In order to vote shares at the GM, receive dividends and other company shareholder disbursements, or to sell the shares, stockholders must show proof of shareownership. Proof may be generated via the information recorded by the financial intermediary (broker or custodian bank) originally used to execute the share trade. However, modern financial markets, where literally millions of investors and their companies require proof on a regular basis, have developed a more sophisticated shareownership registration systems which economize on information collection costs.

A basic component of a modern registration systems is a "Central Security Depository" (CSD).[57] The CSD is typically a regulated privately owned company—sometimes partly owned by the stock exchange—and it may offer clearing and settlement services in addition to acting as a share registry. By opening an account at the local CSD, the account information may be used as proof of ownership.

[54] Law No. 33 of April 9, 2009 (Article 7). The threshold used to be 3%.

[55] Examples of board actions precluded under this rule are issuance of new shares and bonds convertible into shares, share repurchase, and reincorporation or split-off of the target company. A mere search for other bids is not considered an action aimed at frustrating the bid. (CLFI, Article 104).

[56] CLFI, Article 104-ter. Under Article 102 of the CLFI, the decision or requirement (in the case of a mandatory bid rule) to promote a takeover bid, must be communicated to Consob and, at the same time, made public.

[57] Every European country (EU member or not) has a CSD (see https://www.ecsda.com/portal/what_is_ecsda_/members/). For members of the Asia-Pacific CSD Group, see http://www.acgcsd.org/acg_03.aspx. Also, the Americas' Central Securities Depository Association (ACSDA) includes 23 depositories and clearing organizations from 28 countries: Argentina, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Jamaica, Mexico, Nicaragua, Panama, Peru, Dominican Republic, South Africa, Trinidad and Tobago, United States, Uruguay and 8 countries of the Eastern Caribbean.

Moreover, in preparation for, say, company disbursements and voting at GM, companies may obtain shareholder lists electronically and at a lower cost than were they to generate this information on their own.

While all countries allow financial intermediaries to open CSD accounts, only some countries permit other shareholders to directly open such accounts. We label systems which allow shareholders or their nominees to directly hold CSD accounts as "direct account" or "centralized" registration systems. Conversely, when shareholder accounts are not permitted, forcing shareholders to register information indirectly via their financial intermediaries, as "indirect account" or "decentralized" registration systems.

As explained below, Italy is a decentralized system. Shareholders (domestic and foreign) cannot open direct accounts with the local CSD and are obliged to hold shares indirectly through financial intermediaries (normally a custodian bank).[58] Also, financial intermediaries cannot exercise shareholder voting rights without a written proxy from their clients.

4.2 The Italian CSD system

The Italian CSD for all Italian financial instruments is Monte Titoli S.p.A. (MT), created in 1986. It is also the settlement company for all financial instruments in Italy. While, under Italian law, other firms may be licensed as a CSD, as of today MT is the sole authorized CSD in Italy.

In Italy, securities can be issued in both physical and dematerialized forms. The dematerialization of securities (securities recorded electronically in a book-entry system) was introduced in Italy by the Euro Decree of 1998 and is mandatory for securities traded or intended to be traded on Italian regulated markets or widespread among the public.[59] Since January 1999, all shares issued by Italian listed companies are centrally managed in dematerialized form by MT.

Under the rules provided for in the Euro Decree and the joint Regulation issued by the Bank of Italy and the Consob, Italian listed companies are required to keep their dematerialized shares in only one CSD (MT). When a company's dematerialized securities are admitted into the MT system,

[58] The exception is when the shareholder is one of the entities (mainly financial institutions - banks, investment firms, stockbrokers - foreign CSDs, etc.) listed by Articles 12 of the joint Regulation issued by the Bank of Italy and the Consob (see Section 4.2.1).

[59] Shares and equity-like securities traded on Italian regulated markets must be entered into a central depository in dematerialized form pursuant to Article 28.1 of the Euro Decree. Financial instruments that are traded or intended for trading on regulated markets cannot be represented by certificates. See also Article 16 of the joint Regulation issued by the Bank of Italy and the Consob.

the full issue must be held by MT. The company has an account in its name in MT showing the total amount of shares outstanding.[60]

While all types of securities (registered, bearer, physical, dematerialized) are eligible for deposit in MT, nearly all securities kept in MT are in dematerialized form. The rest (about 0.2%) are held by MT are in paper form and are normally grouped in jumbo or global certificates. In order to be admitted to the MT system, financial instruments must be freely transferable, fully paid up, and not subject to measures limiting their circulation.[61]

While MT has a direct relationship with domestic Italian firms (see Figure 4), for securities issued by foreign companies MT establishes links with foreign and international CSDs (.e.g., Euroclear International or Clearstream Banking Luxembourg.[62]

4.2.1 Securities accounts in Monte Titoli

As indicated above, shareholders cannot open a direct account with MT; they must hold shares indirectly within the MT system through an intermediary. Intermediaries are defined by Articles 1 of the joint Regulation issued by the Bank of Italy and the Consob, as "persons eligible to hold accounts with a central depository and through which centrally deposited financial instruments can be transferred and the related property rights exercised."

Only firms belonging to one of the qualifying entities (mostly financial institutions - banks, investment firms, stockbrokers - and foreign CSDs, etc.) defined in Article 12 of the joint Regulation issued by the Bank of Italy and the Consob can open an account with MT and be eligible for central depository services.[63]

[60] Euro Decree, Article 29; and Article 27 of the joint Regulation issued by the Bank of Italy and the Consob, which states: "Central depositories shall open an account for each issuer whose financial instruments are entered into a central depository in dematerialized form. Each issue shall be shown separately in the records with all the information provided by the issuer needed to identify the features of the issue and at least the type of financial instrument, the identification number, the quantity issued, the total value of the issue, the unit value and any related rights."

[61] Article 16 of the joint Regulation issued by the Bank of Italy and the Consob.

[62] For information about the custody and administration services offered by MT, see also www.montetitoli.it.

[63] Article 12 establishes: "1. The following shall be eligible in their capacity as intermediaries: a) Italian, EU and non-EU banks referred to in Article 1.2 of the Consolidated Law on Banking; b) investment firms referred to in Article 1.1(h) of the Consolidated Law on Finance; c) asset management companies referred to in Article 1.1(o) of the Consolidated Law on Finance, except as provided for in Article 36.2 of the Consolidated Law on Finance; d) stockbrokers entered in the single national roll referred to in Article 201 of the Consolidated Law on Finance; e) issuers not included in the preceding subparagraphs, exclusively for financial instruments they have issued and financial instruments issued by companies they control by means of shareholdings; f) central banks; g) foreign persons that supply services analogous to central depository and settlement services and that manage systems analogous to guarantee systems for financial instruments, provided they are subject to supervisory measures equivalent to those provided for in the Italian legal system; h) central depositories, settlement guarantee fund management companies

Account-holders in the MT system may have two different types of accounts: a proprietary account in which the participants keep the securities in their own portfolio; and a third party account in which the securities of the participant's clients are credited. Participants are permitted to maintain more than one third party account at MT.

However, under the Italian law, intermediaries are required to have separate own and customer accounts in MT. They are required to keep securities of their clients in "segregated omnibus accounts' in which shareholdings belonging to more than one client are pooled and registered in the name of the same intermediary.[64]

Figure 4 shows a simplified example of custody chain through which foreign institutional shareholders of Italian listed companies hold their shares. We describe here a common set up for a foreign large institutional shareholder who appoints a global custodian that does not open an account with the local CSD (MT) and uses its network of local custodians (Italian custodian banks). The local custodians are CSD participants. The institutional shareholder also appoints one or more investment managers that manage part of the shareholder's asset.

The solid black arrows highlight the custody agreements existing among the different participants in the chain. The dotted arrow shows the relationship between the investment manager and the global custodian. Under the agreement with the shareholder, the investment manager is required to open an account with the global custodian for the assets managed on behalf of the shareholder. The account is normally opened in the name of the shareholder.

Regarding the responsibility to reconcile the holdings of securities held with the CSD itself with the holdings of the CSD participants, Monte Titoli is required to perform a specific reconciliation procedure after all the transactions of the business day have been carried out. Once the daily

and central counter-parties, exclusively for the activities specified in Articles 69.2 and 70 of the Consolidated Law on Finance; i) financial intermediaries entered in the register referred to in Article 107 of the Consolidated Law on Banking, exclusively for the activities specified in Article 1.5, subparagraphs c and c-bis, of the Consolidated Law on Finance; j) Poste Italiane S.p.A.; k) Cassa Depositi e Prestiti S.p.A.; l) the Ministry for the Economy and Finance. 2. Persons who issue financial instruments referred to in Article 11 shall be eligible in their capacity as issuers. 3. The eligibility of persons referred to in paragraphs 1 and 2 shall be subject to verification by central depositories of their ability to meet the condition referred to in Article 33.2."

[64]Under Article 27 of the joint Regulation issued by the Bank of Italy and the Consob, the CSD is required to open separate own and customer accounts for each intermediary, except in the case of persons referred to in Article 12(d) (that is, stockbrokers), for whom it shall open exclusively customer accounts. Article 29 of the joint Regulation issued by the Bank of Italy and the Consob establishes: "1. Intermediaries shall open accounts in which to enter the financial instruments belonging to each accountholder, specifying the ID information of account-holders, including their tax codes and any restrictions on the transferability of financial instruments. 2. For financial instruments they own, intermediaries shall open special accounts separate from those in the names of their customers."

transactions have been processed, the central depository must check, for each class of financial instrument entered into the system in dematerialized form, that the total amount of securities issued by Italian issuers and kept in the MT system is identical to the amount of securities held by MT's participants in securities accounts opened with MT (both property and third parties' accounts).

Once this check is completed, the CSD must send documentation to intermediaries. This documentation includes the opening and closing balance, with an indication of any quantities of financial instruments that are not freely transferable, and any transfers made during the day where these have not already been notified.[65]

Within one day of the date of registration, intermediaries are also required to perform a specific reconciliation procedure. They must check that for each class of financial instrument the balance of their own account at the central depository, or the sum of the balances of their own accounts at the central depositories, coincides with the balance of the account they keep for themselves. Moreover, they must check that the sum of the balances of the customer accounts at the central depositories coincides with the sum of the balances of the customer accounts that they keep for the customer.[66]

4.2.2 Ownership rights

The ownership rights attached to shares of Italian listed companies result from the registration on the book of CSD's participants (intermediaries/custodian banks) and not from the CSD's records or the shareholder book ("*libro dei soci*"), kept by the company. This means that the ownership of the full issue of shares cannot be found in one register, but across the books of several intermediaries. Inother words, the Italian shareownership registration system is a decentralized system.

4.3 Authentication of registered shareholders and the shareholder book

Italian listed companies must keep the shareholder book which must include for each category of shares: the number of shares, the name and surname of the owners of registered shares, the related transfers and constraints, and the contributions made.[67]

[65] Article 31 of the joint Regulation issued by the Bank of Italy and the Consob.

[66] Article 43 and Article 32 of the joint Regulation issued by the Bank of Italy and the Consob.

[67] Civil Code, Article 2421: "(...) 1) il libro dei soci, nel quale devono essere indicati indistintamente per ogni categoria il numero delle azioni, il cognome e il nome dei titolari delle azioni nominative, i trasferimenti e i vincoli ad esse relastivi e i versamenti eseguiti; (...)"

Italian listed companies normally do not keep the shareholder book (or register of shareholders) themselves; they outsource this service to a registrar who takes care of the technical updates of the register required by the Italian law and makes sure dividends are distributed.[68] Only a few big companies keep their own register of shareholders.

Unlike some other countries (such as Sweden and Norway), in Italy the CSD is not required by the law to keep the official shareholder book of listed companies. Since shareholders have accounts at the custodian's level and cannot open a direct account with MT (unless they are financial institutions or one of the other entities allowed to be CSD participants), MT normally does not know the identity of the shareholders of Italian companies. In addition, no provision establishes the right of MT to know the identity of the custodian's underlying clients (shareholders). Thus the need for alternate suppliers of the shareholder book.

With regard to the updating of the shareholder book, under Article 89 of the CLFI, ("Notations in the shareholder register"), custodians must send issuers the names of:

- persons (individual as well institutional shareholders) who have requested the certification/notification that certifies the participation in the central system and legitimates the owner of the securities to the exercise of the rights attached to the shares;
- those to whom dividends have been paid;
- and those who have exercised pre-emption rights, specifying the quantities of shares in question.

The reports must be made within three days of the aforementioned events and issuers must note such reports in their shareholder register. In practice, in a cross-border context, the global custodian sends names and other details of its underlying clients (shareholders) to the appointed local custodian that is a participant of MT and acts as "intermediary" for all the securities of the global custodian's clients deposited at the CSD. In order to satisfy the Italian law requirements detailed above, once received the information from the global custodian, the local custodian communicates them to the issuing company, so that the company can update its shareholder book. Shareholders are responsible for providing the required information to the global custodian.

[68] Three of the main registrars in Italy are Servizio Titoli (which is part of the Borsa Italiana Group, Istifid, and Spafid.

Intermediaries are also required to notify the listed company, at the request of the person involved, or when it is required by the regulations in force, of the names of the persons holding rights in financial instruments, for purposes of obligations incumbent upon the listed company.[69]

In summary, all of the above mentioned reports (under Article 89 of the CLFI and the Euro Decree) to companies must be sent within three business days of intermediaries completing the related formalities.[70] Subsequently, companies are required to update their shareholder registers in conformity with notifications sent by both intermediaries and central depositories.[71]

It should also be noted that as the GM approaches, the shareholder register is only updated with the information regarding shareholders who have requested the notification for attendance at the shareholder meeting; and, in most of the cases, the register will not cover 100% of the shareholder base.

Since the register is updated only when one of the specific events established by the law (distribution of dividends, exercise of voting rights, exercise of rights to buy or conversion or allotment rights, exercise of preemptive rights) takes place, we can conclude that the shareholder's register of Italian companies offers only a historical picture of the shareholder base, because if none of these events take place, the issuer is not able to update the register of shareholders.

The respective listed companies might very well be interested in knowing the identity of their shareholders and update the shareholder book more often. Toward that end, the law does not exclude the possibility of a company asking intermediaries for information about their clients' identity. However, in cases different from the ones mentioned above, even under request by the company, the intermediaries are not required to disclose the identity of their underlying clients/shareholders.

[69] Euro Decree (Article 31).

[70] Article 24 of the joint Regulation issued by the Bank of Italy and Consob. "Within three days of the start of payment of dividends, intermediaries shall send issuers the names of the holders of accounts in which registered financial instruments are registered and the quantities held. Intermediaries shall also send issuers the names of holders of registered shares entered into the central depository in dematerialized form following the exercise of rights to buy or conversion or allotment rights. The names of holders of financial instruments entered into the central depository in dematerialized form must always be sent where they are different from the applicants for certifications or notifications for attendance at shareholder meetings."

[71] In accordance with Articles 87 and 89 of the CLFI and Article 31.1(c) of the Euro Decree; and Article 25 of the joint Regulation issued by the Bank of Italy and Consob which establishes that "On the basis of the notifications sent by central depositories, issuers shall note the identification numbers and related quantities of certificates entered into the central depository in dematerialized form in the name of the central depository in the shareholder register with the specification *'ai sensi del decreto legislativo 24 febbraio 1998, n. 58'*." On the basis of the notifications sent by intermediaries, "issuers shall keep, as part of the shareholder register, records containing the names of the holders of financial instruments for which certifications have been issued or notifications for attendance at shareholder meetings sent and of the persons to whom dividends have been paid or who have exercised purchase, pre-emption, assignment or conversion rights, specifying the related quantities of financial instruments."

In addition, shareholders are allowed to object to the disclosure of their identity and transfer of their data when not prescribed by the law.[72]

With regard to the legal value of entries in the shareholder book, these entries kept by the company do not entitle shareholders to the exercise of corporate rights (including voting rights) attached to the shares. As we have seen above (section 4.2.2), under Italian law, the account holder's legitimate empowerment to exercise ownership rights connected to dematerialized securities results from book-entries in the accounts kept by the intermediaries. (See Section 7)

4.3.1 Right to inspect the shareholder book

While the shareholder book kept by the company is not public information, shareholders do have the right to inspect the book and to obtain abstracts of it at their own expense.[73] Under Italian law, in order to inspect the shareholder book (and, more generally, exercise ownership rights[74]) a shareholder must present a certification issued by the intermediary attesting the participation of the financial instruments to which the right is attached in the CSD system and specifying the shareholder right that may be exercised. Within two business days of the date of receipt of an application and after checking the regularity of the request, the intermediary must issue the certification. At the same time it must make the corresponding financial instruments unavailable (that is, block the financial instruments) until the certification is returned or ceases to be effective.[75]

However, the Consob has clarified that when the right to inspect the shareholder book is instrumental to the exercise of the right to participate in the GM, a shareholder legitimated to participate in the GM does not need a certification to inspect the book. Rather, this right should be considered instrumental if through the inspection the shareholder acquires information that will allow him/her to make a decision regarding the conduct to assume and the vote to cast at the GM.[76] It is only

[72] For example, in case of a solicitation of proxies, under the request of the intermediary that effects the solicitation, the custodian is required to communicate the names of and the number of shares held by shareholders who have not expressly prohibited communication of their data.

[73] Article 2422 of the Civil Code.

[74] Ownership rights include, e.g.: the right to vote at the shareholder meeting, to place new items on the agenda, to present a list of director nominees, and to ask questions before the meeting. For the specific rules that regulate the right to vote, see Section 7.1 below.

[75] See Article 85 (paragraph 4) of the CLFI and Articles 21 and 22 of the joint Regulation issued by the Bank of Italy and Consob.

[76] In the Communication, the Consob highlights the instrumental value of the right to inspect shareholder books: the inspection of the book allows shareholders to ascertain directly the identity of other shareholders and the characteristics of their holdings in order to establish the appropriate contacts (for example with the goal to reach the percentage of share capital necessary to request the convening of a GM or to agree on a common conduct during an

when the shareholder wants to inspect the shareholder book independently by the exercise of other rights that he/she has to obtain the above mentioned certification.[77]

5 Dissemination, storage, and filing of regulated information

In this section we describe the main features of the new systems for dissemination, storage, and filing of information that has to be made public by issuers of securities (hereafter "regulated information") recently introduced in Italy through the implementation of the EU Transparency Directive (TD). This helps prepare the reader for the subssequent discussion of the rules governing the voting process and the exercise of voting rights at the GM of Italian listed companies.

The TD establishes requirements in relation to the disclosure of periodic and ongoing information about issuers whose securities are already admitted to trading on a regulated market situated or operating within a MS.[78] The TD regulates the dissemination and access to regulated information. Regulated information means all information which the issuer is required to disclose under the TD, under Article 6 of Directive 2003/6/EC of January 2003 on insider dealing and market manipulation (market abuse),[79] or under more stringent requirements than those laid down in the TD adopted by a Member State (MS). Article 12 of the directive 2007/14/EC of March 8, 2007, regulates the dissemination of regulated information and sets the minimum standards to follow in doing so.[80]

The TD has been implemented in Italy by Legislative Decree No. 195 of 2007. The Decree introduced a new Article (113-ter) in the CLFI, which provides general provisions on regulated disclosures and governs the dissemination, storage and filing of regulated information. Article 113-ter gives also a mandate to Consob to issue implementing rules and establish standards and procedures to disseminate regulated information. In particular, Consob is required to a) authorize

already convened GM).

[77]See Communication n. DM/99008319 of February, 8, 1999, in which the Commission replies to a question about the relation between certifications issued under article 85 of the CLFI and the right to inspect shareholder books under Article 2422 of the Civil Code. Available (only in Italian) at http://www.consob.it

[78]Transparency Directive, Article 1

[79]Under Article 6, Member States must ensure that issuers of financial instruments inform the public as soon as possible of inside information which directly concerns the said issuers and, for an appropriate period, post on their web sites all inside information that they are required to disclose publicly.

[80]The directive lays down detailed rules for the implementation of certain provisions of the TD on the harmonization of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market.

third parties to the issuer to provide dissemination services for regulated information; b) authorize centralized storage services for regulated information; and c) organize and manage the centralized storage service in case no one asks for the authorization under b).

In enactment of the Legislative Decree that implemented the TD and following extensive market consultation, in April and May 2009, Consob issued two Resolutions that modify and integrate the Consob Regulation N. 11971 of 1999 of issuers.[81] Significant amendments have been made to the Regulation of Issuers to introduce standardized provisions on the reporting obligations of listed issuers and related shareholders, and a specific rule to guarantee public access to regulated disclosures.

5.1 The new system for dissemination of regulated information to the public

Under the new Consob Regulation of Issuers, regulated information is defined as the information listed in Article 113-ter of the CLFI that must be published by listed issuers, listed issuers with Italy as Home Member State, or by their controlling entities. Regulated information includes company information such as for example information regarding ownership structures (major holdings, shareholder agreement), adoption of code of conduct, protection of minority interests, and financial information.[82]

Issuers of securities admitted to trading on a regulated market in Italy and which have Italy as home Member State,[83] must make regulated information public in a manner ensuring fast access to such information on a non-discriminatory basis. The access to regulated information must also be reasonably appropriate to guarantee the effective dissemination of information to the public throughout the European Community. In order to achieve this goal, regulated information must be disseminated in a manner ensuring the widest possible public access, and where possible must reach the public simultaneously in Italy and in the other EU Member States (that is, inside and outside the issuer's Home Member State).

Information must also be disseminated to the media (defined as agencies specialized in the timely electronic dissemination of financial information to the public) in unedited full text and in

[81] Resolution N. 16850 of April 1, 2009, and Resolution N. 16893 of May 14, 2009.

[82] Consob Regulation N. 11971 of 1999 (Article 65) and CLFI (Article 113-ter).

[83] The CLFI, Article 1 (letter w-quarter), includes in the definition of "listed issuers with Italy as Home Member State" issuers of shares admitted to trading on a regulated market in Italy or any other Member State of the European Union having their registered ofice in Italy.

a manner which ensures the security of the communication, minimizes the risk of data corruption and unauthorized access, and provides certainty as to the source of the regulated information. Regulated information shall be communicated to the media in a way which makes clear that the information is regulated information, identifies clearly the issuer concerned, the subject matter of the regulated information and the time and date of the communication of the information by the subject required to do so.[84] Security issuers are not required to disclose annual and half-yearly financial statements and the interim directors' report to the media in unedited full text provided that the announcement regarding the publication of such statements and reports is communicated to the media, transmitted to the authorized storage mechanism and indicates in which web site, as well as in which authorized storage mechanism of regulated information, such information is available.

Under the amended Consob Regulation of Issuers, listed companies must make available a web site for the publication of regulated information. Italian listed companies must comply with this requirement within 120 days starting from April 24, 2009.

As for the language to use in the dissemination of regulated information:

a) where securities are admitted to trading on regulated markets only in Italy and Italy is the home Member State, regulated information must be disclosed in Italian. Therefore, Italian companies listed only in Italy are required to disclose regulated information only in Italian;

b) where securities are admitted to trading on regulated markets in more than one member state including Italy and Italy is the home Member State, regulated information must be disclosed in Italian and, depending on the choice of the issuer, either in a language accepted by the competent authorities of those host Member States or in a language customary in the sphere of international finance[85];

c) in the above cases, foreign issuers that have chosen Italy as their home MS, can disclose regulated information either in Italian or in a language customary in the sphere of international finance;

[84] Consob Regulation N. 11971 of 1999 (Articles 65 and 65-bis - "Criteria for the dissemination of regulated information"). See also Directive 200714EC of March 8, 2007 (Article 12).

[85] Under the Regulation of Issuers (Article 65), "Host Member State" means the MS, other than the home MS, in which the securities are listed on a regulated market.

d) where securities are admitted to trading on a regulated market in one or more host Member States, but not in Italy and Italy is the home MS, regulated information must, depending on the choice of the issuer, be disclosed either in a language customary in the sphere of international finance or in a language accepted by the competent authorities of those host Member States and, in this case, also in Italian;

e) where securities are admitted to trading on a regulated market in Italy and Italy is the host MS, regulated information must, depending on the choice of the issuer, be disclosed either in Italian or in a language customary in the sphere of international finance;

f) by way of derogation from paragraphs 1, 2, and 4, issuer of securities whose denomination per unit amounts to at least EUR 50 000 or, in the case of debt securities denominated in a currency other than Euro equivalent to at least EUR 50 000 at the date of the issue, that have Italy as home or host MS, must disclose regulated information to the public either in Italian or in a language customary in the sphere of international finance at the choice of the issuer.[86]

Regulated information must be also filed at Consob and the market management company (Borsa Italiana) for which the issuer has requested or received approval for admission to trading of its securities.[87]

Besides the above mentioned general requirements for the distribution of regulated information, the new Consob Regulation of Issuers introduced specific rules and established standards and procedures for the dissemination, filing and storage of regulated information.

In order to guarantee the active distribution of information from the issuers to the media, with a view to reaching investors and the public in general, Consob designed a new system for the dissemination of regulated information through a SDIR (System for the Dissemination of Regulated Information) that is a system for the electronic dissemination of regulated information, authorized by the Consob, that connect its users to the media. SDIRs must be established and organized in compliance with the requirements established by Article 113-ter of the CLFI and by the Consob Regulation of Issuers. Consob Regulation establishes that only security issuers, asset management

[86]Consob Regulation N. 11971 of 1999 (Articles 65-quarter)
[87]CLFI (Article 113-ter)

companies (SGR - *"società di gestione del risparmio"*), SICAV (or *"societá di investimento a capitale variabile*"), individuals who have requested the admission to trading on a regulated market of financial instruments without the consent of the issuer, the Consob, and the market management company if the financial instruments are admitted to trading, can be SDIR users.

As "issuers of securities admitted to trading on a regulated market in Italy and which have Italy as home Member State", Italian listed companies can decide to disseminate regulated information among the public by means of using a SDIR. In this case, among other things, the issuer must identify a SDIR from the list of authorized SDIRs kept by the Consob as the system dedicated to the dissemination of all the regulated information, inform the Consob before the start of the service, and publish the name of the SDIR on its web site.[88]

In order to obtain from Consob the authorization to offer the dissemination service, the SDIR must guarantee the observance of the provisions and the organizational and functional requirements established in the Regulation of Issuers. The SDIR must also guarantee Consob and the management company of the market on which listing of the financial instruments has been requested, access to the regulated information received without any charge, at the same time of the dissemination of such information to the public.[89]

In order to achieve the timely dissemination of regulated information to the public, a SDIR must establish and maintain an adequate number on connections with the media that have significant experience and market share in the field in which they operate, in Italy and in the other EU MSs. A SDIR cannot refuse, in absence of valid explanations, the connection with the media that ask for it. Moreover, a SDIR must be able to receive and send electronically to the media to which is connected regulated information communicated by the users of the SDIR. Consob regulates the specific standard format in which information must be sent to the SDIR by users.[90]

Italian listed companies can also decide not to use a SDIR for the dissemination of regulated information. In this case, they have to take care of the dissemination on their own. In order to be allowed to do so, they must send Consob a document which attests that regulated information are disseminated using methods that are in compliance with all the requirements set by the Consob in Annex 3I of the Regulation of Issuers. The issuer must also send Consob a yearly informative

[88] Consob Regulation N. 11971 of 1999 (Articles 65 and 65-quinquies).
[89] Consob Regulation N. 11971 of 1999 (Article 116-quinquies)
[90] Consob Regulation N. 11971 of 1999 (Annex 3I)

report about the respect of the conditions set in Annex 3I. If it believes that the methods used to disseminate regulated information are not able to ensure the fulfillment of the requirements provided for in Annex 3I, Consob may prohibit the trading of securities informing the issuers and the market management company at least 10 days before the date established for the start of trading. Issuers must also publish on their web site the information regarding the choice of disseminating regulated information on their own (that is, without using a SDIR).

It is important to note that the CLFI (Article 113-ter) establishes that companies required to communicate regulated information to the public cannot charge for such disclosures.

Figure 2 summarizes the dissemination system of regulated information from the issuer to the public designed by the new Regulation of Issuers. The issuer can decide to appoint a SDIR or take care of the dissemination of regulated information to the public on its own. The solid arrows highlight the passages of regulated information along the dissemination chain. Consob and the market management company (Borsa Italiana) must have free access at no charge to the regulated information received by the SDIR (see dotted arrows).

5.2 The new system for storage and filing of regulated information

A issuer of securities, not later than the day in which it requests the admission of its securities to trading, must identify an authorized storage mechanism as a system dedicated to the maintenance of all the regulated information and inform its parent company and the Consob of the choice. An authorized storage mechanism is defined as the mechanism which provides the centralized storage service of regulated information envisaged by Article 113-ter, paragraph 4, of the CLFI, authorized by Consob and established and organized in compliance with the requirements established by the Regulation of Issuers. The issuer is also required to publish on its Internet web site the name and the web site address of the authorized storage mechanism.[91]

Security issuers must transfer regulated information to the authorized storage mechanism, at the same time of the dissemination of such information to the public, according to the requirements indicated by the manager of the storage mechanism. Issuers must also transfer regulated information to the Consob, at the same time of the dissemination of such information to the public, through a connection with the authorized storage mechanism. (See Figure 3) The requirements

[91] Consob Regulation N. 11971 of 1999 (Articles 65-septies)

to send regulated information to the authorized storage mechanism and to the Consob, must be deemed to be fulfilled if the security issuer appoints, for the dissemination of such information to the public, a SDIR that takes care, on the issuer's behalf, of the transfer of regulated information to the authorized storage mechanism. (See Figure 3)

Among other things, the authorized storage mechanism must guarantee:

- the receipt and maintenance of regulated information sent by issuers of financial instruments, asset management companies (SGR), SICAV, by the respective controlling entities, or by SDIRs on behalf of the above mentioned entities, Consob, and the management company of the market on which the relevant financial instruments are admitted to trading;

- security, certainty as to the information source, registration of the time and date of receipt of the regulated information, easy access by end users;

- availability of regulated information maintained by the storage mechanism to Consob and the management company of the market for which the issuer has requested or received approval for admission to trading of its securities, without any charge;

- public access to the stored information within an hour of its receipt at affordable prices.[92]

Listed companies must publish regulated information relating to them, including information disclosed by their parent companies, on their web sites by the opening of the market on the day following the day in which such information was disclosed. The information shall remain available on the issuer's web site for at least five years.

Given the complexity of the new Consob Regulation of Issuers, a transitional period is envisaged in order to give market operators and the public the time to adapt to the new systems for distribution, storage, and filing of regulated information and the new reporting requirements for issuers. All the obligations regarding the dissemination of regulated information through a SDIR or by the issuer on its own (established by Articles 65-ter, 65-quinquies, and 65-sexties), as well as the requirements for the filing and storage of regulated information (provided for in Article 65-septies) will not apply until both the dissemination and storage systems are launched.[93] The

[92]Consob Regulation N. 11971 of 1999 (Article 116-novies)

[93]The start dates of the activities of the dissemination of regulated information systems and of the activities of the storage mechanisms will be established by means of Consob authorization provided for in Article 113-ter of the CLFI.

Consob Regulation of Issuers establishes transitional provisions regulating the dissemination, filing and storage of the different types of regulated information.[94]

Below, we describe both the requirements for the dissemination of GM-related information in force during the proxy season 2008, and the new transitional provisions regarding dissemination, storage, and filing of GM-related regulated information in effect from April 2009 and until the new systems are launched.

6 Calling a General Meeting

In this section we describe the legal rules that regulate the convocation of the GM of Italian listed companies and the distribution to shareholders and the public of GM-related information (GM-notice and agenda, accounts, and reports) before the GM. We also describe shareholder right to add new items to the GM agenda.

6.1 Time and power to convene a GM

The ordinary GM of Italian listed companies must be called at least once a year, within the term established by the articles of association, and no later than 120 days after the close of the fiscal year. If a postponement is needed because the company is required to write a consolidated financial statement or due to specific needs related to the company's structure and purpose, the articles of association may permit that the GM be held up to but no later than 180 days after the close of the fiscal year. In this event, the members of the board of directors or the management board must specify the reason for this postponement in the directors' report.[95]

As for scheduling the GM, it is recommended by the Consob (Communication SOC/RM/90004190 of 16 July, 1990) that listed companies avoid the concentration of GMs in the last possible days of the 120-day term permitted following the end of the fiscal year.

Most Italian companies follow the calendar year for their fiscal year. Based on the general meetings of the Italian companies in NBIM's portfolios, it seems like the majority of the companies tend to hold their annual general meeting 110-120 days after the close of the fiscal year. In 2008,

[94] Consob Regulation N. 11971 of 1999 (Article 65-bis, Footnote 82).
[95] Civil Code, Article 2364.

78% of the annual general meetings of the Italian companies in NBIM's portfolios were held during the second half of April.

Under the Italian law, the GM is called by the board of directors in the traditional or one-tier structure, or by the management board in a two-tier structure.[96] In addition, shareholders representing at least one-tenth (10%) of the share capital, or a lower percentage if stated in the respective company's articles of association, have the right to ask the board of directors or the management board to call a general meeting. The request must be in writing and must include the items to be discussed at the meeting. When the request is made, the board of directors or the management board (or on their behalf the internal statutory auditors, the supervisory board, or the management control committee) must call the meeting without delay. If they fail to do so, the court, after hearing from the administrative and controlling bodies, will determine whether the refusal to convene the GM is justified or not, and may convene the GM by decree and designate the chairman of the GM.

Shareholders cannot ask the board to convene a meeting to discuss issues which, according to the law, must be voted on anyway by the GM.[97] An example is the annual financial statements (which must be presented by the board), or a report prepared by the board.

Regarding the location of GMs, the general rule is that the GM must be held where the company maintains its registered office ("*L'assemblea è convocata nel comune dove ha sede la Società*"), unless the articles of association state otherwise.[98]

6.2 Notice of the GM

6.2.1 Notification date

Under the Italian law, directors or the management board of Italian companies publicly traded in Italy or in any other EU Member State are required to publish the notice convening a GM (both OGM and EGM) at least 30 days before the meeting day. The term is reduced to 20 days in the case of a GM convened at the shareholder request and a GM convened to vote on resolutions

[96] Civil Code, Article 2366.
[97] Civil Code, Article 2367.
[98] Civil Code, Article 2363.

regarding the liquidation of the company.[99]

The notice convening the GM of Italian listed companies with shares involved in a takeover bid or equity swap must be published at least 15 days before the meeting day.[100]

Market practice for Italian listed companies seems to be to call the meeting about 30 days or 5 weeks before the meeting. In fact, most of the companies in our sample published the notice convening the 2008 GM in the*Official Gazette of the Italian Republic* and in one or more newspapers about 5 weeks ahead of the meeting.

6.2.2 How to give notice of the GM

Under the Italian law, listed companies are not required to send the GM notice directly to registered shareholders and they normally do not do so. Instead, the GM notice must be published in the *Official Gazette* or at least in one newspaper indicated in the company's articles of association.[101] In addition, the Consob (Communication n. SOC/RM/90004190 of July 16, 1990) recommends that listed companies publish the GM notice on at least two national newspapers (one of which should be a financial newspaper).

Italian companies whose articles of association allow shareholders to exercise voting rights by mail are also required to send the notice convening the shareholder meeting to the CSD and the CSD must inform custodians, which in turn must notify depositors.[102]

So far, Italian listed companies have normally published the GM notice both in the *Official Gazette* and in one or more national newspapers. In 2008, the majority of companies in our sample, published the GM notice in the *Official Gazette* and in at least two other national newspapers one of which was a financial newspaper. Three companies published the notice in five newspapers and one in six newspapers. Three companies published the notice also on international financial newspapers (Financial Times and Wall Street Journal).

Companies listed in Italy are also required to send copies of the notice calling the shareholder meeting to Borsa Italiana. Copies must be sent no later than the day before the notice is scheduled to be published in the *Official Gazette* or newspapers. In turn, Borsa Italiana must make the GM

[99] Article 1 of the Ministerial Decree (D.M. Giustizia) No. 437 of 1998 and Articles 2366, 2367, and 2487 of the Civil Code.

[100] Article 104 of the CLFI and Article 2 of the Ministerial Decree (D.M. Giustizia) No. 437 of 1998

[101] Article 2366 of the Italian Civil Code.

[102] Article 139 of the Consob Regulation N. 11971 of 1999.

notice received by the company public.[103]

Under the new Consob Regulation, companies listed in Italy and listed companies with Italy as their home Member State (MS), must provide the information needed to enable holders of their financial instruments to exercise their rights.[104] Moreover, these firms must guarantee the integrity of the information and that the information is available in the home member state or in the member state where the financial instruments are listed. This information (e.g., GM notice and agenda, financial statements, and reports) must be filed at Consob and the stock exchange and made public according to the provisions regulating the new systems for dissemination, storage, and filing of regulated information that we analyzed in Section 5 above.[105] However, since these new disclosure obligations will not apply until the dissemination and storage systems are launched, starting from April 2009, listed issuers will have to comply with the transitional provisions established by Consob.[106]

With regard to the GM notice, until the start of the activity of authorized storage mechanisms, Italian companies listed in Italy are required to publish the notice in at least one national newspaper. The GM notice is considered to be temporarily stored in centralized form if it is also published on the web site of the Italian stock exchange (Borsa Italiana).

In order to be deemed disseminated to the public, the GM notice must be sent to the stock exchange where the company is listed. Moreover, a release containing the announcement of the publication of the GM notice and the web site where the notice is available, must be sent to at least two press agencies and to the stock exchange, or through the Network Information System (NIS) to which Consob has access.

NIS is a web based system created and managed by Borsa Italiana and is used by listed companies to publicly disclose regulated information. The information communicated by the issuers to NIS, are immediately viewable by Consob and Borsa Italiana and can also be accessed by News Agencies which decide to use the NIS circuit.[107] So far, Italian listed companies have been using NIS in order to communicate corporate information to the public, Consob, and Borsa Italiana as required by the existing rules.

[103] Article 2.6.2, "Disclosure requirements" of the "Rules of the Markets Organized and Managed by Borsa Italiana".
[104] See above section 5.1 for the definition of "listed issuers with Italy as their home Member State".
[105] Consob Regulation of Issuers, Article 84
[106] Consob Regulation of Issuers (Article 65-bis, Footnote 82).
[107] Information about NIS are available at www.borsaitaliana.it

As for the filing requirement, under the transitional regime, the GM notice is deemed to be filed at Consob once it is sent through NIS or, in the case of issuers that do not use NIS, through mail.

6.2.3 Content of the GM notice and agenda

The GM notice must contain the date, hour, and location of the GM, and the list of items to be discussed at the meeting.[108] Meetings for which the required constitutive quorum is not reached in first call, will be held on second or third call.

Italian companies are allowed to set the date for the GM to be held in second call in the notice convening the meeting in first call, however, the meeting on second call cannot take place on the same day as the GM to be held on first call. When the GM notice does not specify the date of the GM to be held in second call, the GM must be called again within thirty days of the first call and the notice convening the GM in second call must be published at least 8 days before the meeting date.[109] When the EGM held in second call is not duly constituted for lack of the required quorum, the meeting may be called again within thirty days. In this case, the notice convening the EGM in third call must be published at least 8 days before the EGM date.[110]

For OGMs that will probably be held on second call, and EGMs that will probably be held in second or third call, it is common for Italian listed companies to include these dates in the notice convening the GM in first call. All the companies in our sample did include the date of the second call for the OGM (and of the second and third call for the EGM) in the first notice. For example, the following is from the GM notice of Enel:

> "(...) Notice of Ordinary and Extraordinary Shareholders' Meeting: An ordinary and an extraordinary meeting (together, the "Meetings") of the shareholders of ENEL S.p.a. ("ENEL") will be held at the Enel Conference Center at 125 Viale Regina Margherita, Rome as follows: the ordinary meeting at 11:00 a.m. on June 9, 2008 (first call) or June 11, 2008 (second call) and the extraordinary meeting at 11:00 a.m. on June 9, June 10, or June 11, 2008 (respectively, on first, second, or third call). (...)"

In the comments to Article 11 of the Corporate Governance Code it is recommended that, when

[108] Civil Code, Article 2366.
[109] Civil Code, Article 2369.
[110] CLFI, Article 126.

choosing the place, date and time for shareholder meetings, directors bear in mind the objective of making it as easy as possible for shareholders to attend.

Companies whose articles of association allow shareholders to exercise voting rights by mail must specify in the notices convening shareholder meetings that votes may also be cast by mail and the way and the persons at whose offices voting papers are to be requested. The address to which voting papers are to be sent and the time limit by which they must reach the addressee must also be included.[111](See Section 8.3.1)

As of April 2009, issuers of shares must include in the GM notice the provisions of their articles of association that govern the participation in general meetings; information on the total number of shares and voting rights; and information on the requirements that shareholders must comply with in order to be able to participate in the GM (including information regarding how each person entitled to vote at the GM may obtain a proxy form) must also be included. [112] Moreover, the notice convening the GM must state that the documentation regarding extraordinary transactions (such as mergers, spin-offs, amendments to the articles of association, related parties transactions) will be published within the time limits provided for in the Consob Regulation of Issuers and that shareholders may obtain a copy of such documents at their own expense.[113]

At least fifteen days before the GM, Italian listed companies must make available to the public, at the headquarters of the company and at Borsa Italiana, a report on the draft resolutions for each item to be discussed and voted on at the GM.[114] The report must be published according to the provisions regulating the new systems for dissemination, storage, and filing of regulated information that we have analyzed in Section 5. However, until these new systems are launched, it must be published following the same transitional provisions that regulate the publication of the GM notice.

At the GM, shareholders holding at least 1/3 of the shares capital may ask to postpone the GM for no more than 5 days if they declare that they have not been informed adequately about one or more items on the agenda.[115]

[111]Article 139 of the Consob Regulation N. 11971 of 1999.
[112]Article 84, paragraph 2, of the Consob Regulation N. 11971 of 1999 (as amended by Resolution N. 16850 of April 1, 2009)
[113]Consob Regulation of Issuers (Article 76)
[114]Article 3 of D.M. Giustizia n. 437 del 1998.
[115]Civil Code, Article 2374.

6.3 Right to place items on the GM agenda

Before the introduction of the so-called "Investor Protection Act" or "Savings Law" (Law No. 262 of December 28, 2005), shareholders of Italian companies were not allowed to place items on the GM agenda unless they had requested the convening of the GM. Furthermore, only shareholders representing 10% of the share capital (or lower percentage if designated in the articles of association) could make such a request.

The Savings Law allows shareholders representing (separately or jointly) at least one fortieth (2.5%) of the share capital of a listed company to add new items to the GM agenda. Shareholders must submit their proposed items within 5 days after the publication of the GM notice. As noted earlier, such additions to the agenda may not include topics which the shareholder meeting is required by law to resolve by proposals put forward by the directors or on the basis of a plan or report the directors have prepared.

Following a shareholder request, which remain rare in Italy, the company must issue a notice of the items added to the agenda in the same manner as the publication of the GM notice, and this must be done at least 10 days before the GM.[116] This means that, starting from April 2009, and until the new systems for the dissemination and storage of regulated information are launched, Italian companies listed in Italy are required to give notice of items added to the GM agenda in the same way they have to publish the GM notice. (See Section 6.2.2)

Counterproposals (related to items already on the agenda) can always be raised during the GM and this is not uncommon at GMs of Italian listed companies. However, the GM chairman may exercise discretion when deciding whether a counterproposal should be considered related to an item already on the agenda (and therefore accepted) or a new item which should have been added to the GM agenda following the above mentioned requirements (and therefore rejected).

6.4 Distribution of other GM-related information to shareholders and publication of accounts and reports

In this section we list the main information (announcements, financial statements, and reports) that Italian companies listed in Italy must publish and make available to shareholders before the

[116] Article 5 of Law No. 262 of December 28, 2005 which introduces the new article 126-bis in the CLFI.

GM or periodically. We focus on the deadlines by which companies must make this information available to the public and the formalities that companies must respect in doing so.

Recall that Italian companies with a traditional or one-tier governance structures must submit the previous year's annual financial statement to shareholders for approval. Moreover, for companies with a two-tier structure, the supervisory board is required to approve the annual financial statement (containing a balance sheet, a profit and loss account, and explanatory notes to the financial statement[117]).

Under the Italian law, within 120 days of the end of the company's fiscal year, listed firms with Italy as home member state must approve the annual financial statement. Moreover, within this deadline, they must publish the annual financial report containing, among other things, the company's annual financial statement, the consolidated financial statement (if any), and the directors' report. The external auditor report must be published in full with the annual financial report.[118]

During the 15 days that precede the GM and until it has been approved, the annual financial statement must be held at company headquarters for the shareholders to inspect. Shareholders must also be able to inspect the last financial statement of the company's subsidiaries and a summary of the last financial statement of affiliated companies, the directors' report, the report of the members of the board of statutory auditors ("*collegio sindacale*"), and the report of the independent external auditor ("*società di revisione*"). The directors' report must contain a fair and exhaustive view of the company's situation and performance.[119]

Within sixty days of the end of the first half-year, Italian listed companies (with Italy as home MS) must also publish a half-yearly financial report including, among other things, a half-yearly abridged financial statement and the interim directors' report.[120] Within forty-five days of the end of the first and third quarters of the financial year, these companies must publish an interim management report.[121] The half-year financial report and the interim management report must be made available to the public at the company's registered office.

All the above mentioned financial statements and reports must be made available to the public through the new system for dissemination of regulated information and stored in an authorized

[117] Civil Code, Article 2423.
[118] Article 154-ter of the CLFI
[119] Articles 2428 and 2429 of the Civil Code and Article 156 (paragraph 5) of the CLFI .
[120] CLFI, Article 154-ter (paragraph 2).
[121] CLFI, Article 154-ter (paragraph 5)

storage mechanism.[122] However, until the new dissemination and storage systems described in Section 5 are launched, the documents will have to be made available to the public according to the transitional provisions set by the Consob: Italian companies listed on Borsa Italiana will have to announce the publication of the documents (and the web site where these documents can be found) to at least two press agencies and to Borsa Italiana, or through the Network Information System (NIS) managed by Borsa Italiana. The documents will be deemed properly stored if the company transmits them to Borsa Italiana and publish them on its the web site; they will be considered filed at Consob if the company sends them to Consob through NIS or through mail.[123]

Italian companies listed on Borsa Italiana must disclose in the notes to the financial statements the compensation of all of its executives, directors, and other members of "controlling bodies" (including subsidiaries).[124] Moreover, these firms must also provide a detailed explanation of the compensation plan. This explanation must be given at least 15 days before the OGM called to approve the compensation plan. Within the same term, the document must be made available at the company's registered office and published on the issuer's web site.

As for information related to extraordinary operations such as the increase of capital by way of contributions in kind, mergers or spin-offs, modifications to the memorandum of association, related parties transactions, and the issuance of bonds, Italian companies listed in Italy are required to make the relevant documentation available to the public. This sharing of information must occur at least 30 or 15 days before the GM, depending upon the case. For example:

- For mergers or spin-offs, the company must make the relevant information available to the public at its registered office at least 30 days before the GM convened to approve the merger or spin-off. The Civil Code requires the published information includes the merger plan, reports of the boards of the companies taking part in the transaction, and financial statements of the last three fiscal years.[125]

- For changes to articles of association or issuance of bonds, the report of the board must be made available to the public at the company's registered office and at Borsa Italiana at least

[122] Articles 81 and 82 of the Conosb Regulation of Issuers)
[123] Article 65-bis (Footnote 82) of the Consob Regulation of Issuers)
[124] Consob Regulation N. 11971, Article 78 and Annex 3C.
[125] Civile Code (Articles 2501-quinquies, 2501-sexies, and 2501-septies) and Consob Regulation of Issuers (Article 70)

15 days before the GM convenes to vote on these items.

- For the sale or repurchase of treasury shares, the company must make the board report available to the public at least 15 days before the GM.

Italian listed companies are also required to send specific information to Borsa Italiana. In particular, companies must:

(a) Send Borsa Italiana, not later than the day before it is scheduled for publication in the press, copies of the notice including information needed to enable holders of the company's financial instruments to exercise their rights, the notice calling the shareholder meeting, and the notice regarding offerings of pre-emption rights.

(b) Inform Borsa Italiana of every change in the amount or composition of their issued share capital with the procedures and time limits established in the Instructions.

(c) Send Borsa Italiana, within 30 days of the end of the previous fiscal year, the annual calendar of corporate events giving the dates or periods established for:

- the meeting of the competent body called to approve the quarterly report and/or the draft annual financial statement for the previous year;
- the meeting of the competent body to approve the annual financial statement for the previous year or the annual directors' report;
- the meeting of the competent body called to approve the half-yearly report for the current year or the half-yearly report on operations;
- the meeting of the competent body called to approve the first and third interim directors' report for the current year;
- any meetings of the competent body called to approve preliminary data;
- any presentations of accounting data to financial analysts.

Once issuers have set these dates, they must forward them to Borsa Italiana immediately, as well as any subsequent changes to the information contained in the calendar.

Issuers must also include the proposed date for the payment of any dividend in the notice regarding the approval of the annual financial statement by the competent body and send Borsa Italiana, in the interest of orderly trading, all the other information specified in the Instructions.

All the communications referred to above are then made public by Borsa Italiana by means of Notices.[126]

At least once a year, companies listed within the EU must present a document which includes or make reference to all the information they have published or made available to the public during the previous 12 months under the requirements imposed by national and EU securities laws. The document must also specify the date of publication and where it is possible to obtain the information underlying the report.

According to Article 4 of the Corporate Governance Code, the managing directors must ensure the correct handling of corporate information. Specifically, they must propose to the Board of Directors the adoption of procedures for the internal handling and the disclosure to third parties of documents and information concerning the company, with special regard paid to price-sensitive information.

6.4.1 Electronic distribution of information relevant for the exercise of shareholder rights

Italian companies listed in Italy are not required to distribute GM-related information directly to their shareholders, and they normally do not do so. However, as of April 2009, the GM of Italian companies listed in Italy may adopt a resolution allowing the company to transmit such information directly to shareholders or through custodians (depository intermediaries) using electronic means, provided that:

(a) The use of electronic means is not restricted in any way by the location of the registered office, the domicile or the residence of the shareholder or the natural persons or legal entities who have the right to exercise voting rights.

(b) Identification systems are put in place so that shareholders or their proxies are effectively informed.

[126] Article 2.6.2, ("Disclosure Requirements") of the "Rules of the Markets Organized and Managed by Borsa Italiana."

(c) Shareholders or their proxies are contacted in writing to request their consent for the use of electronic means in transmitting information. If they do not object within a reasonable period of time, their consent shall be deemed given. The consent can be revoked at any time.

(d) Any allocation of costs related to the transmission of such information by electronic means shall be determined by the issuer in compliance with the principle of equal treatment of shareholders.

Given Italy's decentralized system of shareownership registration, companies need to request information on the identity of its shareholders from their respective financial intermediaries (custodians). Article 84 of the Consob Regulation of Issuers permits Italian listed companies to make such requests for the purpose of asking shareholders to consent to receiving the electronic information through custodians.

6.4.2 Electronic dissemination of GM-related information to the public

As discussed in Section 5, under the amended Consob Regulation of Issuers, listed companies must make available a web site for the publication of regulated information.

Italian listed companies normally publish the full notice convening the GM on their web site. Most companies also make the press release regarding the notice of the meeting available on their web site. Most large companies provide the GM notice and agenda in English in addition to Italian. Listed companies normally make the draft annual financial statement available on their web site, very often also in English, as soon as adopted by the Board of Directors. The draft annual report is normally available on the company's web site 2-3 weeks in advance of the OGM. The annual report is often available only in Italian, until after the GM.

As for our sample companies, we have been able to find an English version of the notice convening the meeting for all companies except one (Banco Popolare). All companies in our sample made their annual report available in English on their web page either before or after the general meeting.

It is common for companies to disclose the GM minutes in Italian on their web site, including count of votes (for/against/abstain), list of names of who voted against or abstained per agenda item and list of names of shareholders represented at the meeting. Only for two of our sample companies we have not been able to find the full minutes on the company's web site. It is not

common to make these minutes available in English. As for our sample companies, only three companies published the full minutes on their web site in English. All the remaining companies made a short press release stating what was approved and what was not approved at the meeting available in English on the company's web site.

The Corporate Governance Code requires companies to establish a specific section on their web site that may be easily identified and accessed, in which the above-mentioned information is also made available. Particular reference must be made to the procedures provided for the participation in and the exercise of the voting right at the shareholder meetings. In addition, the company must provide documentation relating to items on the agenda of the shareholder meetings, including the lists of candidates for the positions of director and auditor with a discussion of their relevant personal traits and professional qualifications.[127]

As discussed in Section 12.2.5 below, with the implementation of the 2007 EU Shareholder Right Directive (SRD), Italian companies listed in Italy will be required to publish specific GM-related information on a specific section of their web site at least 21 days before the GM.

7 Criteria for participation and voting at the GM

In this section we discuss shareholder rights to participate and vote at the GM of Italian listed companies. We focus on specific criteria shareholders must fulfil to exercise voting rights, either in person or by proxy.

7.1 Regulatory framework

7.1.1 Formal entitlement to exercise ownership rights

As stated earlier, shares and other financial instruments issued by Italian listed companies are held by their owners in accounts kept by financial intermediaries. The account-holder has full and exclusive title to the rights attached to the financial instruments in the account. The intermediary is required to certify the ownership when needed to exercise the rights. Moreover, the intermediary may be requested to exercise rights on the owner's behalf, such as voting at the GM.[128] Notice

[127] Article 11 of the Corporate Governance Code (Criteria).
[128] See Article 31 and 32 of the Euro Decree.

also that, for ownership rights to be exercised, it must also be confirmed that the account information certified by the custodian corresponds to the account information in the central security depository.[129]

7.1.2 Right to participate in and vote at the GM of listed companies

Under Article 2370 of the Civil Code, which has been amended by the Legislative Decree No. 6 of January 17, 2003, only shareholders who have the right to vote can participate in the GM. The articles of association may require the deposit of the shares or the relevant ownership certifications at the headquarters of the company or at the banks indicated in the GM notice, and set the time period within which the shares must be deposited. The articles may also establish that the shares cannot be withdrawn before the general meeting has taken place (share blocking requirement). For listed companies the term for the deposit cannot be set more than two business days before the meeting date and the deposit is replaced with a notification by the intermediary that keeps the relevant accounts.

Dematerialization of financial instruments precludes physical deposit of shares and so, in 2003, Italy replaced the earlier deposit requirement with a notification requirement.[130] For companies and entities that issue financial instruments admitted to the Italian CSD, also the certification requirement mentioned in the CLFI (article 85.4) and Euro Decree (article 31.1(b)) has been completely replaced by a notification requirement. In fact, Article 21 of the joint Regulation issued by the Bank of Italy and the Consob[131], states: "When the right to be exercised is the right to attend shareholder meetings, certifications shall not be issued and the intermediary shall send the notification for attendance at shareholder meetings referred to in the second paragraph of Article 2370 of the Civil Code."[132] Article 23 of the same Regulation clarifies that the notification for attendance sent by the intermediary produces the same effects as the deposit of shares, if this is provided for in the bylaws, or the presentation of certifications for attendance at shareholder meetings.

[129] Article 85 of the CLFI.

[130] See Di Noia, Gargantini, and Lo Giudice (2008)

[131] This Regulation completely repealed the Consob Regulation N. 11768/1998 issued in agreement with the Bank of Italy, as amended.

[132] Recall from Section 4.2 above that the regulation defines "intermediaries" as "persons eligible to hold accounts with a central depository and through which centrally deposited financial instruments can be transferred and the related property rights exercised".

Therefore, as clarified by the Consob,[133] the notification for attendance replaces ex lege the deposit of the shares (and the exhibition of certifications) if provided for in the company's articles of association and is the only way for shareholders to exercise the right to participate in the GM of listed companies. In fact, even when the articles do not require the prior deposit of the shares, the notification has a legitimating function.[134]

The new joint Regulation issued by the Bank of Italy and the Consob confirms the legitimating function of certifications issued by intermediaries with regard to the other ownership rights attached to financial instruments admitted to the central systems. The content of the application that the shareholder must submit to the intermediary and the issuance of the certifications by the intermediary are also regulated(see Section 4.3).[135].

As for other than shareholders being admitted to the GM, a Communication of the Consob (16 July, 1990, Communication n. SOC / RM / 90004190 of July 17, 1990) contains a recommendation for listed companies to allow experts, financial analysts, qualified journalists, and representatives from the rating agencies responsible for the certification of the financial statements to attend the GM.

7.1.3 Notifications for attendance at the GM: Content and deadline for issuance

Since (as noted earlier) the entitlement to exercise corporate rights (including voting rights) is rooted in the registration in the securities account kept by the intermediaries, the verification of the entitlement to participate in the GM of a listed company is based on the notification for attendance at the shareholder meeting sent to the issuer from the intermediary that keeps the relevant securities account.[136]

Therefore, shareholders who want to participate in the GM and vote must ask their intermediaries to send the company a notification for attendance. Only the owners of the financial instruments entered into the central depository in dematerialized form are entitled to apply for a

[133] See *Esito delle Consultazioni, Modifiche al Regolamento N. 11768/98 in Materia di Mercati (March 2005)*, available at http://www.consob.it/main/documenti/Regolamentazione/lavori_preparatori/consultazione_mercati_esiti_marzo_2005.htm

[134] See Lener (2006). The author concludes that the notification has become "the only manner in which the entitled party can "present itself" to the issuer, both when the articles of association require shares to be deposited and when they make no provision in this respect."

[135] Article 21 and 22.

[136] See "Consultation Document, Implementation of the Directive 2007/36/CE regarding the exercise of some voting rights of the shareholders of listed companies", available at www.dt.tesoro.it/AreeDocum/Regolament/Consultazi11/index.htm.

notification for attendance at shareholder meetings. In requesting this notification, shareholders must submit an application, the content of which is regulated by Italian law, to the intermediary.[137]

With regards to institutional shareholders, they generally send their voting instructions (either directly or via a proxy agent) to the custodian ahead of the deadline to send the notification for attendance. These instructions are interpreted as the application. Once received, the custodian not only knows the voting intentions of the shareholder but can then issue the notification for attendance within the given deadline.

While the Italian law clearly establishes the intermediaries' obligation to send such notifications for attendance (Article 22, paragraph 1), in a cross-border context, it is unclear as to which intermediary in the custody chain has to issue and send the notification to the company. For example, if foreign shareholders decide to vote at the GM of Italian listed companies, is it the upper-tier account provider (normally the local custodian bank appointed by the global custodian) or the lowest-tier account provider who is required to issue the notification?[138]

In October 2007, before issuing (with the Bank of Italy) the joint Regulation of February 22, 2008, Consob launched a public consultation. A participant to the consultation (Assomine, the Italian Association of Listed Companies) asked Consob to clarify whether the notification for attendance must be sent by intermediaries that are CSD participants (that is, in a cross-border context, normally local custodian banks) or by intermediaries placed lower in the voting chain. Consob answers this question in a document reporting the results of the consultation.[139] Here, Consob argues that the notification for attendance must be issued not by the intermediaries that are participants to the central depository, but by intermediaries that are lower in the voting chain. In support of its argument, Consob refers to Article 2 (paragraph 4) of the Joint regulation which

[137] Article 21 of the joint Regulation issued by the Bank of Italy and the Consob. The application must contain: a) the name of the applicant; b) the quantity of financial instruments for which the notification is required; c) an indication of the right to be exercised; d) the time limit of the notification's effectiveness; e) the place and date of the application; f) the signature or other indication permitting to identify univocally the applicant. Applications must also specify date and type of GM.

[138] A similar comment is made by the EU Legal Certainty Group in *Second Advice of the Legal Certainty Group, Solutions to Legal Barriers Related to Post Trading within the EU*, Part II (page 88): "In Italy it is not clear whether the lowest-tier account provider or the upper-tier account provider has to issue the electronic notification which has to be issued - according to the law - by the 'account provider holding the accounts.'" The Advice was published in August, 2008 and is available at http://ec.europa.eu/internal_market/financial-markets/docs/certainty/2ndadvice_final_en.pdf.

[139] "Regolamento congiunto Consob-Banca d'Italia: Disciplina dei servizi di gestione accentrata, di liquidazione, dei sistemi di garanzia e delle relative società di gestione - Esito delle Consultazioni (February 22, 2008)". Available only in Italian at www.consob.it.

establishes that, as a general rule, "persons entitled to apply for a certification or a notification for attendance at shareholder meetings [are] the owners of the financial instruments entered into the central depository in dematerialized form".

Nevertheless, to our knowledge, in a cross border voting situation, it is normally the local custodian bank (typically a CSD participant) appointed by the global custodian that issues and sends the electronic notification certifying that the shareholder is entitled to participate in the shareholder meeting to the issuer.

As for the content, notifications for attendance at shareholder meetings must include the information specified in Annex 2 of the joint Regulation issued by the Bank of Italy and the Consob, such as the name of the shareholder, address, and the number of shares owned by the shareholder who intends to participate in the GM.

Regarding the deadline to send the company the notification for attendance at shareholder meetings, intermediaries are required to send notifications:

- within two working days of the date of receipt of applications made by the shareholders, or
- within the longer period between the shareholder's application and the day established by the issuer's articles of association for the prior deposit of the shares (pursuant to the second paragraph of Article 2370 of the Civil Code), or
- if the articles of association do not provide for the prior deposit of the shares, within the time established for the start of the shareholder meeting.

Intermediaries are required to make copies of notifications available to applicant shareholders at the time they are sent to the issuer.[140]

In 2006, Consob clarified that when the general meeting has not reached a quorum in first call, the intermediary is not required to repeat the notification for attendance already sent within the deadline established by the company.[141] However, if the intermediary has not sent the notification for attendance within the deadline set by the company and the meeting has not taken place in first call, the articles of association of the company may give specific instructions to intermediaries as to

[140] Article 23 of the joint Regulation issued by the Bank of Italy and the Consob. Intermediaries are required to preserve copies, numbered progressively by year of issue, of notifications for attendance at shareholder meetings.

[141] See Consob Communication DME/6004099 of January 20, 2006 (available only in Italian at http://www.consob.it/main/documenti/bollettino2006/c6004099.htm).

the possibility to send a late notification. Intermediaries can be made aware of these instructions through the CSD or in the GM notice.

Since January 1, 2006, intermediaries are required to transmit notifications for attendance at shareholder meetings to issuers in electronic form.[142] This important rule was introduced in 2005 by a Resolution (No.14955 of March 23, 2005) issued by the Consob in agreement with the Bank of Italy, which modified the Consob Markets Regulation (no. 11768/1998) to align it with the new rules regarding the right to participate in the GM introduced by the 2003 reform. This provision was introduced to reduce the costs of paper-communication between intermediaries and companies regarding the GM.[143]

The electronic notification for attendance can be sent by the intermediary through the web platform provided by Monte Titoli or other providers,[144] or sent via certified electronic mail.[145] (See Section 11 for more information about the electronic flow of communications between issuers and intermediaries).

7.2 Notifications for attendance, deposit of shares, and share blocking

Italian listed firms may choose any of the following three approaches:

(1) The company's articles of association may establish a share blocking requirement and limit the participation in the GM to shareholders who have deposited their shares within the term set in the articles. The term may not exceed 2 business days before the GM and the shares cannot be withdrawn before the meeting has taken place. As we have seen above, for listed companies the deposit has been replaced with a notification by the intermediary.

Mandatory share blocking has been abolished by the Italian law; however, Article 2370 of the Civil Code still allows companies to include it in their articles of association. This conflict has created uncertainty and is the reason that blocking still exists at the custodian's level and foreign

[142] Article 33 of the joint Regulation issued by the Bank of Italy and the Consob.

[143] Consob Communication DME/6004099 of January 20, 2006 (available only in Italian at http://www.consob.it/main/documenti/bollettino2006/c6004099.htm)

[144] See Title IV of MT's "Centralized Administration Services Terms and Conditions" for a description of its services relating to the management of communications via the Internet.

[145] The Consob Communication DME/6004099 of January 20, 2006 (available only in Italian at http://www.consob.it/main/documenti/bollettino2006/c6004099.htm) has specified the obligation to adopt standard electronic means for data transmission and reception. The use of email is compatible with the existing regulation provided that it takes place on the basis of standardized technical-operative procedures concerted between intermediaries and issuers and appropriate to ensure the correct and timely transmission and reception of data.

shareholders generally do not vote in Italy. (Note: with the implementation of the Shareholder Rights Directive, share blocking will have to be completely abolished.[146] See also Section 12.2 below).

In the case of blocking companies, shareholder intermediaries are required to send the electronic notification for attendance at the shareholder meeting within the deadline set by the company for the deposit of the shares (normally at least 2 business days prior to the GM). Also, a 2-day blocking is required; that is, shares must be blocked at least two days prior to the date set for a given meeting and cannot be withdrawn before the meeting has taken place.

Market practice example:

> Enel stated in its 2008 "Notice of Ordinary and Extraordinary Shareholders' Meeting" to be held on June 11th, 2008, that "Shareholders and others entitled to vote for whom the Company has received timely notice from an authorized securities dealer in accordance with applicable law are entitled to participate in the Meetings. In this regard, article 10.1 of the Bylaws provides that shareholder meetings may be attended only by those who deposit their shares at least two days prior to the date set for a given meeting and do not withdraw them before the meeting has taken place."

(2) The company may decide not to include a share blocking requirement in its articles of association and limit the participation in the GM only to shareholders who have deposited their shares within the term set in the articles. The term may not exceed 2 business days before the GM; that is, the articles of association may set a shorter term closer to the GM or even the GM date itself. Even though the articles require the deposit of the shares, for listed companies this is replaced ex *lege* with the notification for attendance that must be sent by the intermediary within the same term set by the company's articles for the deposit. The deadline to send the notification must always be counted from the date set by the company for the meeting to be held in first call.

When the company's bylaws do not prohibit the withdrawal of shares, before shareholder meetings are held, the intermediaries that sent notifications to the company are required to inform the latter without delay of any transfers, in whole or in part, of the corresponding financial instruments before the shareholder meeting is held. In this "corrective communication", the intermediary must

[146] Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007.

specify the annual serial number of the notification for attendance at shareholder meetings sent previously.[147]

(3) The company's articles of association and/or GM notice may not include a share blocking requirement, not provide for the prior deposit of the shares in the bylaws, and not set any deadline for sending the notification for attendance at shareholder meeting. In this case, under the Italian law, an electronic notification for attendance must be sent by the intermediaries within the time established for the start of the shareholder meeting. Intermediaries generally collect all the notifications and send everything to the company at the last minute.

Although in this case the company does not prohibit the withdrawal of the shares, the intermediaries that sent notifications to the company must inform the latter without delay of any transfers, in whole or in part, of the corresponding financial instruments before the shareholder meeting is held.

Today, Italian listed companies normally do not require shareholders to block their shares ahead of the GM in order to be allowed to vote. Only a few companies still include a share blocking requirement in their articles of association. All cooperative banks, however, require blocking since they ask for the shareholder to be registered on the company's register of shareholders for 90 days to be able to vote. Of course, the shareholder may sell his shares during these 90 days, but will then loose the right to vote.

Among the companies in our sample, excluding cooperative banks, there is only one blocking company. Italian listed companies normally set the deadline to send the notification for attendance two business days before the meeting date. Two companies in our sample do not set any deadline to send the notification for attendance (that is, the notification has to be sent before the start of the meeting).[148]

As we have seen above, under request from applicant shareholders, intermediaries are required to make copies of notifications for attendance available at the time they are sent to the issuer.

[147] Article 23 of the joint Regulation issued by the Bank of Italy and the Consob.

[148] See Enriques, Luca, Modernizing Italy's Corporate Governance Institutions: Mission Accomplished?(May 7, 2009). ECGI - Law Working Paper No. 123/2009. Available at SSRN: http://ssrn.com/abstract=1400999 The author's elaboration on companies' charters and notices convening annual meetings confirms our findings: currently one-sixth of companies out of a sample of 283 impose that shares are blocked since the electronic communication is sent and until the meeting is concluded, while two-thirds require that the communication is sent in advance of the meeting but do not impose share blocking; the remaining companies (one-sixth) simply require a communication before the meeting is opened.

Therefore, the shareholder who wants to attend the GM personally (or by proxy) may ask the intermediary to provide her with a copy of the notification to bring at the GM.

Under Italian law, shareholders are not required to bring a copy of the notifications for attendance (provided by the intermediary) at the GM in order to be allowed to participate and vote. In reading the entire regulation about the right to participate and vote at the GM, it appears that once the notification for attendance at the GM has been sent by the intermediary, the company must allow the shareholder (or a proxyholder) who presents an ID card at the entrance of the GM to participate. No other authorization or document seems to be needed. It is important to notice that Article 11 of the Corporate Governance Code (Criteria 11.C.3), requires the Board of directors to make its best effort to reduce the restrictions and burden on shareholders to participate in the shareholder meeting and exercise their voting right.

That said, most companies in their GM notice request shareholders to bring and present a copy of the notification for attendance sent by the intermediary, in order to be allowed to participate in the GM.[149] In our sample, the majority of the companies ask for such a copy to be brought to the meeting.

7.2.1 Trading of shares close to the GM

Under Article 23 of the joint Regulation issued by the Bank of Italy and Consob, intermediaries are required to send notifications for attendance at shareholder meetings in conformity with their accounting records .[150]

The notification requirement under Article 23 is unclear. Specifically, it is unclear whether the

[149] See "Consultation Document, Implementation of the Directive 2007/36/CE regarding the exercise of some voting rights of the shareholders of listed companies", available at www.dt.tesoro.it/Aree-Docum/Regolament/Consultazi11/index.htm.

[150] Resulting from entries made pursuant to Article 30.2 (of the joint Regulation issued by the Bank of Italy and Consob) or from the recording of transfers between accounts kept by the same intermediary. Article 30 ("Registration of book-entry transfers") establishes: "1. At the end of the securities settlement process, or subsequent to transfers ordered by intermediaries, central depositories shall notify intermediaries of the registration of the transfers. 2. As soon as they receive the notifications referred to in paragraph 1, intermediaries shall make the necessary entries in their accounts, specifying at least the following information: a) the effective settlement date; b) the identification number and name of the financial instruments; c) the quantity or face value of the financial instruments; d) the sign of the transaction."

Moreover, the "Centralized Administration Services Terms and Conditions" (Article 26, "Attendance at the shareholder meetings") issued by MT, establishes that for financial instruments issued under Italian law, Monte Titoli, having been informed of the convocation of a shareholder meeting, shall communicate to intermediaries the transaction details necessary for the issue of the certification or communication confirming participation in the System. The aforesaid certification or communication is issued by the intermediary in conformity with its own accounting records, according to the provisions set out in the Consob Regulation.

rule requires the intermediary to send the notification for attendance according to the registrations made in the accounts connected to the execution of the contract (i.e., trade date), or according to the registrations connected to the settlement of the transaction (i.e., effective settlement date).[151]

Consob answered the question: the entitlement to exercise the right to vote is transferred after the settlement of the transaction is registered in the accounts in the name of the buyer of financial instruments.[152] Therefore, only shares that are settled on the deadline set by the company (to send the notification, deposit the shares, or block the shares) entitle the shareholder to exercise her voting rights.

As Consob clarifies[153], in order to be able to send the notification, the intermediary must have respectively credited or debited the corresponding financial instruments in the accounts kept within the CSD system. Therefore, it is apparent that the timeliness of the notification is strictly dependent on the timeliness of the registration of the transfers of the shares in the accounts made by the intermediary. Intermediary has a certain discretion in choosing the moment to make the registration in the accounts, but Consob clarifies that the rule requiring intermediaries to inform the issuer without delay of any transfer of the shares that takes place before the GM, must be seen as a general criterion of conduct that also applies to the registrations in the accounts.[154] When the exercise of the right to participate in the GM depends on the timeliness of the registrations in the accounts, intermediaries cannot have discretion in deciding the time for the settlement of the shares. They must not only inform the company of any transfer, but also send the notification for attendance at the shareholder meeting without delay. Intermediaries are also required to effect the registrations in the accounts without delay.[155]

That said, it is interesting to analyze what happens to the voting rights when shares are traded close to the GM date under the different scenarios mentioned in the above section:

1) As we know, if the company asks for the deposit (notification) and blocking of the shares,

[151]For an analysis of the acquisition of entitlement to participate in the GM see Lener (2006).

[152]See "Esito delle Consultazioni. Modifiche al Regolamento N. 11768/98 in Materia di Mercati (March 2005)", available only in Italian at www.consob.it

[153]Consob Communication DME/6004099 of January 20, 2006 (available only in Italian at http://www.consob.it/main/documenti/bollettino2006/c6004099.htm)

[154]Article 23 of the joint Regulation issued by the Bank of Italy and the Consob.

[155]The Consob also provides interpretative criteria with the goal to reduce the risk to have shareholders not allowed to participate in the GM due to late registrations in the accounts. For example, regarding the service of custody and administration of financial instruments, the Consob recommends to the intermediaries to effect without delay the registrations in the accounts and all the other fulfillment related to the exercise of the right to participate in the GM when they affect the exercise of the right itself.

they must be blocked not earlier than two business days before the GM (or less if so established in the articles of association of the company), and cannot be sold until the end of the GM. As for buying shares close to the GM, only shares that are settled on the blocking deadline set by the company give voting entitlement. In addition, in Italy there is a T+3 system (i.e., trading plus three days) for the settlement cycle, so only shares that are bought (or recalled in case they are on loan) three trading days before the blocking date at the latest (or a total of 5 trading days before the meeting) entitle the shareholder to exercise her voting rights. Foreign shareholders are normally required to block their shares earlier.

In the case of companies that require share blocking, as a general rule, shares must remain blocked until the meeting has taken place. Anyway, shareholders can try to unblock the shares activating a cumbersome unblocking procedure which, in case of foreign shareholders, involves both the global and local custodians. Once received by the client the instruction to unblock (that cancels the previous instruction through which the client confirmed attendance to the meeting), the company must be contacted to check whether or not it accepts the unblocking request. An attempt to unblock shares before the GM may not succeed: the company might decide not to accept the unblocking request and shares could remain blocked. If the company accepts the unblocking request, then it will have to reduce the entitlement for meeting attendance accordingly. It is clear that the entire unblocking procedure is activated only under the shareholder's request.

2) When the company asks for the deposit (notification) but does not ask for the blocking of the shares ("deposit without blocking") or set a deadline to send the notification for attendance, the shares can always be sold after the notification has been sent by the intermediary. If the transfer of shares occurs after the notification has been sent but before the GM, the intermediary must notify the listed company of the transfer. Unlike other systems (e.g., Germany) that specify the deadline before the GM by which shareholders must own the shares (that is, have settled positions) in order to be allowed to vote, the Italian law seems to refer only to the deadline to deposit the shares (or send the notification for attendance at the shareholder meeting).[156] Our understanding is that only

[156]In Germany, for example, the law specifies that shareholders owning bearer shares (who hold shares in their bank account under their own name) at the beginning of the 21st day prior to the GM are entitled to participate and vote at the GM provided that a written confirmation (almost identical to the Italian notification for attendance) of such shareholding from the custodian bank is submitted to the company up to 7 days prior to the meeting date. Therefore, the confirmation can be sent at the latest on the 7th day before the GM but it must confirm shareholdings at the beginning of the 21st day before the GM.

shares that are settled into the client's account by the deadline set by the company to deposit the share or send the notification (either "at least 2 business days before the GM" or "before the start of the GM") grant shareholders voting entitlements.

Therefore, when the company sets the deadline to deposit the shares or send the notification at least two business days before the date of the GM to be held in first call, the positions of the shareholders must be settled at the latest on the 2nd day before the GM (in practice, at the closing of business on the 3rd day before the GM) for the shareholder to be entitled to voting rights for these shares. This means (with Italy being a T+3 system for the settlement cycle) that shareholders must have bought shares (or recalled them from loan) at least 3 trading days before the deadline to send the notification - again, that is 5 trading days before the GM. Also, because companies' bylaws or GM notices generally specify that the notification must be sent "at least" 2 business days before the GM, the intermediary can send the notification even earlier (that is, right after having received the application/voting instructions from the shareholder or at any time before the 2-day deadline). In these cases the notification will confirm the shareholdings (settled positions) at a specific point in time before the deadline (2 days before the GM).

As noted earlier, the intermediary will have to inform the company of any subsequent transfer of the shares that takes place after the notification is sent but before the GM is held. The shareholder who sells the shares after the notification has been sent but before the GM loses the right to participate in the GM and to vote. In 2006, Consob clearly specified that the intermediary is required to communicate to the company the transfer of the shares (for which there has already been sent the notification for attendance at shareholder meetings). This "corrective communication" must occur for each single call because shareholders who sell the shares between subsequent calls lose their right to participate in the GM.[157] Therefore, when shares are sold after the deadline set by the company for the deposit (or notification) or after the first call if the meeting has not been validly constituted in first call, the seller cannot exercise the right to participate in the subsequent calls. Anyway, the intermediary is required to communicate the transfer to the issuer only if the registration in the accounts in the name of the buyer takes place before the GM (or before the subsequent calls). If the transaction is settled after the GM, the seller keeps the voting

[157]Consob Communication DME/6004099 of January 20, 2006, available only in Italian at http://www.consob.it/main/documenti/bollettino2006/c6004099.htm.

rights. Regarding the legitimization of the buyer, Consob does not establish any specific rule in its Communication but specifies that listed companies may give specific directions to intermediaries in this respect.

3) When the company does not state anything about the deposit of the shares and does not set any deadline to send the notification, the intermediary is required to send the notification for attendance at the shareholder meeting within the time established for the start of the shareholder meeting and the shares can always be traded before the GM. In this case, only shares that are settled into the client's account at the latest on the GM date (in practice, at the closing of business on the day before the GM) grant shareholders voting entitlements (that is, they must have bought or recalled from loan the shares at least 3 trading days before the GM).

As with the prior scenario, the intermediary will have to inform the company of any subsequent transfer of the shares that takes place after the notification is sent but before the start of the GM, as well as of any transfer of the shares that takes place between subsequent calls. The shareholder loses the voting rights attached to the shares sold before the GM or between different calls.

Considering both options 2 and 3, we can say that in Italy there is no real record date and the shareholder who sells the shares after the notification for attendance has been sent but before the meeting or between subsequent calls, loses the right to participate in the GM and vote.

However, as a consequence of the T+3 system for the settlement cycle and the fact that only shares credited to the shareholder's account on the effective settlement date grant voting entitlement, in practice today the shareholder entitled to participate in the GM who sells the shares in the two days preceding the GM keeps the voting entitlement. In fact, since the transaction will be settled only on the day after the GM, the seller's intermediary is not able to send a corrective communication before the GM is held and the seller remains entitled to participate and vote at the GM. On the other hand, the buyer will not be entitled to vote at the GM since the transaction will be settled only the day after the GM and the buyer's intermediary will not be able to send a notification for attendance on the deadline set by the company for the deposit of the shares (either two days before the GM or less) or before the start of the GM.

We conclude that some of the typical effects of a real record date system have been introduced in the Italian voting system.[158]

[158]See also Lener (2006), and Dario Trevisan's response to the "Consultation Document, Implementation of the

7.3 Registration requirement for cooperative banks

Shareholders of Italian listed companies are in general under no legal obligation to register their shares in order to participate in and vote at the GM. The determination of the right to attend the GM is done at the GM. However, in case of cooperative banks, Article 2538 of the Civil Code establishes that only the persons whose name has been registered in the shareholder book for at least 90 days have the right to vote at the GM. Italian cooperative banks generally require shareholders to have their name on the shareholder register of the company for at least 90 days before the meeting and until the meeting has taken place in order to be allowed to exercise their voting rights. This condition means that there is a 90-day blocking requirement in place and shares cannot be sold for at least 90 days before the GM (or more when the meeting does not take place in first call). Because GMs are normally not announced in the market so early, it is very difficult to know the deadline by which shares must be blocked in order to be allowed to vote at the GM.

For the above reasons foreign institutional shareholders very seldom vote at meetings of cooperative banks.

7.4 Notice of intention to attend the GM

There is no requirement or market practice in Italy of asking shareholders to send the company a notice of intention to attend the GM. Requests for such notification are common in markets like the Scandinavian ones, yet function only to facilitate the organization of the meeting. In fact, this notice of intention to attend the meeting does not prove the shareownership and does not entitle the shareholder to vote.

8 How to vote at the GM

Shareholders of Italian listed companies can decide to attend the meeting in person or appoint a proxyholder who attends the meeting and votes on behalf of the shareholder. If the shareholder decides to vote by proxy, he/she has to be compliant with specific documentation requirements.

In this section we describe the provisions that regulate the exercise of voting rights at the GM

Directive 2007/36/CE regarding the exercise of some voting rights of the shareholders of listed companies", available at www.dt.tesoro.it/Aree-Docum/Regolament/Consultazi11/index.htm.

of Italian listed companies by a proxyholder.

8.1 The proxy voting system

8.1.1 Voting by a proxyholder appointed by the shareholder

8.1.1.1 Right to vote by proxy and who can be appointed

Unless the company's articles of association state otherwise, shareholders of Italian listed companies may be represented at the GM and vote by proxy. Under Italian law, a proxy can be granted to any individual or legal person except to members of administrative or controlling bodies, or employees of the company or of its subsidiaries.[159] As a general rule, the proxyholder need not be a shareholder, however, a representative of shareholders of cooperative companies *must* also be a shareholder.[160] The articles of association of Italian cooperative banks establish that a shareholder may be represented by written proxy only by another shareholder entitled to participate in the meeting.[161]

In terms of restrictions, the proxy can be granted only for one GM and related subsequent calls, unless the proxy is general or granted by a company, association, foundation or other collective entity or institution to one of their employees. When the proxy is granted to a company, association, foundation or other collective entity (that is, a legal person), they can appoint as a proxy only one of their employees or collaborators.

The number of shareholders a single person (proxyholder) may represent depends on the size of the listed company: no more than 50 shareholders for companies with a share capital not exceeding 5 million Euros; no more than 100 shareholders for companies with a share capital higher than 5 million but no higher than 25 million Euros; no more than 200 shareholders if the company has a share capital higher than 25 million Euros.[162]

As for Italian cooperative banks, under the Civil Code (Article 2539), each shareholder may represent at the GM no more than 10 other shareholders. The articles of association of the cooperative banks in our sample establish different requirements in this respect: each shareholder may

[159] Civil Code, Article 2372.
[160] Civil Code, Article 2539.
[161] See, for example, the Regulations for Shareholder Meetings of Banca Popolare di Milano, available at http://www.bpm.it/documenti/statuto/2008/Regol_Ass2008_Eng.pdf.
[162] Civil Code, Article 2372.

represent by proxy either one, two, or three other shareholders.

8.1.1.2 Method and deadline for appointing proxies and provide voting instructions

The proxy appointment - granting a representative the authority to vote - must be provided in writing and the company must keep the related documentation. The proxy must indicate the name of the proxyholder and can be revoked at any time notwithstanding any agreement to the contrary. The proxyholder can be substituted only by someone who is expressly mentioned in the proxy.[163]

As discussed below (Section 8.2), the Consob Regulation of Issuers provides for a standard form for both the solicitation and collection of proxies but no predefined standard form exists for the appointment of proxies regulated by Article 2372. While Italian companies do not seem to provide shareholders with any standard form for the written proxy, some companies mention in their notice convening the meeting that the name of the proxyholder must be included in the written proxy. Some companies require a copy of the written proxy to be sent (by mail or by fax) to the company at least 2 days before the meeting, while others only ask the proxyholder to bring it to the meeting. Among our sample companies, 5 companies do not state anything about these specifics concerning a written proxy in either their articles of association or in the notice of the meeting.

Concerning the use of electronic means to appoint a proxy, Article 2372 of the Civil Code does not mention the possibility to appoint proxies in this manner. The GM notices and articles of association of Italian listed companies generally do not establish any guideline in this respect, either.

Under the Italian law, shareholders are not required to include voting instructions in the written proxy. Italian companies do not require shareholders voting by proxy to send voting instructions in advance of the GM or to include them in the written proxy appointment. The agreement between the proxyholder and the shareholder regulates the way to instruct the proxyholder on how to cast the votes at the GM. For institutional shareholders, proxy voting is typically regulated by the custody agreement that normally does not allow proxyholders to vote without instructions.

Specific rules regulate the use of investment firms, banks, or asset management companies as proxyholders. Under the Italian law, the power to exercise voting rights in relation to financial instruments under management may be transferred by means of written proxy and for each share-

[163] Civil Code, Article 2372.

holder's meeting. Specifically, a proxy may be granted to an to an investment firm, bank or asset management company only for a GM already convened. The proxy must be given at least 1 day before the GM to be held in first call, and it may always be revoked within one day before the meeting date. Proxies must be conferred in writing using a form prepared by the intermediary. The form must include a section for the shareholder/client to indicate voting instructions, as the shareholder has the right to require the intermediary to vote in a given direction. There is also a section for the intermediary to specify how it intends to vote in case the shareholder/client decides not to give voting instructions. This is the so-called "two-way proxy".

In addition, the intermediary may vote in a different way from the voting instructions received if material events occur that cannot be communicated to the shareholder, and which give grounds for reasonable belief that the shareholder would agree to the change. This can only occur if it is stated on the proxy form as permissible and the shareholder has not indicated otherwise. Finally, the intermediary must indicate any conflict of interest it may have in relation to the issues discussed at the GM. The limits to the number of shareholders that can be represented by the same intermediary/proxyholder provided for in Article 2372 apply.[164]

The joint Regulation issued by the Bank of Italy and the Consob provides a specific section for a possible proxy in the standard form for the notification for attendance at shareholder meetings.[165] As we have seen above, the notification for attendance must be transmitted to issuers using IT tools. Even though this notification for attendance including the proxy eventually granted by the shareholder must be transmitted to the issuer using IT links, the proxy must still be granted from the shareholder in writing. That is, the proxy cannot be conferred electronically.

8.1.1.3 Power of proxies

The Italian law does not regulate the rights of proxyholders to take the floor and ask questions at the GM. The articles of association and the regulations of GM of Italian listed companies generally do not establish any guideline in this respect either. Therefore, unless otherwise stated in the agreement between the shareholder and the proxyholder, the latter enjoys the same rights to speak

[164] CLFI (Article 24) and Decree No 470 of November 11, 1998 of the Ministry of Treasury. See also "Consultation Document, Implementation of the Directive 2007/36/CE regarding the exercise of some voting rights of the shareholders of listed companies," available at http://www.dt.tesoro.it/Aree-Docum/Regolament/Consultazi11/index.htm

[165] Available at http://www.consob.it/documenti/english/laws/bi_consob_post_trading_20080222.htm

and ask questions during the general meeting as those to which the represented shareholder would be entitled.

Regarding the right of the proxy to vote on counterproposals from the floor, this is normally regulated in the agreement between the shareholder and the proxyholder. Most institutional shareholders do not give their proxy the right to do this.

8.2 Proxy solicitation

Under Italian law, the solicitation and collection of proxies are regulated by specific legislative provisions of the CLFI and by implementing rules issued by the Consob, and are not subject to the general rules provided for in Article 2372 of the Civil Code. Note that these provisions do not apply to cooperative banks.[166] Also, specific and less stringent rules than the ones described below govern the collection of proxies by shareholder associations among their own members.

The CLFI defines "proxy" as "the authority to represent someone and vote on her/his/its behalf at general meetings" and "solicitation" as "the seeking of proxies among shareholders in general".[167] The solicitation of proxies must be carried out by an intermediary on behalf of a promoter ("*committente*") through the distribution of a proxy statement ("*prospetto*") and a proxy form ("*modulo di delega*").

The promoter of a specific shareholder proposal to be voted on at the GM must be a shareholder (or shareholders) holding at least 1% of the share capital represented by shares carrying voting rights at the shareholder meeting for which the solicitation is launched.[168] The Consob sets lower percentages of share capital for companies with high market capitalization and particularly dispersed ownership.[169]

To solicit votes in favor of the shareholder proposal, the promoter must appoint a professional intermediary such as an investment firm, a bank, an Italian management company ("*Società di gestione del risparmio*"), a SICAV ("*Società di investimento a capitale variabile*"), or a company

[166] See Article 137 of the CLFI, available at http://www.consob.it

[167] See Article 136 of the CLFI.

[168] See Articles 136 and 139 of the CLFI. Article 3 of the Legislative Decree No. 303 of December 2006 repealed the requirement for the promoter to remain registered in the shareholder book with the same quantity of shares for at least 6 months.

[169] See Consob Resolution ("Delibera") N. 12317/2000; at least each 6 months, the Consob publishes a communication with a list of listed companies subject to this provision. Today the percentage of share capital that a shareholder must own to be able to launch a proxy solicitation is reduced to 0.5% for the 20% of listed companies with the highest market capitalization of the free float.

specializing in the solicitation of proxies and the representation of shareholders at shareholder meetings. Votes received as a result of the solicitation are cast by the promoter or by the intermediary on behalf of the promoter. The intermediary may not delegate the execution of its mandate to third parties.[170]

In terms of specifics regarding proxy solicitation, proxies must be signed; may be given only for one shareholder meeting that has already been called and are valid for subsequent calls; may be revoked; and may not be given blank. They must show the date, the name of the proxyholder, and the voting instructions. Proxies may also be given for only some of the resolutions included in the proxy form. Even though a partial proxy is given, shares represented by both partial and complete proxies are counted for the purpose of establishing the validity (quorum) of the shareholder meeting. The information contained in the proxy statement or the proxy form, or any other information sent out during a solicitation or a collection of proxies, must be sufficiently complete to enable shareholders to make an informed decision. While the intermediary is responsible for the completeness of the information, the promoter is responsible for the information's appropriateness.

With regard to the solicitation procedure, the CLFI gave a mandate to Consob to issue a regulation on the transparency and correctness of solicitations and collections of proxies. Consob Regulation of Issuers (Articles 134 - 138) establishes specific rules about the content of proxy statements and proxy forms and the procedures for their distribution, the solicitation, and the collection of proxies. It also establishes the conditions and procedures for giving and revoking proxies, as well as the forms of cooperation between solicitation's intermediaries and the persons possessing the personal information of the shareholders in order to permit solicitations. With specific regard to the solicitation of proxies, the Consob Regulation specifies that the promoter may not acquire proxies pursuant to Article 2372 of the Civil Code.

The proxy solicitor must state that the solicited vote as a rule will be cast as promoted. Unless the shareholder indicates otherwise, the vote may be cast in a different way only if material events occur which cannot be communicated to the shareholder and which give grounds for reasonable belief that the shareholder would have agreed to the change.[171] Unlike in the case in which an intermediary is appointed as a proxyholder by the shareholder (see above Section 8.1.1), the proxy

[170] See Article 138 of the CLFI.
[171] Consob Regulation N. 11971, Article 135.

solicitor cannot specify how it intends to vote should the shareholder/client decide not to give voting instructions (so called "one-way proxy").

For amendments to proposals submitted to the shareholder meeting, a shareholder who has given voting instructions may express his will by abstaining, voting nay or accepting the proposals submitted by the board of directors or other shareholders.[172] For items on the agenda for which the promoter has not requested proxies, the shareholder who has given a full or partial proxy may with the same proxy form give voting instructions for those items as well. At the same time, the promoter is prohibited from formulating recommendations, declarations or other indications likely to influence voting instructions with regard to such items. Failure to give voting instructions shall mean abstention.

If a proxy solicitation is launched, once the custodians receive the definitive version of the proxy statement and proxy form from the CSD, they must inform shareholders of the solicitation in time for them to accept at their discretion.[173] Then the intermediary, directly or by means of the custodian, must deliver the proxy form and statement to whomever requests them. Moreover, under the Consob Regulation of Issuers, at the "intermediary's request and without delay":

a) the central depository must communicate the names of the custodians and the quantity of the issuer's shares booked in their respective securities accounts;

b) the custodians must communicate the names of and the number of shares held by shareholders who have not expressly prohibited communication of their data;

c) the issuer shall make available the contents of the company share register and of other communications received pursuant to statutory or regulatory provisions.[174]

It is also important to note that in Italy, the request for proxy solicitation is not included in the company's proxy documents. Its production and distribution are at the expense of the activist group (the promoter).[175]

[172]Consob Regulation N. 11971, Article 137.

[173]Under the Manuale dei Servizi - Gestione Accentrata, section 4.5.3, in case of proxy solicitation (provided for in Article 138 of the CLFI and Consob Regulation N. 11971), the intermediary that effects the proxy solicitations is required to timely inform MT, sending a copy of the proxy statement and proxy form. According to this communication, MT informs the participants of the ongoing proxy solicitations through a "Communication Service".

[174]Consob Regulation N. 11971, Article 134.

[175]See European Commission, Commission Staff Working Document - Annex to the Proposal for a DIRECTIVE

To the best of our knowledge, at the time of writing, solicitations of proxies as regulated by the CLFI and Consob Regulation of Issuers have not yet taken place in Italy. We are aware of two attempts to launch a solicitation in 2004 in connection with the ordinary GM of Roncadin S.p.A.. Both solicitations were publicly announced but after a few days interrupted and never completed.[176]

8.3 Voting in absentia by mail or by direct electronic voting

Under Italian law (Article 2370 of the Civil Code), the articles of association of a company may allow a shareholder to participate in the GM via telecommunication and to exercise voting rights by surface mail (postal voting). A shareholder who exercises postal voting is considered present ("*intervenuto*") at the GM.

8.3.1 Mail (postal) voting

The Consob Regulation of Issuers (Articles 139-143) regulates the procedures for postal voting and shareholder meetings. In particular, notices convening shareholder meetings must specify:

a) that votes may also be cast by mail;

b) the way and the persons at whose offices voting papers can be requested;

c) the address to which voting papers are to be sent and the deadline by which they must be received.

As we have seen in Section 6.2.2, Italian companies whose articles of association allow shareholders to exercise voting rights by mail are also required to send a copy of the notice convening the shareholder meeting to the CSD and the CSD must inform custodians (CSD participants), which in turn must notify depositors.

OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the exercise of voting rights by shareholders of companies having their registered office in a Member State and whose shares are admitted to trading on a regulated market and amending Directive 2004/109/EC, IMPACT ASSESSMENT COM(2005) 685 Final, 17 February 2006, (page 15). Including proxy solicitation costs into total voting costs, Hermes estimates that for an active shareholder proxy solicitation weights about 43% of total voting costs (see Annex 1, Table 4). In the UK, for instance, the request for proxy solicitation would be included in the proxy documents produced and distributed by the company to all the shareholders at no significant cost for the activist.

[176] See http://www.arenaholding.it/download/RStampa/2004_06_12%20-%20Il%20Sole%2024%20Ore.pdf

In order to facilitate voting by mail, the company is required to issue voting papers, either directly or through custodians, to any person who is entitled to participate in the GM upon request. The voting papers must include the name of the company, the details of the meeting, the identity of the person entitled to exercise the voting right and the number of shares held, the draft resolutions, the vote cast, the date, and the signature.

As for the requirements to exercise voting rights by mail, Consob further establishes that:

1. Postal votes must be cast directly by the person entitled to exercise voting rights on each of the draft resolutions.

2. Voting papers must be delivered to the company, even through custodians, within forty-eight hours before the GM.

3. Votes cast by mail must remain secret until the beginning of scrutiny at the GM and remain valid for subsequent calls.

4. Votes may be revoked by means of an express statement which has to reach the company not later than the day preceding the meeting.

With regard to controlling this process leading up to the shareholder meeting, the Consob establishes that the date of receipt must be attested on the voting papers by the head of the office assigned to receive them. In addition, the chairman of the internal control body must keep the voting papers until the beginning of the GM.

At the GM, voting papers delivered after the 48-hour deadline or those not signed must not be counted for the purposes of establishing the due constitution of the meeting or for voting. Also, failure to give voting instructions shall mean abstention on the related proposals. In the case of amendments to proposals submitted to the shareholder meeting," states Consob, "a person entitled to exercise voting rights who has given voting instructions may express his will by abstaining, voting nay or accepting the proposals submitted by the board of directors or other shareholders."[177]

Consob Regulation takes into account only postal voting expressed in paper form.[178] Postal votes must be cast directly by the person entitled to exercise voting rights (that is, the shareholders)

[177] Consob Regulation N. 11971, Articles 141, 142, and 143.

[178] See the "Consultation Document, Implementation of the Directive 2007/36/CE regarding the exercise of some voting rights of the shareholders of listed companies" (page 10). Available at http://www.dt.tesoro.it/Aree-Docum/Regolament/Consultazi11/index.htm

and cannot be exercised through a proxy. Since voting papers are not proxy forms, postal voting is not proxy voting by mail but direct shareholder voting in absentia.

Institutional shareholders (especially foreign ones) normally vote using an electronic platform provided by a proxy voting agency and do not vote by mail (in Italy as well as in other countries). Among our sample companies, in 2008 only ENI and Telecom Italia included in their articles of association the shareholder right to vote by mail and stated in their GM notices that voting by mail was allowed. The GM notice of Telecom, for example, establishes that the documentation for voting by mail can be requested also through an authorized intermediary and must be delivered to the company (at the specified address) not later than forty-eight hours before the meeting. From the GM Notice of Telecom:

> "The right to vote can also be exercised by mail. The documentation for voting by mail will be available from 21 March, 2008 at the company's office (...). Shareholders are reminded that voting by mail is incompatible with giving proxies and must be exercised directly by the holder of the right to vote."

Only a small minority of Italian listed companies include such provision in their articles of association and allow their shareholders to vote by mail. To our knowledge, during the 2008 proxy season only a very few postal votes were cast in Italy.

8.3.2 Electronic voting and the right to participate in the GM by electronic means

Under Article 2370 of the Civil Code, the company's articles of association may allow participation in the GM through telecommunications means. In other words, Italian companies may offer their shareholders to vote by electronic means. Two of the companies in our sample, Saipem and Fiat Group, specify in their articles of association that the shareholders can take part and vote at the GM via video-conference given certain provisions. However, none of these companies have used this option to date. To our knowledge, very few, if any, companies have yet to allow participation and voting through telecommunications means.

It does not seem that live transmission of the meeting is common either: only a few companies organize video-conferences. In these cases the meeting can be followed on the Internet but shareholders are not allowed to participate or vote via video-conference.

9 Functioning rules of the GM

Italian companies operate a GM under regulations that have been approved by the general meeting and must be mentioned in the articles of association. In fact, the Corporate Governance Code (Article 11, Criteria 11.C.5.) establishes that the Board of Directors must propose for approval at the shareholder meeting rules laying down the procedures to be followed in order to permit an orderly and effective conduct of the ordinary and extraordinary shareholder meetings. However, the right of each shareholder to express his or her opinion on the matters under discussion at the GM must not be affected.

This means that as part of the adoption of the Italian corporate governance code, companies are required to have a document that sets rules for the functioning of general meetings. There is no specific requirement about publishing it on the company's web site, but most of the companies within our sample publish such rules on their web page and it appears to be the market practice.

The regulations are often published as a separate document if they are not attached to the articles of association.[179] The regulations include guidelines for who can participate and attend the meetings (i.e., shareholders, executives and employees, financial analysts, journalists etc.). The administrative part of the meeting is explained, including how verification of the right to participate is done on the day of the meeting. Generally, a very detailed description of all the steps from the opening of the meeting until the closing is then provided. The authority of the GM chairman is closely described, including his right to decide the order of the agenda and voting, and rules for asking questions and to speak.

As for the right of each shareholder (or proxyholder) to express his or her opinion, the applicable rules can include the maximum duration of time the individual can speak and the order for speaking. Other approved rules cover the right of directors and members of the board of statutory auditors to intervene, as well as the settling or preventing of conflicts during meetings.

[179] According to the "Guidelines for the Preparation of the Report on Corporate Governance", regarding shareholder meetings, companies should indicate whether they have approved a set of rules for their organization and, if so, whether they have been adopted as an annex to the bylaws or in some other form.

9.1 Quorum and majority requirements for OGMs and EGMs

In first call, ordinary general meetings (OGM) have a quorum if at least half of the share capital (represented by shares with voting rights) is present. In second call, the OGM is valid regardless of the capital represented. Resolutions at OGMs are adopted by an absolute majority of votes (50% plus one vote) of the share capital present. However, the articles of association may establish a higher majority. In case of elections, the articles of association may establish particular provisions.

For the resolutions to be approved at the OGM held in second call, the articles of association may require a higher majority, except for the approval of the annual financial statement and for the election or revocation of directors ("*cariche sociali*").

Extraordinary general meetings (EGM) of listed companies are regularly held in first call if at least half of the share capital is present (unless a higher quorum is established in the articles of association). In second call, EGMs have a quorum if more than 1/3 of the share capital is present. For following calls, the EGM has a quorum if at least 1/5 of the share capital is present (again, unless a higher quorum is required by the articles of association). If the shareholders attending an extraordinary shareholder meeting in second call do not represent the proportion of capital necessary for the meeting to be regularly held, the meeting may be called again within thirty days. In such cases, the notice convening the EGM to be held in third call must be published at least 8 days before the EGM date.[180] Resolutions at the EGM are approved by a favorable vote of at least 2/3 of the share capital represented at the meeting. The articles of association may require a higher majority, except for the approval of the annual financial statement and for the election or revocation of directors ("*cariche sociali*").

For both OGMs and EGMs, unless otherwise stated in the law, the shares for which it is not possible to exercise voting rights are still counted in order to determine the "constitutive quorum". However, these shares and shares for which the right to vote has not been exercised by the shareholder who had to abstain due to a conflict of interest, are not counted in order to determine the "deliberative quorum".[181]

Under Article 2376 of the Civil Code, if a company issues different categories of shares or financial instruments with administrative rights, the resolutions of the GM that affect the rights of

[180] CLFI, Article 126.
[181] Civil Code, Articles 2368 and 2369.

one of these categories of shares must be also approved by the special meeting of the members of the affected category. These special meetings operate under the same rules established for EGMs.

Companies do not very often provide for higher quorums or majority than what is stated by law. With this system of calls that allow for decreasing quorum requirements, most agenda items are voted on given that meetings can go to second and third call. OGMs of Italian listed companies are normally held in second call and EGMs in second or third call.

As for cooperative banks, the articles of association establish the majorities for the regular constitution of the GM and the validity of resolutions. Majorities are calculated according to the number of votes granted to shareholders.[182] Quorum and majority requirements established in the articles of association of cooperative banks are normally different from the ones established by the law for other listed companies. Moreover, quorum requirements varies among cooperative companies. From the Articles of Association of Banco Popolare:

> "Ordinary and Extraordinary Shareholders' Meetings shall be regularly convened, at first call, when at least 1/10 of shareholders with voting rights are present, either personally or by representation and proxy. At second and third call, the Annual General Meeting is regularly convened irrespective of the number of shareholders participating; the extraordinary meeting is regularly convened when at least 1/200 of shareholders with voting rights are present, either personally or by representation and proxy".

From the Articles of Association of Unione di Banche Italiane:

> "The ordinary and extraordinary meetings are effectively convened, in first call, when at least one twentieth of the Shareholders with the right to vote is present on its own or by representation and proxy.In second call, the ordinary Meeting is regularly convened whatever the number of Shareholders present, whereas the extraordinary Meeting, without prejudice to what is provided for in the following article 28, is regularly convened when at least 1/400 (one four hundredth) of the Shareholders with the right to vote is present on its own or by representation and proxy."

[182] Civil Code, Article 2538

9.2 Role and power of the chairman of the meeting

According to Article 2371 of the Civil Code, the general meeting is chaired by the person indicated in the articles of association, or, if the articles do not address this topic, by the person appointed by the majority of the shareholders present at the meeting.

The article of association of Italian listed companies normally establish that the GM is chaired by the chairman of the board , or, in his absence, by the Deputy Chairman or a person designated by the board or a person elected by the meeting. In companies with a two-tier governance structure, the GM is normally chaired by the chairman of the supervisory board or, in case of his/her absence or impediment, by the longest-serving Deputy Chairman of the Supervisory Board. If all of the above are absent or impeded, the Shareholders Meeting is chaired by the Chairman of the Management Board or, in case of his/her absence or impediment, by the longest-serving Deputy Chairman of the Management Board. Finally, if also the latter is absent or impeded, the Shareholders Meeting is chaired by another person designated by the Shareholders attending the meeting.

The chairman of the meeting verifies the regular constitution of the meeting and declares the meeting open; verifies the identity and the legitimation of the participants and the regularity of proxies (that is, decides which shares are eligible to vote); regulates the course of the meeting and of the voting process; and ascertains the voting results, all of which must be included in the GM minutes.[183] Once all the items on the agenda have been addressed, the Chairman shall declare the Meeting closed.

9.3 Language of the GM

None of the companies in our sample mention anything about the spoken language of the meeting in their articles of association or in the regulations that govern the meeting. However, market practice is that general meetings are conducted in Italian. Only a few large companies offer a simultaneous translation in English at their GMs.

For example, Generali Assicurazioni, for the 2008 and 2009 GMs, offered shareholders attending the meeting the opportunity to follow the proceedings by means of simultaneous translation from Italian to other 4 languages (English, French, German, and Spanish).[184]

[183] See Article 2371 of the Civil Code

[184] As of May 22, 2008, foreign shareholders represented 30.52% of the shareholder base of Assicurazioni Generali.

9.4 Voting by poll or show of hands

Voting at general meetings is normally by poll, either through a remote distributed at the GM (all votes are counted and confidential) or by card (only abstentions and votes against are counted). Shareholders voting against/abstain must give their name and it will be included in the minutes. In fact, Article 2375 of the Civil Code (and Consob Regulation 11971 of 1999) establishes the obligation of companies to include in the GM minutes the voting results and the names of the shareholders who voted in favor, against or withheld their votes. (See below section 10.1) Voting at the GMs of Italian companies can therefore not be regarded as confidential. The exception is the board election. Article 1 of the Law No. 262 of December 28, 2005, establishes that for the election of the members of the board of directors, the vote must be by a ballot that is confidential ("con scrutinio segreto").

9.5 Shareholder right to ask questions during the GM

Under the Italian law, there is no limit placed on the shareholder right to ask questions related to items on the agenda before and during the general meeting. In fact, the Italian law does not address how the GM should function. As discussed above, the articles of association can establish specific rules in this respect, and the chairman of the meeting has the power to control and regulate the debate during the GM.

For example, most companies permit a maximum duration of intervention per participant of 10-15 minutes. Generally each person may only intervene once per agenda item, but can give a brief rejoinder. The chairman of the meeting has the power to direct the discussion, including limiting speaking time and refusing to allow people to take the floor if they are not strictly keeping to the items on the agenda. Often the total time used to answer questions is specified (usually two hours).

Directors are not required by the law to answer questions (neither before nor during the GM) or publish questions and answers on the company's web site. However, as we will see in Section 10.1, GM minutes must include a summary of the interventions, listing the name of the people who spoke during the GM, the answers given, and any resulting declarations.

Directors are required by the Corporate Governance Code to make their best effort to insure

Information available at www.generali.com

that the shareholders receive adequate information in order to make informed decisions at the meeting. In regards to sharing information that may impact stock price, the Code establishes that the shareholder meetings are also an opportunity for disclosing to the shareholders such information, as long as it is in compliance with the rules governing price-sensitive information. In particular, the Board of Directors must submit a report to the shareholder meeting with regard to the prior year and planned activity.

10 Post-GM information

10.1 GM minutes and voting results

The GM minutes must be written without delay as Italian companies are obliged to deposit and publish them in a timely manner. The minutes must be approved and signed by the chairman and the secretary of the meeting or a notary public. For an EGM, the minutes must be written by a notary public. In summary, GM minutes must include the meeting date and the identity of the participants and the share capital represented by each participant. They must also indicate the procedure followed to vote, the voting results, and must allow to identify the shareholders who voted in favor, against or withheld their votes. Under request by shareholders, the minutes must also summarize the shareholder interventions concerning items on the agenda.[185]

More specifically, regarding the minutes for ordinary and extraordinary shareholder meetings, Consob states they must include what is provided for in Annex 3E of the Consob Regulation N. 11971.[186] Per those guidelines, Italian companies listed in Italy must include in the minutes:

(a) the list of the participants (in person or by proxy), specifying the number of shares for which has been issued the certification or for which has been effected the notification by the intermediary to the issuer as provided in Article 2370 (Second paragraph) of the Civil Code;

(b) the names of the persons who voted against, abstained, or left before a ballot took place, and the number of shares owned by each of them;

c) the list of shareholders owning directly or indirectly more than 2% of the subscribed capital

[185]Civil Code, Article 2375 (as modified by the Legislative Decree 2003/6).
[186]Consob Regulation N. 11971, Articles 85.

represented by shares with voting rights, according to what is stated in the shareholder book, distinguishing, where possible, ordinary shares from privileged shares;

(d) a summary of the interventions, listing the name of the people who spoke during the GM, the answers given, and any resulting declarations ("*dichiarazioni a commento*");

(e) any declarations by the chairman of the GM regarding the existence of shareholder agreements provided for in Article 122 of the CLFI (such as, agreements regarding the exercise of voting rights or the transfer of shares). If the chairman makes any such declaration, details concerning the percentage of share capital involved in the agreement, as well as the name of the shareholders part of the agreement and their respective percentage of share capital must be specified.

As for the publication of GM minutes, GM minutes must be made available at the company's registered office. Until April 2009, Italian companies listed in Italy have not been required by Italian law to publish GM minutes and voting results on their web sites. However, as discussed in Section 6.4.2, it has been market practice for Italian listed companies to do so. The majority of Italian companies make the full minutes in Italian available on their web pages. Many of them also publish either the full minutes or an abstract in English.

After the 2008 GM, with one exception, the companies in our sample published the full GM minutes in Italian on their web sites. The exception is one firm who published only a press release with voting results. The majority of the sample firms published the full GM minutes or an abstract also in English.

As of April 2009, under the new Consob Regulation of Issuers, listed companies must publish regulated information (including GM minutes) on their web sites by the opening of the market on the day following the day in which the regulated information is disclosed. As discussed below, the minutes of the GM that approves the financial statement have to be disclosed within one day of the GM (or at the latest 15 days after the meeting). Therefore, such minutes must be published on the company's web site on the 2nd day (or at the latest on the 16th day) after the GM that approved the financial statement. No deadline is specified by the Regulation for the disclosure of the minutes of other OGMs and EGMs (Section 12.2.12).

In addition, within one day after the approval of the company's annual financial statement,

under Article 77 of Consob Regulation of Issuers, Italian companies listed in Italy must make the following information available to the public at their registered office:

a) the documents referred to in Article 154-ter (paragraph 1) of the CLFI (that is, the annual financial report containing, among other things, the company's annual financial statement, the consolidated financial statement, if any, and the directors' report. The external auditor reports must be published in full with the annual financial report);

b) the report of the board of statutory auditors provided for in Article 153 of the CLFI and the minutes of the GM or the meeting of the supervisory board that approved the financial statement. Where the minutes are not available within one day of the GM or the meeting of the supervisory board that approved them, they must be made available to the public within 15 days.

The above mentioned documents must also be made public through the new systems for dissemination and storage of regulated information that we described in Section 5. However, starting from April 2009 and until these systems are launched, companies are required to send a press release containing the announcement of the publication of all the above mentioned financial statements and reports and the web site where these documents are available, to at least two press agencies and to the management company of the market on which the related securities are listed (which ensures the dissemination of the information to the public), or through the Network Information System (NIS) managed by Borsa Italiana. The financial statements and reports will be deemed to be properly stored if the company transmits them to the market management company and publish them on its web site; they will be considered filed at Consob if the company sends them through NIS or through mail.[187]

Within one day of the approval of their annual financial statement, Italian companies listed in Italy must make available to the public at their registered office also a full copy of the annual financial statements of subsidiary companies (or a summary including essential data of their last financial statement) and the summary report including essential data of the last annual financial statements of associated companies.

[187] Article 65-bis (Footnote 82) of the Consob Regulation of Issuers.

In addition, if the GM or the meeting of the supervisory board approves amendments to the annual financial statement, the amended annual financial statement must be made available to the public at the company's registered office within 3 days of the GM or the meeting of the supervisory board. If the company's financial statement is not approved, the minutes of the GM or of the supervisory board that did not approve the financial statement must be made available to the public at the company's registered office within 15 days after the GM. Both the amended financial statement and the minutes of the GM or meeting of the supervisory board that did not approve the financial statements must also be made available to the public in the ways we described above.[188]

11 Voting chain and voting timeline for Italian listed companies

In this section, we characterize the voting chain through which foreign institutional shareholders of Italian listed companies must pass in order to exercise voting rights. We focus in particular on the different flows of GM-related information, and the section ends with an overview of the voting timeline.

11.1 Voting chain

As explained in Section 7, shareholders of Italian companies hold shares through financial intermediaries and, as a consequence, must go through these intermediaries in order to exercise voting rights. Figure 5 provides a stylized example of a voting chain through which foreign institutional shareholders must pass in order to exercise voting rights at the GM. As in Figure 4, the perspective is that of a foreign institutional shareholder. The foreign shareholder appoints a global custodian who does not open an account with the local CSD but instead uses a network of local custodians (Italian custodian banks). The assets of the foreign institution are managed by an investment manager who is given the authority to exercise voting rights (in cases where the assets are managed directly by the shareholder, the shareholder personally makes voting decision and cast votes). The black thin solid arrows highlight the custody chain for indirectly held shares described earlier in Figure 4.

The participants in the custody chain described in Section 4.2.1 and Figure 4 all play a role

[188] Consob Regulation of Issuers, Article 77.

also in the voting chain described in Figure 5. As shown, GM-related information and voting instructions pass downstream and upstream through the chain of financial intermediaries. We analysis these information flows next.

11.1.1 Electronic flow of GM-related information from companies to shareholders

We begin with the flow of GM-related information (GM notice and agenda) from companies to shareholders through the CSD and the chain of intermediaries (custodians). The 'Voting material' arrows in Figure 5 indicate the movement of voting material (in particular GM notice and agenda) for the case where the information is passed from the company to the other participants through a registrar.

The Italian CSD (MT) is key to routing specific information (such as GM notice and agenda) from listed companies to intermediaries. The flow of GM-related information from companies to intermediaries passing through MT is regulated by Italian law only for companies whose articles of association allow shareholders to exercise voting rights by mail. In this case, as discussed in Section 8.3.1, Italian companies are required to send the GM notice to the CSD, who informs its participants (custodians) who in turn notify their depositors.[189] In a cross-border context, the depositor of a CSD participant is typically another intermediary in the custody chain (e.g., a foreign global custodian). It is typical for the agreement between custodians and between custodians and shareholders to requires custodians to pass information received by MT through the chain of intermediaries until it reaches the beneficial shareholder.

By their contract with MT, Italian listed companies are required to pass to MT all important information related to corporate events. Thus, companies must inform MT of the convocation of the GM and promptly send MT the GM notice and agenda (directly or through the company's registrar). Neither Italian law or MT regulations set a specific deadline for sending the GM notice to MT.

Since the notifications to and from central depositories concerning central depository services must be sent exclusively through electronic networks, within the time limits and in the manner specified by the central depositories,[190] companies must send the GM notice to MT electronically

[189] Article 139 of the Consob Regulation N. 11971/1999.
[190] Article 33 of the joint Regulation issued by the Bank of Italy and the Consob.

using a standardized form (called MT260). Form MT260 must include information about the GM such as: where the GM notice has been published (Official Gazette and/or newspaper/s); type of GM (i.e., OGM, EGM, special meeting of holders of savings or privileged shares); ISIN code of financial instruments which legitimate the participation in the GM; order, date, time, and place of subsequent GM calls; instructions of the issuer regarding criteria for the participation and voting at the GM (such as, share-blocking requirement, deadline to send the notification for attendance to the company; requirement for the participant in the GM to bring a copy of the notification for attendance at the GM; right to vote by mail).[191]

Once MT receives the GM notice together with the above mentioned information, MT must inform its participants (intermediaries). According to the Manuale dei Servizi - Gestione Accentrata (Section 4.5.1), the company gives MT the mandate to communicate to the MT System (that is, all the MT's participants) that the GM has been convened.[192] The communication is given through a telematic message which includes all the information sent by the issuer in form MT260. The GM notice and related agenda must be attached to the message.

In January of 2005, the Italian Banking Association (ABI), the Italian Association of Listed Companies (ASSONIME), and the Italian Association of Financial Intermediaries (ASSOSIM), adopted (voluntary) "Guidelines for the issuance of notification for attendance at the GM" (hereafter "2005 Guidelines").[193] These guidelines aim at establishing common standards for the flow of GM-related communications to be followed by issuers and intermediaries. The guidelines regulate the flow of GM-related information both from issuers to intermediaries and from intermediaries to issuers. Under the Guidelines, companies are required to send form MT260 on the date of the publication of the GM notice.[194]

11.1.2 Flow of GM-related information from intermediaries to shareholders

As shown in Figure 5, in a cross-border context, it is normally the local custodian (an Italian bank) that receives the GM notice and agenda from MT. Upon receiving this information, they translate

[191] The form MT260 is available at www.montetitoli.it.

[192] Manuale dei Servizi - Gestione Accentrata ("Services Manual - Central Administration"). Available at www.montetitoli.it/eng/document/normativa/pdf/ManualeDeiServizi-GestioneAccentrata.pdf.

[193] ABI, ASSONIME, ASSOSIM, Linee guida per l'invio delle comunicazioni assembleari ex art. 34 bis del Reg. Consob n. 11768/98, 2005, published in ASSONIME, Circular, January 13th, 2006, available at http://www.emagazine.assonime.it/upload/Lettera%20Circolare%20comun%20int%20assemblea.pdf.

[194] For an analysis of the guidelines see also Di Noia, Gargantini, and Lo Giudice (2008).

the notices to English and pass these on to their clients (typically global custodians) who in turn take care of the distribution to their clients/shareholders. Local custodians normally send the GM notice only to global custodians and do not take care of the further communications to shareholders (see the 'Voting material' arrows in Figure 5.)

The custody agreement between foreign institutional shareholders and their global custodians typically includes proxy voting. The custodian is then required to inform the client about general meetings, pass on all GM-related material it receives and, based on instructions from the client, make sure votes are cast at the meeting. The global custodian in turn maintains relationships with local custodians in each market and opens custody accounts with them. In Italy, like in most markets, local custodians are normally the last intermediaries in the custody chain. They are CSD participants and therefore receive GM-related material from the company through the CSD. Shareholder who do not appoint a global custodian operate through agreements with local custodians in each market.

Once GM-related information is received, the global custodians send it to either their clients (shareholders) and shareholders' investment managers, or to a proxy voting agency (PVA) appointed by the global custodian. Large global custodians typically outsource the voting process to a proxy voting agency (examples of PVAs are RiskMetrics and Broadridge). In such cases, it is the voting agent that routes information directly to and from the client/shareholder (i.e., the voting agent receives GM-related information from the global custodian and makes the agenda/ballot available to the shareholder or the shareholder's investment manager). Not all shareholders that have given a mandate to an investment manager authorize the investment manager to vote on the shareholder's behalf giving them proxy authority. In such cases the global custodian, or the proxy voting agency when the global custodian has appointed an agent, sends all the voting material related to the assets managed by the investment manager to the shareholder. It could also be the case that the investment manager is authorized to vote only on instructions from the shareholder.

As shown in Figure 5, to get voting materials (i.e., GM notice and agenda and annual reports) proxy voting agencies have their own procurement network and use different means such as their local custodians' network, company web sites, data vendors, local newspapers, and other media. The PVAs may decide to purchase a share in the listed company in order to obtain timely information from the company.

11.1.3 Electronic flow of proofs of ownership from intermediaries to companies

Recall that shareholders who want to participate in the GM and vote must ask their intermediaries to send the company a notification for attendance at the shareholder meeting as proof of ownership (Section 7). The notification must be sent within the deadline set by the company's articles of association (normally 2 business days before the GM).[195] Intermediaries are required to send the notification to the company (or its registrar) in electronic form either using the electronic platform provided by MT (MT-X) or other service providers, or via certified electronic mail (see the 'Notification for attendance' arrow in Figure 5).

11.1.4 Flow of voting instructions from shareholders to companies

The 'Voting instructions' arrows in Figure 5 show how voting instructions given by the shareholders move through the voting chain to reach the company's registrar. In order to vote their shares, foreign institutional shareholders normally give voting instructions using an electronic platform provided by a PVA (appointed by the global custodian). PVAs sets a deadline (cut-off date) to give voting instructions. The PVA then sends the voting instructions to the local custodian. In the case of an investment manager voting on behalf of the shareholder (either on instructions from the shareholder or by having authorization to make voting decisions), the investment manager has to send voting instructions to the PVA.[196]

Recall from Section 8.3 that only a minority of Italian listed companies allow shareholders to vote in absentia by mail (see the 'Mail Vote' arrow in Figure 5). None of the companies in our sample allowed shareholders to vote in absentia through electronic means at the 2008 GM.

Shareholders who cannot attend the meeting in person can vote by proxy but the proxyholder must be present at the GM. Because the proxyholder must be present at the GM, once the voting instructions reach the local custodian, the local custodian normally send a representative to attend the meeting. The local custodian's representative can be either an employee of the custodian or a

[195] Under the voluntary 2005 Guidelines, intermediaries are recommended to send the electronic notification for attendance to the issuer at least on the fifth working day before the GM for all the requests received and process until then. The notifications for attendance related to requests received by the intermediary after the 5th day before the GM as well as any corrective notification will have to be sent the issuer on a daily basis. Where the issuer do not set any deadline to send the notification for attendance, intermediaries can send them before the start of the GM.

[196] The global custodian can decide not to appoint a PVA. In this case, the investment manager appointed by the shareholder can appoint a PVA to process voting instructions on its behalf. However, this is not a very common scenario.

third party such as a lawyer. This is the case in most markets. In some markets, shareholders (or their custodians or PVAs) can send votes to the company (or its registrar) electronically.

11.2 Voting timeline

The following summarizes the timeline of activities around the GM:

I: Timeline pre-GM:

- **30 days at minimum:** The company publishes the OGM/EGM notice (including date, hour, place and agenda. (See Section 6.2.2 for a detailed analysis of the publication requirements).
- **Within 5 days of the publication of the GM notice:** Shareholders representing at least 2.5% of the share capital can add new items on the GM agenda.
- **20 days at minimum:** If a GM is to be convened at shareholder request (minority shareholders who represent at least 10% of the share capital) the publication of the GM notice must occur.
- **15 days at minimum and until the GM has been approved:** The company makes available at its registered office for shareholder inspection and publish (following the formalities described in Section 6.4) the following documents: the financial statement, the complete copies of the last financial statement of the company's subsidiaries and a prospectus summarizing the essential information of the last financial statement of affiliated companies; the reports of the directors, the members of the board of internal auditors ("*collegio sindacale*") and the independent auditor ("*società di revisione*"); the directors' report on the proposals to be discussed at the GM.
- **10 days at least:** Directors must publish the items added to the GM agenda by shareholders.
- **6 to 8 days ahead of the GM to be held in first call:** Cut-off dates (deadline to give voting instructions) that NBIM faces voting through its proxy voting agency.
- **5 days at minimum:** For non blocking companies that set a 2-day deadline to deposit the shares (that is, send the notification for attendance at shareholder meeting), shareholders who want to vote must buy or recall from loan their shares so that they have settled positions by

the deadline set by the company (2 days before the GM); and for blocking companies which set a 2-day blocking deadline, shareholders who want to vote must buy or recall from loan their shares so that they have settled positions on the blocking deadline.

- **3 days at minimum:** For non blocking companies that set no deadline to send the notification for attendance at shareholder meeting, shareholders who want to vote must buy or recall from loan the shares so that they have settled positions on the GM date.

- **2 business days at minimum:** For blocking companies, the articles of association and the GM notice normally establish that shares must be blocked at least 2 business days before the GM, in order to be able to vote. Also, the shareholder who wants to participate in the GM must ask his/her intermediary to send the issuer a notification for attendance at least 2 business days before the GM.

- **2 business days at minimum:** For the majority of non blocking companies, the articles of association set the deadline to send the notification for attendance at shareholder meeting 2 business days before the GM date.

- **2 days at minimum:** Some companies require a copy of the written proxy to be sent to the company at least 2 days before the meeting, while others only ask the proxyholder to bring it to the meeting.

- **48 hours at the latest:** If the company allows shareholders to vote by post, voting papers must be delivered to the company not later than forty-eight hours preceding the shareholder meeting. Votes may be revoked not later than the day preceding the meeting.

- **Within the time established for the start of the GM:** For non blocking companies that do not set a deadline to send the notification for attendance at the shareholder meeting, the notification simply has to be sent to the company by the intermediary before the start of the meeting.

II: Timeline at GM and post-GM:

- **DAY 0: GM date:** Most companies in their GM notice request shareholders (or their proxyholder) to bring and present a copy of the notification for attendance sent by the intermediary,

in order to be allowed to participate in the GM.

- **Timeline post-GM: + 1 day:** Companies, within one day after the approval of the company's annual financial statement, must make the following information available to the public at their registered office: annual financial report containing, among other things, the company's annual financial statement, the consolidated financial statement, if any, and the directors' report; the external auditor report; the report of the board of statutory auditors and the minutes of the GM or the meeting of the supervisory board that approved the financial statement. Where the minutes are not available within one day of the GM or the meeting of the supervisory board that approved them, they must be made available to the public within 15 days. These documents must also be published following the formalities described in Section 10.1.

12 Share-voting impediments in Italy: discussion

12.1 Existing cross-border voting impediments

Impediments to cross-border voting at the GM of Italian listed companies include the following:

- Share blocking: According to the EU Impact Assessment of the Shareholder Rights Directive, a significant percentage of EU cross-border votes are lost due to share-blocking across EU Member States.[197] This vote-deterrent is also present in Italy: although few Italian listed companies themselves include a share-blocking requirement in their bylaws, shares are often blocked at the custodian level. Share-blocking will cease when Italian law makes blocking illegal.

- Voting in absentia: Voting in absentia (that is, without being present at the GM either in person or by proxy) by mail or by electronic means is permitted under the law. However, few companies offer shareholders this opportunity. In our sample, in 2008 only two of twelve companies allowed shareholders to vote by mail and no company granted the possibility

[197] European Commission, *Commission Staff Working Document - Annex to the* Proposal for a Directive of the European Parliament and of the Council on the exercise of voting rights by shareholders of companies having their registered office in a Member State and whose shares are admitted to trading on a regulated market and amending Directive 2004/109/EC, *Impact Assessment* COM(2005) 685 final, 17 February 2006, page 13.

of voting via telecommunication. Moreover, shareholders who cast their vote by mail do not receive confirmation by the company that the votes have been received, accepted, and counted.

- Voting instruction deadline: Shareholders must give voting instructions to custodians and proxy voting agencies within a deadline prior to the GM. Deadlines of 6-8 business days are not unusual and may act as an impediment because it substantially reduces the time for the shareholder to prepare their opinions.

- Pre-GM information dissemination: Companies are required to publish certain GM-related information (e.g., financial statements, directors' reports, auditors' reports) at least 15 days prior to the GM. For cross-border voters, who may be facing a complex voting-chain, fifteen days may be too short. Also, not all companies publish GM-related information on their web site in English.

- Adding items to GM agenda: The deadline for adding new items to the GM agenda is a short five days after publication of the GM notice.

- Voting by proxy: There are restrictions on who can be appointed as a proxy and the number of shareholders a single proxyholder may represent. Also, the company must receive notification of the proxy appointment in writing (not electronically).

- Cooperative banks: Shareholders are subject to ownership limits and voting caps. In order to vote, a shareholder must be recorded in the shareholder book for at least 90 days prior to the GM date—effectively a 90-day share blocking requirement. Any proxyholder must be a shareholder and this shareholder cannot represent more than 10 other shareholders at the GM.

12.2 The EU Shareholder Rights Directive: impact on Italian company law

In this section we describe key provisions of the EU Shareholder Rights Directive (SRD) and its impact on Italian Company Law.[198] The main purpose of the SRD is to set minimum standards

[198]Directive 2007/36/EC, 2007 O.J. (L 184/17), Directive of the European Parliament and of the Council on the exercise of certain rights of shareholders in listed companies, July 11, 2007, Available at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:184:0017:0024:EN:PDF

for the protection of shareholder rights in general and cross-border voting in particular.[199]

In June of 2008, the Italian Ministry of the Economy and Finance (Department of Treasury) launched a public consultation regarding the implementation of the SRD.[200] Below, and throughout Section 12, we discuss several of the issues and provide recommendations concerning Italy's SRD implementation.

On July 7, 2009, the Italian Legislature adopted the *"Legge comunitaria"* ("Community Law") for the year 2008 (Law No.88 of July 7, 2009) which contains, among other provisions, the criteria for the Legislative Decree that is needed to transpose the SRD into Italian law.[201] The *"Legge comunitaria"* 2008 came into force on July 24, 2009, and the Italian government has three months to adopt rules implementing the directive.

On July 24, 2009, the Department of Treasury launched a second public consultation soliciting comments on the text of its draft Legislative Decree.[202] In Section 13, we summarize key aspects of this draft Decree. The discussion in Section 12 and Section 13 provides an up-to-date summary of how the legislative process is progressing in Italy. More importantly, the discussion highlights our own response to the new proposals for implementing the SRD.

12.2.1 Equal treatment of shareholders

The SRD requires companies to ensure equal treatment of shareholders who are in the same position with regard to participation and exercise of voting rights in the GM.[203] The Italian legislature introduces a general principle of equal treatment of shareholders in its implementation of the Transparency Directive. With a wording analogous to Article 17 (paragraph 1 and 2) of the Transparency Directive, the amended Article 92 of the CLFI establishes that: companies listed in

[199] SRD, Recital 4. Also, the SRD expressly does not prevent Member States from implementing higher standards (Article 3).

[200] *"Documento di consultazione, Attuazione della direttiva 2007/36/CE relativa all'esercizio di alcuni diritti degli azionisti di societá quotate, 12 giugno 2008"* (Consultation Document, Implementation of the Directive 2007/36/CE regarding the exercise of certain voting rights of the shareholders of listed companies). The Consultation Document and some of the responses to the consultation are available at www.dt.tesoro.it/Aree-Docum/Regolament/Consultazi11/index.htm.

[201] The *"Legge comunitaria"* is the principal instrument of transposition of the European Union Law into the Italian law system. The Legislative Decree will not apply to cooperative companies.

[202] *"Attuazione della direttiva 2007/36/CE relativa all'esercizio di alcuni diritti degli azionisti di societá quotate, Seconda Consultazione, 24 July 2009"*(Implementation of the Directive 2007/36/CE regarding the exercise of certain voting rights of the shareholders of listed companies, Second Consultation).The Consultation Document is available at http://www.dt.tesoro.it

[203] SRD, Article 4.

Italy and listed companies with Italy as their home base must ensure equal treatment for all holders of listed financial instruments who are in the same position, and grant them the instruments and information necessary to exercise their rights. Since the term "rights" means all the rights attached to a financial instrument—including the right to participate and vote in the GM—the Italian law is in compliance with Article 4 of the SRD.

12.2.2 Convocation of the GM: time to give the GM notice

The SRD requires Member States to ensure that companies issue the convocation of the general meeting not later than on the 21st day before the day of the meeting. Member States may allow companies to call a GM other than the annual general meetings (AGM) at a shorter notice, but not later than 14 days before the GM date, provided that:

(a) the company offers the facility for shareholders to vote by electronic means accessible to all shareholders;

(b) the decision is taken at the GM by a majority of not less than two thirds of the votes attaching to the shares or the subscribed capital represented at the GM. The decision is valid only until the next company's AGM.[204]

Italian companies with shares traded on regulated markets (in Italy or any other EU Member State) must publish the notice convening a GM (both OGM and EGM) at least 30 days before the meeting day. The term is reduced to 20 days in the case of a GM convened at the shareholders' request and a GM convened to vote on resolutions regarding the liquidation of the company.[205] (See Section 6.2) Therefore, in order to be in compliance with the SRD, the Italian legislature has to modify the 20-day term for the convocation of the GM under request by shareholders and in the case of the company's liquidation and bring it to at least 21 days before the meeting date. No change is required with respect to the 30-day term and we recommend the Italian legislature not to change the 30-day term to a shorter term. Until the communication channel between companies and their shareholders becomes more efficient, a 30-day notice may be sufficient to provide shareholders (domestic and foreign) with timely GM-related information (such as time, date, place of the GM and

[204] SRD, Article 5.

[205] Civil Code, Articles 2366, 2367, and 2487 and Article 1 of the Ministerial Decree (D.M. Giustizia) No. 437 of 1998.

agenda).[206] Also, considering the issues normally discussed and voted on at the EGM of Italian listed companies (including non-routine items such as amendments to the company's articles of association), we recommend that the term to convene an EGM is not reduced from 30 to 14 days.

In any event, should the Italian legislature decide to introduce a shorter term for the notice convening an EGM, how should the SRD's expression "facility for shareholders to vote by electronic means accessible to all shareholders" be interpreted? Does it mean that the company must offer a form of direct electronic voting—e.g. through a company web site through which shareholders may cast votes electronically without appointing a proxyholder who is physically present at the meeting? Or, is it sufficient for the company to offer any form of electronic proxy voting to all its shareholders—including the appointment of proxyholder and notification to the company by electronic means?[207]

The SRD leaves some uncertainty in this respect. An answer to this question has been given in the consultation document "Implementation of the Directive on the Exercise of Certain Rights of Shareholders in Listed Companies" published by the UK Department for Business Enterprise & Regulatory Reform (BERR) on October 2008. The BERR clarifies that the "facility to appoint a proxy by electronic means is a facility to vote by electronic means". The revised draft implementing regulations published by the BERR on May 2009 establish that the condition to offer the facility to vote by electronic means to all members is met "if there is a facility, offered by the company and accessible to all such members, to appoint a proxy by means of a web site".[208] In our opinion, "facility for shareholders to vote by electronic means" is best interpreted as "electronic proxy voting", implying that it requires companies to offer shareholders the right to appoint a proxyholder and notify such appointment to the company by electronic means (further discussion on this point in Section 12.2.9 below).

[206] Of the same advice Borsa Italiana and RiskMetrics in their responses to the public consultation launched by the Ministry of the Economy and Finance. Confindustria (the Confederation of Italian Industry) instead believes that the 30-day term should be reduced to 21 days and companies should have the discretion to set longer terms; this would guarantee flexibility in the organization and management of the pre-GM requirements and allow companies to adapt the terms to the specific GM agenda.

[207] For the definition of "Electronic Direct Voting" and "Electronic Proxy Voting" see also Zetzsche (2008).

[208] See BERR (Department for Business Enterprise & Regulatory Reform), "Implementation of the Directive on the Exercise of certain Rights of Shareholders in Listed Companies", October 2008. Available at www.berr.gov.uk/files/file48662.pdf

The notice convening the GM of Italian listed companies with shares involved in a takeover bid or equity swap must be published at least 15 days before the meeting day.[209] This provision is in compliance with the SRD (article 5, paragraph 1) and the Takeover Bid Directive[210] (Article 9 (4)) and no change is required.

In the case of a second or subsequent convocation of a GM for the lack of a quorum required for the meeting to be valid in first call, the minimum periods (21 and 14 days before the GM) set by the SRD, need not be applied by Member States provided that: these minimum periods have been respected for the first GM convocation; no new item is added to the GM agenda; and at least 10 days elapse between the final convocation and the GM date.

As described in Section 6.2, Italian companies are allowed to set the date for the GM to be held in second call in the notice convening the meeting in first call. However, the meeting on second call cannot take place on the same day as the GM to be held on first call. When the GM notice does not specify the date of the GM to be held in second call, the GM must be called again within thirty days of the first call and the notice convening the GM in second call must be published at least 8 days before the meeting date.[211] When the EGM held in second call is not duly constituted for lack of the required quorum, the meeting may be called again within thirty days. In this case, the notice convening the EGM in third call must be published at least 8 days before the EGM date.[212] Therefore, to comply with the SRD the Italian legislature must extend to 10 days the existing 8-day term for the convocation of a GM to be held in second call as well as the 8-day term for the convocation of an EGM to be held in third call. In our opinion, it is preferable to introduce a general requirement for listed companies to publish the GM notice convening an OGM in second call and an EGM in second and subsequent calls at least 10 days before the meeting date so that at least 10 days elapse between the final convocation and the GM date.

For an OGM that will be probably held on second call and an EGM that will be probably held in second or third call, it is market practice for Italian listed companies to write down these dates in the notice convening the GM in first call. All the companies in our sample did include the date of eventual adjourned meetings (second call for the OGM and second and third call for the EGM)

[209] Article 104 of the CLFI and Article 2 of the Ministerial Decree (D.M. Giustizia) No. 437 of 1998.
[210] Directive 2004/25/EC.
[211] Civil Code, Article 2369.
[212] CLFI, Article 126.

in the first notice.

12.2.3 Convocation of the GM: way to give GM notice

Under the SRD, companies are required to issue the convocation of the GM in a manner ensuring fast access to it and on a non-discriminatory basis. Member States must also require companies to use such media as may be reasonably relied upon for the effective dissemination of information to the public throughout the Community. Member States will not have to impose the above mentioned requirements on companies that are able to identify the names and addresses of their shareholders from a current register of shareholders and are under the obligation to send the convocation of the GM to each of their registered shareholders.[213]

As we have seen in Section 6.2.2, in enactment of the Legislative decree that implemented the TD in Italy, Consob amended the Regulation of Issuers. Under the new rules, the GM notice must still be published in the *Official Gazette of the Italian Republic* or at least in one newspaper indicated in the company's articles of association.[214] In addition, the Consob (Communication n. SOC/RM/90004190 of July 16, 1990) recommends that listed companies publish the GM notice on at least two national newspapers (one of which should be a financial newspaper).

These requirements are inadequate to ensure fast access to the notice convening the GM on a non-discriminatory basis. Moreover, the Official Gazette as well as national newspapers (financial and not) are unlikely to guarantee rapid and effective dissemination of information to the public both within and outside of EU. In fact, the Official Gazette is published in Italian only. Moreover, only the Gazettes published within the last 60 days are made available to the public and can be accessed for free. As for the national newspapers, they are written only in Italian and neither the paper nor the electronic versions are available for free. Moreover, since companies are not required to publish GM notices in the same national newspaper, a shareholder investing in more than one Italian listed company will have to read daily all the newspapers indicated by the different companies in their articles of association in order to be aware of a forthcoming GM.

Besides the publication in the Official Gazette or one newspaper, Italian companies listed in Italy

[213] SRD, Article 5 (paragraph 2). Note that Article 5 (paragraph 2) of the SRD uses the same wording of Article 21 (paragraph 1) of the Transparency Directive (TD) regarding the access to regulated information (including the GM notice).

[214] Article 2366 of the Italian Civil Code.

are required to publish the GM notice on their web site an make it public according to the provisions regulating the new systems for dissemination, storage, and filing of regulated information that we have analyzed in Section 5. Moreover, until the dissemination systems are launched, companies are required to comply with the transitional provisions that we described in Section 6.2.2. The new dissemination regime introduced in Italy, is in compliance with the SRD.

12.2.4 Convocation of the GM: content of the GM notice

The SRD (Article 5, paragraph 3) regulates the content of the notice convening the GM which must include at least the following:

(a) Precise information about when and where the GM is to take place, and the proposed GM agenda.

(b) Clear and precise description of the procedures that shareholders must comply with in order to be able to participate and cast their vote at the GM (in particular, information regarding: the rights to put items on the agenda and table draft resolutions; the right to ask questions; the procedure for voting by proxy; and, where applicable, the procedure for voting by correspondence or by electronic means).

(c) The record date, where applicable, explaining that only those who are shareholders on that date shall have the right to participate and vote in the GM.

(d) Information about where and how the full unabridged text of draft resolutions and comments for each item on the GM agenda as well as all the documents to be submitted to the GM may be obtained.

(e) The address of the web site on which all the information that companies are required to make available to their shareholders before the GM can be accessed.

Under Italian law, listed companies are already required to include the information under (a) in the notice convening the GM.[215] Under Article 84 of the new Consob Regulation of Issuers, issuers of financial instruments are also required to provide the public with the information needed to enable the owner of their instruments to exercise their rights. More specifically, issuers of shares

[215] Civil Code, Article 2366.

are required to include in the notices convening general meetings the articles of their respective company's bylaws governing the participation in general meetings and information on the total number of shares and voting rights. Information on the procedures that shareholders must comply with in order to be able to participate in the GM (including information regarding how each person entitled to vote at the GM may obtain a proxy form) must also be included. Italian companies which allow their shareholders to vote by correspondence, are already required to specify in the notice convening the GM that votes may also be cast by mail and the procedure for casting vote in such a way (see Section 8.3.1).

Since Italian listed companies are required to include in their GM notice only part of the information under (b), the Italian legislature will have to introduce a provision requiring companies to include in their GM notice also the information concerning the right to add new items to the GM agenda and table draft resolutions, the right to ask questions before and during the GM, as well as all the information under (d) and (e) above. Some Italian listed companies already include in their GM notice information concerning the right to add new items to the GM agenda specifying the deadline by which shareholders may exercise this right.

12.2.5 Publication of GM-related information on the company's web site before the GM

Prior to April 2009, Italian listed company were not required to make GM-related information such as notice convening the GM, financial statement, and other reports available to their shareholders on their web sites before the GM (Section 6.4).[216] Under the new Consob Regulation of Issuers, companies must create, if not already available, a web site for the publication of all the above mentioned information and any other regulated information. As specified in Recital (6) of the SRD, "The Directive presupposes that all listed companies already have a web site" and requires the mandatory publication of specific GM-related information on the company's web site. In particular, Member States are required to ensure that listed companies make available to their shareholders on their web site, for a continuous period beginning not later than on the 21st day

[216] Listed companies are required—also prior to 2009—to deposit specific GM-related information (such as the annual financial statement, the reports of the directors, the reports of the members of the board and of internal auditors (*"collegio sindacale"*), the report of the independent external auditor, and a report on the draft resolutions for each item included in the GM agenda to be discussed and voted on at the GM) in copy at the company's headquarters, for the shareholders to inspect, during the 15 days that precede the GM. See Section 6.4.

before the day of the GM and including the meeting day, at least the following information:[217]

(a) The notice convening the meeting.

(b) The total number of shares and voting rights at the date of the convocation (including separate totals for each class of shares where the company issues two or more classes of shares).

(c) The documents to be submitted to the GM (such as, annual financial statements and other reports).

(d) A draft resolution or, where no resolution is proposed to be adopted, a comment from a competent body within the company, for each item on the proposed GM agenda.

(e) Draft resolutions tabled by shareholders (these must be added to the web site as soon as practicable after the company has received them).

(f) Where applicable, the form to be used to vote by proxy and by correspondence, unless those forms are sent directly to each shareholder. When these forms cannot be made available on the Internet for technical reasons, the company must indicate on its web site how shareholders may obtain the forms and send them by post to every shareholder who so requests free of charge.

Italian listed companies are already required to publish their GM notice at least 30 days before the GM and no change is needed. As for the information under (b), Article 84 of the new Consob Regulation of Issuers requires issuers of shares to include in the notices convening general meetings the total number of shares and voting rights. In order to be in compliance with the Directive, Article 84 should be integrated and require companies to include in the GM notice the numbers of shares and voting rights "at the date of the convocation including separate totals for each class of shares where the company issues two or more classes of shares". Italian companies are required to publish information under (b), (c), (d), and (f) on their web site at least 15 days before the GM. We recommend that the existing rules be amended to require companies to publish such information at least 21 days before the GM.

[217] SRD, Article 5, paragraph 4.

12.2.6 Requirements for participation and voting in the GM: the record date system

The SRD abolishes share-blocking by requiring Member States to use a "record date" system. In a record date system, the right to participate and vote at the GM requires owning the share on the record date. Moreover, in a record date system shareholders must have the right to sell or transfer shares between the record date and the GM—eliminating share blocking.[218] If you sell the share after the record date but before the GM, you keep the GM participation and voting right although you no longer have the funds vested in the stock (so-called "empty voting"). The closer the record date is to the GM date, the lower the potential for empty voting at the GM.

Under the *"Legge comunitaria"* 2008, in writing the Legislative Decree that implements the SRD, the Italian Government is required to set a record date. In setting a record date, the SRD requires Member States to ensure that a single record date applies to all companies. The record date must not be set more than 30 days before the GM and at least 8 days must elapse between the latest permissible date for the calling (convocation) of the GM and the record date (in calculating the 8 days those two dates shall not be included).[219] Since the latest permissible date for the convocation of the GM of Italian listed companies is 30 days before the GM, the Italian legislature may not set a record date earlier than on the 21st day before the GM. Moreover, it should require (as allowed by the SRD) that at least six days elapse between the latest permissible date for the second and subsequent convocation of the GM and the record date (in calculating the 6 days those two dates shall not be included).

What is a reasonable record date for Italy? Recall from Section 7 that, in Italy, financial intermediaries send companies an electronic notification for attendance at the GM as proof of shareownership. Moreover, companies typically require this electronic information at least two days before the GM. In keeping with this system, respondents to the public consultation process on the question of record date have suggested setting a record date of two days before the GM. Such a record date virtually eliminates the possibility of empty votes at the GM. Also, proponents of the two-day proposal highlight the fact that the existing system seems to work properly and that market participants are already used to a two-day deadline.[220]

[218] SRD, Article 7.

[219] SRD, Article 7.

[220] Myners (2007) examines the record date choice in the UK. He argues that the existing UK record date of 48 hours before the GM should not be altered other than recording the 48-hour time period in terms of business days

On the other hand, Assonime (the Italian Association of Listed Companies) argues that sending notifications for attendance on a date too close to the GM could create problems in managing the GM—and proposes a record date five days before the GM. The concern is that, with a record date closer to the GM, the intermediaries in the voting chain (custodians and proxy voting agencies) and the company (or its registrar) may not have enough time to process voting entitlements and to reconcile them with voting instructions.

In our opinion, since the current 2-day notification system works well in Italy today, it should be manageable for companies to also have a record date close to the GM. There are few practical arguments for separating the notification and record dates. Thus, we also recommend the Italian legislature to set the record date two business days prior to the GM. The legislation should make clear that a share-purchase must be settled by the record date in order to entitle the shareholder to vote. The record date should be counted from the date set by the company for the meeting to be held in first call. Also, in keeping with current practice, intermediaries should be required to send companies notification for attendance at the GM by the record date. In addition, companies should not be allowed to require that shareholders (or their proxyholder) bring copies of the notification for attendance to the GM as proof of the right to vote.

In order to facilitate the exercise of the right to vote and any other ownership right (such as to place new items on the agenda, to present a list of director nominees, and to ask questions before the meeting), the *"Legge comunitaria"* 2008 requires the Italian Government to reorganize the existing provisions regulating the updating of the shareholders' book.

As explained in Section 4.3, the shareholder book kept by Italian listed companies (or their registrar) is not updated on a regular basis and offers only an occasional historical "snap-shot" of the identity of the shareholder base. This makes it impossible for the company to rely on the shareholder book to identify its shareholders and have a direct relationship with them. In reviewing the existing provisions on the shareholder book, the Italian Government is required to evaluate the introduction of a mechanism to identify shareholders through intermediaries. In doing so, we believe Italy should consider transforming the existing "decentralized" registration system into a "centralized" one where the Italian CSD keeps the official shareholder book.

The benefit of our proposal is that a centralized registration system gives companies instant

only.

access to updated information on the company's shareholder base. Moreover, it eliminates the need for other shareholder identification processes or requirements. The entry in the shareholder book kept by the CSD is sufficient proof to entitle the shareholder to exercise all ownership rights. The need for electronic notification for attendance at the shareholders' meeting or electronic certification are eliminated.

Under the SRD, Member States may exempt from the record date system those companies who are themselves able to fully identify the names and addresses of their shareholders on the day of GM. In the existing decentralized Italian shareownership registration system, Italian companies are unable to create the updated share registry on their own (see Section 4). Nevertheless, we recommend that the legislature explicitly allows this exemption also in Italy.

Finally, we recommend that Italy considers introducing a right for companies to ask financial intermediaries to disclose the identity of their clients-shareholders. Companies already have this right in other EU Member States.[221]

12.2.7 Right to put items on the agenda of the GM and to table draft resolutions

Under Article 6 of SRD, shareholders must be granted the right to put items on the GM agenda (provided that each item is accompanied by a justification or a draft resolution to be adopted at the GM) and the right to table draft resolutions included in the GM agenda. Member States can require shareholders to hold a minimum stake in the company in order to be allowed to exercise these rights. This minimum stake must not, however, exceed 5% of the share capital.

Italian law already grants shareholders the right to put items on the GM agenda. Under Article 126-bis of the CLFI shareholders representing (separately or jointly) at least 2.5% of the share capital of a listed company have the right to request additions ("*integrazione*") to the GM agenda. The request must be submitted within 5 days after the publication of the GM notice.

The above provisions are in compliance with SRD. The 2.5% threshold was introduced by the Saving Law which came into force in January of 2006 as a measure to reinforce the protection of minority shareholders. We agree with "*Legge comunitaria*" 2008 that this threshold should not be

[221] For example, in the UK, Section 793 of the Companies Act 2006 gives a public company the power to investigate the ownership of its shares. Companies do this by giving a notice to any person whom the company has reasonable cause to believe has, or had, an "interest" (e.g.: owns, controls, or has certain rights over shares) in its relevant share capital at sometime during the three years immediately preceding the date on which the notice is issued.

increased.

The SRD allows Member States to require that the right to add agenda items be exercised in writing (that is, by submitting the request by postal services or by electronic means). Italian law does not specify how to send requests to the company, and we recommend that the Italian legislature regulates this aspect. Specifically, the right should be exercised by sending a written request to the company either by mail (in hard copy form) or by electronic means (fax or email).

Under the SRD, shareholders have the right to add items to the agenda of the annual GM (AGM). However, Member States may restrict shareholder rights to add agenda items for meetings other than the AGM. Specifically, Member States may restrict the right to add agenda items provided shareholders have the right to call (or require the company to call) general meetings other than the AGM. In Italy, shareholders representing at least 10% of the share capital have this right. Moreover, as noted above, CLFI (Article 126-bis) grants the right to add items to the agenda of a general meeting ("*assemblea*") without specifying the type of meeting (annual or extraordinary). "General meeting" here means any type of shareholder meeting—not only the AGM. "*Legge comunitaria*" 2008 protects the shareholder right to add agenda items to general meetings other than the AGM.

The SRD requires Member States to set a single deadline for adding agenda items. As explained above, in Italy, shareholders are required to submit their request to add agenda items within five days after the publication of the GM notice. This deadline is in compliance with SRD. In practice, five days is a short time period (especially for foreign shareholders) to fully analyze GM agenda items and submit requests for additions. Moreover, the GM notice includes only the list of items to be discussed at the meeting: reports detailing the draft resolutions announced in the GM agenda are not included. Companies are not required to make the directors' report on the GM resolutions available to the public until fifteen days before the GM. As explained in Section 12.2.5, the SRD requires the 15-day publication deadline to be extended to twenty-one days. We recommend this deadline to be extended to 30 days. However, even with such an extension, there is a problem with the 5-day window as most GM notices are published five to six weeks prior to the GM.

When the GM agenda is modified following a shareholder addition, the company must make the revised agenda available before the record date or, if no record date is set, "suffiently in advance of the date of the general meeting so as to enable other shareholders to appoint a proxy or, where

applicable, to vote by correspondence" (SRD, Article 6 (paragraph 4)). In Italy, companies are required to issue the revised notice at least ten days before the GM. For this 10-day provision to comply with SRD, the Italian legislature must set a record date that is sufficiently close (i.e., just a few days prior) to the GM.

Recognizing that researching and responding to a draft proposal on the GM agenda is often time consuming, we recommend increasing the response time given shareholders from 5 days to 15 days. Furthermore, once the 15-day period has expired, we recommend that the company be required to publish the revised agenda within a time period constrained solely by the time it takes to produce and publish the revision—e.g. three days.[222]

To illustrate, in Italy companies typically publish the GM notice five to six weeks prior to the GM date. Suppose shareholders receive this notice five weeks (35 days) prior to the meeting date. Under the current system, shareholders must decide on additions within the next five days. Thus, by day 30 (35-5), the company will have received all requests for agenda revisions. Yet, under the current system, the company is not required to publish the revised agenda until ten days prior to the GM meeting—a potential delay of 20 (30-10) days. This delay serves no purpose, and with our proposal the company would publish the revised agenda 27 (30-3) before the meeting. In other words, under our proposal, shareholders get 27 days to consider the revised agenda items, while the current system provides only ten days. If, in this example, we also implement our recommendation for companies to give shareholders 15 (not just 5) days to add new items to the GM agenda, then the company will receive all requests for new agenda items 20 days prior to the GM. With three days to publish the revision, shareholders will receive the revised agenda 17 days prior to the GM.

Finally, Italian law does not regulate the right to table draft resolutions. We recommend that this right be regulated in the same way as the right to add new agenda items.

12.2.8 Right to ask questions related to items on the GM agenda

The SRD grants shareholders the right to ask questions related to items on the GM agenda and requires companies to answer these questions. Since the Directive does not specify that the right can be exercised only during the GM, we interpret this provision as allowing each shareholder to

[222] Here, we are using three days as an example of what it takes to physically produce and mail out the revised agenda. In practice, the production process may be shorter or longer and so the three days may be adjusted accordingly. The principle introduced below remains unaffected by such adjustments.

ask questions related to items on the GM agenda both before and during the GM. Rules on how and when questions are to be asked and answered are left to be determined by the EU Member States.[223] In particular, Member States may take, or allow companies to take, measures to ensure the identification of shareholders, the good order and preparation of the GM, and the protection of companies' confidentiality and business interest. Member States may also provide that an answer must be deemed given if the relevant information is available on the company's web site in a question and answer format and allow companies to provide one overall answer to questions having the same content.[224]

A: Right to ask questions related to items on the GM agenda before the GM

In our opinion, it is important to grant shareholders of listed companies the right to request information related to the business to be dealt with at the GM before the meeting takes place. Shareholders who cannot attend the meeting and have to vote/give voting instructions in advance of the GM (especially foreign shareholders exercising distance voting) may feel the need to ask questions to the company before the GM. This in order to gather more information about items and draft resolutions on the GM agenda and make an informed voting decision. Therefore, questions received before the GM within a reasonable time for the company to formulate the answer should be answered as soon as possible.

Current practice varies across Member States. For example, the UK Companies Act 2006 does not regulate shareholders' right to ask questions related to items on the GM agenda. In the consultation document "Implementation of the Directive on the Exercise of Certain Rights of Shareholders in Listed Companies" published by the UK Department for Business Enterprise & Regulatory Reform (BERR), BERR proposes to add the following section (319A) to the Companies Act stating "At a GM of a traded company, the company must cause to be answered any question relating to the business being dealt with at the meeting put by a member attending the meeting" subject to certain conditions. This proposed rule does not, however, require companies to answer questions relating to items on the GM agenda before the meeting.

In France, shareholders do have the right to submit questions. Specifically, under French law

[223] SRD, Recital 8.
[224] SRD, Article 9.

(Article L.225-108 and Article R225-84 of the Commercial Code as modified by Decree N. 2009-295 of March 16, 2009), any shareholder is entitled to submit written questions, to which the board of directors or the management, as the case may be, are required to reply in the course of the meeting. The questions must be sent at the company's headquarters either by registered letter with acknowledgement of receipt addressed to the chairman of the board of directors (or of the management board) or by electronic means of communication to the address mentioned in the notice of the meeting (or notice of call), at the latest on the 4th business day prior to the general meeting date. Shareholders must attach to the written questions a certificate of book entry either in the accounts of registered shares held by the company or in the account of bearer shares held by the authorized intermediary.

As explained above (Section 9.5), Italian law currently does not regulate shareholder rights to ask questions related to items on the GM agenda. To comply with the SRD, Italy needs to introduce new provisions establishing a shareholder right to ask questions related to items on the GM agenda before and during the GM, and a corresponding obligation by the company to answer such questions. In accordance with this, Article 31 of the *"Legge comunitaria"* 2008 establishes that the forthcoming Legislative Decree implementing the SRD must regulate the right of shareholder to ask questions related to items on the GM agenda before the GM and require companies to answer the questions at the latest at the GM. In regulating the right, the Italian Government is required to take or allow companies to take, measures to ensure the identification of shareholders, the good order and preparation of GMs, and the protection of companies' confidentiality and business interest.

We recommend the Italian legislature to introduce a rule allowing shareholders to ask questions regarding the business to be dealt with at the GM before the meeting, and requiring companies to answer shareholder questions except when the information requested is sensitive (i.e., business secrets) or confidential and may harm the interests of the company if made public.

Provided that they identify themselves in the form required by the law, shareholders should be allowed to send written questions either by mail or by electronic means to the company at the mail and email addresses indicated in the GM notice. Companies should be required to answer any written question before the GM only if these are received in sufficient time to allow for a response to be prepared; otherwise, answers should be given directly at the GM to all the present shareholders

and published on the company's web site in a question and answer format as soon as possible after the GM.

The new provision should allow the company to give one overall answer to questions with the same content. Moreover, the answer should be deemed to be given if the relevant information was already available on the company's web site in a question and answer format when the company received the written question. Instead, if the company posts the answer to a shareholder's question on its web site only after having received the written question from the shareholder, the shareholder must receive a written communication from the company which makes him aware of the availability of such answer on the company's web site.

The shareholder right to ask questions both before and at the GM has been included in the ICGN Global Corporate Governance Principles revised in June 2009. The draft principles are now under consultation and will have to be approved by the ICGN Members. Under the draft Principle 8.2.6 ("Shareholder questions"), "Shareholders should be provided with the right to ask questions of the board, management and the external auditor both before and at meetings of shareholders, including questions relating to the board, its governance and the external audit."

B: Right to ask questions related to items on the GM agenda during the GM

With the exception of Article 2371 of the Civil Code (which sets rules regarding the powers of the chairman of the GM), Italian law does not regulate the functioning rules of the GM including the shareholders' right to intervene and ask questions related to items on the GM agenda (see Section 9). However, as part of the adoption of the Italian Corporate Governance Code, companies are required to propose for approval at the GM a document that sets rules for the organization and functioning of the GM. It is market practice for Italian listed companies to publish on their web site a document (normally called "Regulations of the meeting of the shareholders") that sets rules for the procedures to be followed in order to permit an orderly and effective conduct of shareholder meetings. The companies' regulations normally include rules regarding the shareholders' right to speak and ask questions, the order for speaking, and the chairman's duty to answer any questions regarding a specific item on the agenda either immediately or after all the interventions. Rules on the maximum duration of time each shareholder can speak are sometimes included.

From the "Regulations of Stockholders Meetings" of Fiat Group

6. DISCUSSION AND POWERS OF THE CHAIRMAN

6.1 The Chairman shall open the discussion and direct it by inviting those who have requested permission to speak to take the floor in the order in which their requests were booked and guaranteeing their right to participate.

6.2 The Chairman may specify that such requests should be made in writing, indicating the item on the Agenda that the individual concerned wishes to address.

6.3 Anyone entitled to participate in the Meeting, including the common representatives of the different classes of shares, if appointed, and the representative of bondholders, shall be entitled to take the floor on any item on the Agenda and to comment or put forward proposals thereon.

REPLIES AND CLOSURE OF DISCUSSION

8.1 The Chairman or, if he so requests, his assistant shall answer any questions raised in a speech either immediately or after all the speeches have been made. Should several speeches cover the same material, a single answer should suffice.

From the "Regulations of the meeting of the shareholders" of Enel SpA

Speaking from the floor and rejoinders

6.1 The chairman shall conduct the discussion, giving the floor to the Directors, the Statutory Auditors and those who request it in accordance with this article.

6.2 All those entitled to vote and the common representative of the bondholders may request the floor to speak on the matters under discussion only once, making observations and requesting information.(...)

6.4 The chairman and, at his or her request, those who assist him or her in accordance with article 4, paragraph 5 of this regulation, shall reply to participants who speak on matters being discussed after all of them have spoken or after each one has spoken.

Even though the companies' regulations of GMs normally include rules regarding shareholders' right to ask questions at the GM, the Italian legislature must introduce a mandatory rule establishing that during a GM every shareholder who is entitled to attend the meeting, or his proxyholder or representative acting on her behalf, has the right to ask questions relating to the business being dealt with at the meeting. The board of directors or the management board, as the case may be, must answer each question asked unless the answer would involve the disclosure of confidential and sensitive information. The chairman of the meeting should be entitled to regulate the asking of questions and refrain from answering a question in order to ensure the preparation and the good order of the meeting. Even in the case of questions asked during the GM, companies should be allowed to give one overall answer to questions with the same content. The answer should be deemed to have been given if the relevant information has been published on the company's web site in a question and answer format at least for a period of 8 days prior to the GM and during the GM.

In the case of complex questions that cannot be answered at the GM, the company should be required to provide the shareholder who has asked the question with a prompt answer as soon as possible after the GM. The answer should also be published in the question and answer section of the company's web site.

12.2.9 Proxy voting

The SRD promotes the principle that good corporate governance requires effective proxy voting opportunities. Thus, the SRD introduces provisions aimed at removing limitations and constraints that make proxy voting cumbersome and costly. Moreover, the Directive allows Member States to introduce adequate measures against a possible abuse of proxy voting by the proxyholder.[225]

Right to vote by proxy

The SRD provides detailed rules concerning shareholder right to vote by proxy and the formalities around proxy-holder appointment and company notification. Below, we highlight changes that the Italian legislature is required to make to be in compliance with these SRD rules. We expose both the SRD's rules[226] and the Italian regulatory framework[227] for proxy voting (see also Sections 8.1

[225] See SRD, Recital 10
[226] SRD, Articles 10 and 11
[227] Article 2372 of the Civil Code, Articles 136-144 of the CLFI, Articles 134-138 of the Consob Regulation of Issuers

and 8.2).

Under the SRD, shareholders have the right to appoint a natural or legal person as a proxyholder. The proxyholder is an agent who attends the GM and votes on the shareholder's behalf. To be in compliance, Member States must abolish legal rules restricting the appointment of a proxyholder. Also, the proxyholder must be granted the same right to speak and ask questions during the GM as the represented shareholder.

Under Italian law (Article 2372), unless the articles of association state otherwise, shareholders of Italian listed companies may be represented at the GM and vote by proxy. A proxy can be granted to any individual or legal person but this power cannot be granted to members of administrative or controlling bodies, or employees of the company or of its subsidiaries (Section 8.1.1). To be in compliance with the rules introduced by the SRD, the Italian legislature will have to grant shareholders an unfettered right to vote by proxy and amend Article 2372 (paragraph 1) of the Civil Code deleting the words "unless the articles of association state otherwise".

Moreover, Italy will have to abolish limits on who can be appointed as a proxyholder. Under Article 15 of the SRD, Member States are required to comply with all the provisions of the SRD at the latest by August 3, 2009. However, Member States (like Italy) whose laws or regulations do not permit the appointment as a proxyholder of a member of the administrative, management, or supervisory body of the company or a controlling shareholder or controlled entity, are allowed to bring into force laws, regulations, and administrative provisions necessary to be in compliance with Article 10 of the SRD at the latest by August 3, 2012. In our opinion, Italy should strive to eliminate limits on who can be appointed as a proxyholder at the earliest possible time, by August 3, 2009.

Even though in Italy proxyholders are normally granted the same rights to speak and ask questions at the GM as the represented shareholder, the Italian legislature should clearly confirm and specify this right.

Member States are allowed to establish the time of validity of a proxy and limit the appointment of a proxyholder to a single meeting, or to a number of meetings that may be held during a specified period. Member States may also limit the number of persons whom a shareholder may appoint as

N. 11971 of 1999, and Article 33 of the joint Regulation issued by the Bank of Italy and the Consob.

proxyholder in relation to each GM.[228]

The Italian law already limits the appointment of a proxyholder to a single meeting. Unless the proxy is general or granted by a company, association, foundation or other collective entity or institution to one of their employees, shareholders of Italian listed companies can grant the proxy only for each single GM and related calls. Under the new *"Legge comunitaria"* 2008, in writing the Legislative Decree that implements the SRD, the Italian Government is required to introduce a provision limiting the number of persons whom a shareholder may appoint as proxyholder at each GM. We believe this provision will make management of the GM proceedings easier, facilitating the reconciliation of proxy appointment and entitlements to vote.

Italian law limits the number of proxies the same proxyholder can hold according to the size of the company (see Section 8.1.1). These limits will have to be removed and, as required by the SRD, the Italian legislature will have to establish the right of proxyholders to hold a proxy from more than one shareholder without limitation as to the number of shareholders so represented. Also, proxyholders holding proxies from more than one shareholder must be enabled to vote in a different way for different shareholders (that is, split voting at the proxyholder level must be allowed).[229]

Besides the limits mentioned above, under the SRD (Article 10, paragraph 3), Member States cannot restrict or allow companies to restrict shareholders from exercising their rights through proxyholders for any purpose other than to address potential conflicts of interest between the proxyholder and the shareholder. In order to ensure that the proxyholder does not pursue any interest other than that of the shareholder, Member States may impose only the following requirements:[230]

(a) Prescribe that the proxyholder disclose certain specified facts which may be relevant for the shareholders in assessing any risk that the proxyholder might pursue any interest other than the interest of the shareholder.

(b) Restrict or exclude the exercise of shareholder rights through proxyholders without specific voting instructions for each resolution in respect of which the proxyholder is to vote on behalf of the shareholder.

(c) Restrict or exclude the transfer of the proxy to another person, but this shall not prevent a

[228]SRD, Article 10(2)
[229]SRD, Article 10, paragraph 5.
[230]SRD, Article 10(3).

proxyholder who is a legal person from exercising the powers conferred upon it through any member of its administrative or management body or any of its employees.

Under the new *"Legge comunitaria"* 2008, the forthcoming Legislative Decree implementing the SRD will have to identify the hypothesis of potential conflict of interest between the shareholder and the proxyholder and impose all the requirements sub (a), (b), and (c).

Member States may require proxyholders to keep a record of the voting instructions received from the appointing shareholder for a defined minimum period and to confirm upon request that the voting instructions have been executed.[231] The *"Legge comunitaria"* 2008 requires the Italian Government to include both these requirements in the forthcoming Legislative Decree implementing the SRD.

Recital 10 of the SRD clarifies that, in order to avoid any possible abuse of proxy voting, proxyholders should be bound to observe any instructions they may have received by shareholders. Following this principle, the Directive establishes an obligation for proxyholders to cast votes in accordance with the instructions issued by the appointing shareholder. Nothing is established in this respect by Article 31 of the *"Legge comunitaria"* 2008. However, we recommend the Italian legislature to give this principle legal basis and introduce it in the Italian law.

Appointment of proxyholder and notification to the company

The SRD requires Member States to permit shareholders to appoint a proxyholder by electronic means. Member States must also permit companies to accept the notification of the appointment by electronic means and ensure that each company offers its shareholders at least one effective method of notification by electronic means. Proxyholders must be appointed and the appointment notified to the company, only in writing. Other than this formal requirement, the appointment of a proxy, the notification of appointment to the company, and the issuance of voting instructions (if any) to the proxyholder, can be made subject only to proportionate requirements that are necessary to ensure the identification of the shareholders and the proxyholders or to verify the content of voting instructions.[232]

"In writing" must be interpreted as by written electronic means (such as, email or fax). There-

[231] SRD, Article 10(4).
[232] SRD, Article 11.

fore, the SRD requires companies to offer some type of electronic proxy voting system to their shareholders (Zetzsche, 2008). Under Italian law, the proxy appointment must be provided in writing and the company must keep the related documentation.[233] As for the use of electronic means to appoint a proxy, nothing is mentioned by the law. The GM notices and articles of association of Italian listed companies generally do not establish any guideline in this respect, either.

The Italian legislature must establish the right to appoint proxies by written electronic means. Companies must be required to accept the notification of appointment by written electronic means and offer their shareholders at least one effective method to do so. The same rules must apply for the revocation of proxies.

We recommend the creation of a predefined standard form for the notification of the appointment of proxyholder to the company. The form should be attached as an Annex to the Consob Regulation of issuer and listed companies should be required to publish it on their web site together with the GM notice. Having a standard form for the notification of proxy appointment will make voting by proxy easier for shareholders and permit companies a quicker verification of the regularity of proxies.

Proxy solicitation

The Italian legislature should keep separated the rules concerning voting by a proxy voluntarily given by the shareholder and the provisions regulating solicitation of proxies as regulated by the CLFI and the Consob Regulation of Issuers. Under the new *"Legge comunitaria"* 2008, in writing the Legislative Decree that implements the SRD, the Italian Government is required to revise and simplify the rules concerning the solicitation of proxies. Such rules must be coordinated with the new rules on proxy voting which will be introduced. In doing so, an adequate degree of reliability and transparency has to be ensured.[234].

Under the new rules on proxy voting, proxyholders will be allowed to hold a proxy for an unlimited number of shareholders. Therefore, the Italian legislature should also review the provisions regulating the collection of proxies by shareholders' associations (Articles 135-138 of the Consob Regulation o issuers) as well as the rules regarding the appointment of investment firms, banks, or

[233] Civil Code, Article 2372.
[234] See SRD, Recital 10.

asset management companies as proxyholders (CLFI, Article 14).

12.2.10 Participation in the GM by electronic means: electronic meetings and direct electronic voting

Under Italian law, since 2003, a company's articles of association may allow shareholder participation in the GM via telecommunications means. Therefore, it follows that Italian companies may offer their shareholders the opportunity to participate in the GM by any type of electronic means (see Section 8.3.2). To our knowledge, very few, if any, companies offer their shareholders this option. Even companies that organize video-conferences normally do not allow their shareholders to participate or vote via video-conference.[235]

Under the SRD, Member States must permit (not require) companies to offer their shareholders to participate in the GM by electronic means. Even though the Italian law (Article 2370 of the Civil Code) is already in compliance with the SRD, in our opinion, the Italian legislature should clarify the meaning of "telecommunications means" and require listed companies to offer their shareholders any or all of the following forms of participation in the GM by electronic means:[236]

a) real time transmission of the GM;

b) real time two-way communication allowing shareholders to address the GM from a remote location;

c) a mechanism for casting vote either before or during the GM without the need to appoint a proxyholder who is physically present at the GM.

While under option (a) shareholders are only allowed to follow the meeting from a remote location without taking an active part in it, under option (b), shareholders can actively participate in the GM (i.e., speak, ask questions, and vote) from a remote location (for example via video-conference or conference call). Option (c) provides shareholders with the right to vote in absentia by electronic means either in advance or during the GM (that is, taking part in the ballot in real-time).

[235]The Danish company Sparindex (a unit trust) recently organized a complete, virtual GM. See http://www.virtualgeneralmeeting.com/C12574CC002D6735/0/F961F426FB2A8589C125759F0028D8B4.

[236]SRD, Article 8.

The new rules should also specify that the participation in the GM by electronic means can be made subject only to the requirements that are necessary to ensure the identification of shareholders and the security of the electronic communications.

Under the *"Legge comunitaria"* 2008, in writing the Legislative Decree that implements the SRD, the Italian Government is required to regulate, where necessary, the exercise of shareholders' rights by electronic means.

It is important to notice that under the Corporate Governance Code (Criterion 11.C.3.) the Board of Directors is required to use its best efforts for reducing restrictions on the opportunity of shareholders to participate in the shareholders meeting and exercise their voting right. In our opinion, in the next revision of the Code, the Corporate Governance Committee should elaborate on this criterion and require companies (especially companies with a broad foreign ownership) to offer shareholders a way to follow the GM from a remote location and cast their votes in absentia by electronic means.

12.2.11 Voting by correspondence

The SRD requires Member States to permit companies to offer their shareholders the possibility of voting by correspondence. Voting by correspondence may be made subject only to such requirements that are necessary to ensure the identification of shareholders and proportionate to achieving this objective.[237] "Possibility to vote by correspondence" has to be interpreted here as the right to vote by correspondence either by post or electronically.

The Italian law already allows listed companies to offer their shareholders the possibility to vote by post in advance of the GM. However, as we have seen above (Section 8.3.1), Consob Regulation of Issuers takes into account only postal voting expressed in paper form. Therefore, the rules that regulate postal voting are not completely in line with the SRD. In our opinion, the existing rules on postal voting should be amended and require companies to offer their shareholders the right to vote in absentia by correspondence either electronically or by post. In regulating voting by correspondence electronically, the Italian legislature will have to introduce the requirements that are necessary to ensure the identification of shareholders through electronic means.[238]

[237] SRD, Article 12.

[238] See the responses of Assonime (the Italian Association of Listed Companies) and Confindustria (the Confederation of Italian Industry) to the public consultation launched by the Ministry of the Economy and Finance.

As discussed above, only a few Italian companies establish in their articles of association a shareholder right to vote by correspondence. Even in companies that offer this option to their shareholders, voting by mail trough a hard copy form is scarcely used by shareholders (especially foreign). According to one of the respondent to the public consultation launched by the Ministry of Economy and Finance, the lack of success of voting by correspondence in Italy is mainly due to the fact that, under the Italian law, companies are allowed to modify resolutions presented to the GM during the meeting. Since it is not possible to change votes cast ahead of the meeting according to new circumstances that occur at the meeting, shareholders have been reluctant to vote by mail.[239] The issue of permitting modification of proposed resolutions at the GM arises each time shareholders decide to cast their votes in advance of the GM (either by correspondence or by electronic means). Moreover, this issue arises when shareholders decide to vote by proxy (without a proxyholder being present at the meeting) and to give voting instructions ahead of the meeting. In these cases, shareholders are not able to modify in real time their votes/voting instructions according to what happens at the GM (changes of resolutions, counterproposal from the floor, etc.)

In the case of amendments (changes or integrations) to resolutions submitted to the GM, under the Consob Regulation of Issuers (Article 143), the shareholder who has cast her vote by correspondence, must be allowed to express her will by abstaining, voting against, or accepting the proposals submitted by the board of directors or other shareholders. Therefore, the form to vote by mail provided by the company must include a specific section for the shareholders to give instructions in this respect.

In our opinion, the Italian legislature, in rethinking the provisions regulating advance voting by correspondence or electronic means, should adopt clear rules aimed at ensuring that the results of the voting reflect the real intentions of the shareholders in all circumstances. In particular, these rules should address situations where new circumstances occur or are revealed after a shareholder has cast her vote by correspondence or by electronic means.[240] In the UK for example, it is market practice for companies to distinguish, in their articles of association, between "substantive" and "procedural" resolutions (Nolan, 2006). "Substantive" resolutions can only be voted on at a meeting if the text of the resolution was set out exactly in the GM notice convening the meeting.

[239] See the response of Dario Trevisan to the "Consultation Document, Implementation of the Directive 2007/36/CE regarding the exercise of some voting rights of the shareholders of listed companies" dated July 18 2008

[240] See SRD, Recital 9.

Such resolutions cannot be amended during the meeting (amendments are allowed only to correct grammatical or clerical errors). "Procedural" resolutions (such as, a resolution to correct grammatical or clerical errors in a substantive resolution, a resolution to adjourn a General Meeting or a resolution on the choice chairman of a General Meeting) can always be modified at the GM.

We believe that shareholders who vote in absentia ahead of the meeting (by correspondence or by proxy) must know what resolutions might be subject to amendments during the GM in order to be allowed to cast their votes/instructions accordingly. Therefore, Italian companies should be required to define in their articles of association "substantial" and "procedural" resolutions and clarify in the GM notice which resolutions on the agenda are to be considered "substantial".

As we have seen in Section 12.2.5, the SRD requires companies which allow shareholders to vote by correspondence to publish on their web site the form to be used to vote by correspondence, unless those forms are sent directly to each shareholder. The form must be published at least 21 days before the GM. We recommend the Italian legislature to require Italian companies to publish the form to vote by correspondence on their web site together with the GM notice (that is at least 30 days before the GM). Italian companies are already required to send voting papers, either directly or through custodians, to any person who is entitled to participate in the GM upon request; it should be clarified that companies have to send the form free of charge.

We recommend the Italian legislature to create a standard form to vote by correspondence. The form could be attached as an Annex to the Consob Regulation of Issuers. Having a standard form for voting by correspondence used by all the Italian companies listed in Italy will make it easier for shareholders to exercise their voting rights.

In order to allow the audit trail of the voting process, in the case of votes cast by correspondence (either electronically or by mail), companies should be required to acknowledge the reception of such votes.

12.2.12 Voting results

Article 14 of the SRD requires companies to establish for each resolution voted upon at the GM at least the number of shares for which votes have been validly cast, the proportion of the share capital represented by those votes, the total number of votes validly cast as well as the number of votes cast in favor of and against each resolution and, where applicable, the number of abstentions.

Member States may provide or allow companies to provide that if no shareholder requests a full account of the voting, it shall be sufficient to establish the voting results only to the extent needed to ensure the required majority is reached for each resolution.

Under Italian law, listed companies are already required to include in the GM minutes detailed voting results for each resolution. However, companies are not required to establish, for each resolution, the total number of shares for which votes have been validly cast, and the number of votes cast in favor. Even tough some companies already include this information in their minutes, the Italian legislature should amend Annex 3E of the Consob Resolution of issuers accordingly (see Section 10.1 above). We believe that the creation of a standardized format for disclosure of voting results, would provide improved transparency of the outcome of votes at the GM of Italian companies. No provision should be included allowing listed companies to disclose a full account of the voting only under request by shareholders.

The SRD requires companies to publish voting results on their web site within a period of time which shall not exceed 15 days after the GM.

In Section 10.1 we described the formalities for the publication of GM minutes on the web site of Italian companies. Under the amended Consob Regulation of Issuers, there is some uncertainty as to the formalities for the dissemination to the public, storage and filing of the GM minutes. Article 85 of the Regulation of Issuers does not establish anything specific with regard to the disclosure of GM minutes.[241] The Italian legislature should therefore clarify what the formalities for the dissemination to the public of GM minutes are and the deadline within which GM minutes of OGMs and EGMs must be published on the company's web site. Companies should be required to publish the minutes of any type of GMs as soon as they are available and anyway within 15 days after the GM.

13 Draft Legislative Decree of July 2009: Recommendations

On July 24, 2009, the Italian Ministry of the Economy and Finance (Department of Treasury) launched a second public consultation regarding the implementation of the SRD and the Legislative

[241] As discussed in Section 5, Consob clearly establishes that information such as GM notice, information on extraordinary transactions, and annual financial reports has to be made available to the public according to the provisions regulating the new systems for dissemination, storage, and filing of regulated information.

Decree that will transpose it into Italian law. In this section, we give our response to the consultation document that includes the draft Legislative Decree (henceforth "draft LD") and recommendations regarding the transposition of the SRD.[242]

Many, but not all, of the provisions contained in the draft LD are discussed in detail earlier in this report. To minimize duplication, when possible, we refer to these earlier sections and move quickly to summarize our recommendation. For draft provisions not covered earlier, we first provide a brief motivational discussion before giving our recommendation.

The forthcoming Legislative Decree will not apply to listed cooperative companies as the Italian Legislature has decided to exempt cooperative societies from the SRD (permissible under Article 1 of the SRD). Thus, the rules (including share-blocking requirements) described in the previous sections of this report will continue to apply to listed cooperatives.

13.1 Power to convene the GM

Calling a GM is a fundamental shareholder right. A high threshold for calling a GM is costly as it curbs shareholder incentives to actively monitor the firm. On the other hand, a low threshold increases the risk of "too many" meeting calls, which is also costly.

The draft LD proposes that shareholders representing at least 5% of the share capital of a listed company, or any lower percentage established by the company's bylaws, shall have the right to ask the board of directors or the management board to call a GM.[243]

We agree that the proposed 5% threshold adequately trades off these costs and benefits. Moreover, the 5% is consistent with similar thresholds in other context proposed by, e.g., the U.S. Security and Exchange Commission in its ongoing discussion of proxy voting reform.

13.2 Quorum and majority requirements

The draft LD proposes that the bylaws of listed companies may permit the GM to take place in single call/convocation. A OGM convened in single call has a quorum regardless of the capital

[242] *"Attuazione della direttiva 2007/36/CE relativa all'esercizio di alcuni diritti degli azionisti di societá quotate, Seconda Consultazione, 24 July 2009"* (Implementation of the Directive 2007/36/CE regarding the exercise of certain voting rights of the shareholders of listed companies, Second Consultation). The Consultation Document is available at http://www.dt.tesoro.it. The Document includes the provisions of the Civil Code and of Legislative Decrees No. 58 of February 24, 1998 (CLFI), and No. 213 of June 24, 1998, which the Italian legislature intends to change, as well as the new proposed provisions of the draft LD.

[243] Proposed Article 2367 of the Civil Code. The proposal reduces this threshold from 10% under current law.

represented. The bylaws may require a higher majority, except for the approval of the annual financial statement and for the election and revocation of directors. Unless the bylaws require a higher quorum, the EGM convened in single call is valid if at least 1/5 of the share capital is represented.[244]

We believe the Italian legislature should clarify the majorities required to pass resolutions (deliberative quorums) at OGMs and EGMs convened in single call.

If the company bylaws do not allow for the GM to be convened in single call, all the rules regarding quorum and majority requirements that we described in Section 9.1 will apply.[245]

13.3 Convocation of the GM: time to give the GM notice

The draft LD confirms the 30-day term for the publication of the notice convening the GM (both OGM and EGM) of Italian listed companies. As required by the SRD, the 15-day term for the publication of the notice convening the GM of companies involved in a takeover bid or equity swap is also confirmed. The 20-day term to publish the GM notice in the case of the company's liquidation or in the case of reduction of the share capital below one-third or below the legal minimum due to losses, is brought to 21-days before the meeting date. Moreover, a longer term of 40 days is established for the publication of the notice convening a GM called to elect members of the board of directors and board of statutory auditors.[246]

This is consistent with our recommendation in Section 12.2.2 and we support a decision to establish a mandatory longer term for the publication of the GM notice in the case of elections of directors or statutory auditors. As discussed in Section 12.2.2, we recommend the longest possible notice period so that shareholders, especially foreign, have enough time to receive the GM notice and other GM-related information and make an informed voting decision.

The draft LD abolishes the shorter term (20-day before the GM) for the publication of the notice convening a GM under request by shareholders. Under the new proposal, the GM notice must be published at the latest 30 days before the GM date. We support the longer publication notice as it is a positive change for shareholders.

To be in compliance with Article 5 (paragraph 1) of the SRD, the draft LD modifies the 8-day

[244] Proposed Article 2369 of the Civil Code
[245] See proposed Articles 2368 and 2369 of the Civil Code
[246] Article 119 of the CLFI and proposed Article 125 of the CLFI.

term for the convocation of an EGM to be held in third call and brings it to 10 days.[247] However, there are no proposed changes to the 8-day term for the publication of the GM notice of an OGM and EGM to be held in second call for lack of quorum. Following our recommendation in Section 12.2.2, the Italian legislature should introduce a general requirement for listed companies to publish the GM notice convening an OGM in second call and an EGM in second and subsequent calls at least 10 days before the meeting date so that at least 10 days elapse between the final convocation and the GM date. In order to do so, Article 2369 (paragraph 2) of the civil Code should be amended.

We also recommend that the Italian legislature includes all the provisions regulating publication of GM notice and quorum and majority requirements in one piece of legislation (either the Civil Code or the CLFI). This will help clarify the system.

13.4 Convocation of the GM: way to give GM notice

As amended under the draft LD, Article 2366 of the Civil Code will no longer regulate the way to publish the GM notice of listed companies. The requirements for the publication will be defined by special laws.[248]

The proposed Article 125 of the CLFI establishes that the notice convening the GM of listed companies must be published on the company's web site. Moreover, the GM notice must be published in the manners prescribed by the Consob Regulation of Issuers (which implements Article 113-ter - paragraph 3 - of the CLFI). In Section 6.2.2, we described the requirements for the publication of the GM notice under the new Consob Regulation of Issuers. As prescribed by Article 65-bis of the Regulation, until the start of activity of the new systems for dissemination of regulated information (including GM notice and agenda), listed companies have to comply with the transitional provisions established by Consob. Under the transitional regime that we described in Section 6.2.2, until the start of the activity of the new systems for dissemination, storage, and filing of regulated information, listed companies must:

a) send the GM notice to the stock exchange where the company is listed;

[247] Proposed Article 126 (paragraph 2) of the CLFI.
[248] Amended Article 2366

b) send a release containing the announcement of the publication of the GM notice and the web-site where the notice is available to at least two press agencies and to the stock exchanges, or through the Network Information System (NIS) to which Consob has access;

c) publish the GM notice on the company's web site;

d) publish the GM notice in at least one national newspaper.

On July 17, 2009, the Italian legislature adopted Legislative Decree No. 101 which amends the CLFI and establishes a requirement to publish regulated information in national newspapers. In enactment of the Legislative Decree No. 101 of July 2009, on August 17, 2009, Consob issued Resolution No. 17002. Under this new Resolution, which came into force on August 21, 2009, until the adoption of an organic regime that regulates the publication of regulated information on national newspapers, the GM notice must also be published in at least one national newspaper.[249]

In light of our recommendation to the Italian legislature regarding the transformation of the existing "decentralized" registration system into a "centralized" one where the Italian CSD keeps the official shareholder book, we also recommend the Italian legislature to extend to all listed companies the requirement to send the GM notice also to the CSD. The CSD will have to inform custodians, which in turn must notify depositors. As we have seen in Section 6.2.2, today only companies whose shareholders are allowed to vote by mail are required to do so.[250]

13.5 Convocation of the GM: content of the GM notice

As explained in Section 12.2.4, the SRD regulates the content of the GM notice. The proposed Article 125 (paragraph 4) of the CLFI is not completely in compliance with Article 5, paragraph 3, letter (i) of the SRD. In fact, it does not require companies to include in the GM notice information concerning the right to table draft resolutions (regulated by proposed Article 126-bis of the CLFI) and the right to ask questions (available to shareholders under the proposed Article 127-ter of the CLFI).

We recommend that companies be required to clarify in the GM notice that shareholders have the right to receive a hard copy of all the documents that the company publishes on its web site

[249] The Resolution abolished the requirement under d) above repealing the transitional provision established by letter IV.2 (b) of footnote 82 of Article 65-bis of the Regulation of Issuers.

[250] Article 139 of the Consob Regulation of Issuers.

free of charge.

13.6 Publication of GM-related information on the company's web site before the GM

In Section 6.4, we describe the main GM-related information (such as, financial statements and other reports) that Italian listed companies must make available to the public before the GM and the publication requirements.

The draft LD regulates the publication of GM-related information on the company's web site before the meeting date. Under proposed article 125-ter of the CLFI, within the term for the publication of the GM notice (that is, 30 or 40 days, see above section 13.3), companies must make available to the public on their web site:

a) the documents to be submitted to the GM;

b) the forms to be used to vote by proxy and, where allowed by the bylaws, to vote by correspondence; when these forms cannot be made available on the Internet for technical reasons, the company must indicate on its web site how shareholders may obtain the forms in hard copy. In this case the company is required to send the form, also through intermediaries, by mail and free of charge to every shareholder who so request;

c) information on the share capital (including number and categories of shares).

This is consistent with our recommendation in Section 12.2.5.

Under the draft LD, directors must make available to the public a report on each agenda item. Within the term for the publication of the GM notice, the report must be made available to the public at the company's registered office and published on the company's web site as well as in the manners prescribed by the Consob Regulation of Issuers (which implements Article 113-ter - paragraph 3 - of the CLFI).[251]

When the GM is called by shareholders,[252] the report on the resolutions regarding the items on the proposed GM agenda must be prepared by shareholders. Within the term for the publication of the GM notice (that is, 30 days), directors must make the report (accompanied by their comments,

[251] Proposed Article 125-bis, paragraph 1, of the CLFI.
[252] Article 2367 of the Civil Code

if any) available to the public at the company's registered office and publish it on the company's web site as well as in the manners prescribed by the Consob Regulation of Issuers (which implements Article 113-ter - paragraph 3 - of the CLFI).[253]

All the other reports to be prepared by directors or auditors must be made available to the public before the GM in the manners described above and within the terms prescribed by the specific provisions that regulate them. Where the provisions establish a term shorter than the minimum 21-day term prescribed by the SRD, the draft LD amends the provisions and brings the term to 21 days.[254]

We recommend that the Italian legislature amend proposed Articles 154-ter and 156 of the CLFI and require listed companies to publish the annual financial report (containing, among other things, the company's annual financial statement, the consolidated financial statement - if any - and the directors' report), the last financial statement of the company's subsidiaries and a summary of the last financial statement of affiliated companies, the report of the members of the board of statutory auditors ("*collegio sindacale*"), and the report of the independent external auditor ("*società di revisione*") at the latest 30 days prior to the GM date. The term to present the annual financial statement and the directors' report to the board of statutory auditors established in Article 154-ter, paragraph 1, should be revised accordingly.

13.7 Requirements for GM participation and voting: the record date system

The draft LD abolishes the share-blocking requirement for listed companies and introduces a record date system. The new proposed text of Article 2370 of the Civil Code establishes that the right to vote at the GM of companies listed in regulated markets and the requirements to update the shareholder book are regulated by special laws.

As we explained in Section 7.1.3, the entitlement to exercise corporate rights (including voting rights) is rooted in the registration in the securities account kept by the intermediaries: the account-holder has full and exclusive title to the rights attached to the financial instruments credited to the account.[255] Under the proposed Article 83-sexies of the CLFI, the entitlement to participate and vote at the GM is based on the notification for attendance at shareholders' meeting (*"comuni-*

[253] Proposed Article 125-bis, paragraph 3, of the CLFI.
[254] Proposed Article 125-bis, paragraph 2, of the CLFI.
[255] Proposed Article 83-quinquies of the CLFI.

cazione") sent to the issuer from the intermediary in conformity with its accounting records. The party who, according to the notification for attendance sent by the intermediary, is the holder of the account in which shares are registered at the close of business on the 5th day of open market (trading days) prior to the GM date in first call, is entitled to vote at the GM of Italian companies listed on a regulated market in Italy or any other EU Member States.

Therefore, the draft LD introduces a 5-day record date system. In Section 12.2.6, we recommended the Italian legislature to make clear that a share-purchase must be settled by the record date in order to entitle the shareholder to vote. Given Italy's T+3 system for the settlement cycle, under the proposed system, shareholders must effectively have bought shares (or recalled them from loan) at least 3 trading days before the record date, which is 8 trading days before the GM.

We recommend the Italian legislature to consider setting the record date only 2 business days prior to the GM. In our opinion, Article 83-sexies should also clarify that companies are not allowed to require shareholders (or their representatives) to comply with any formality other than presenting a proof of identity when entering the GM. (See our discussion in Section 12.2.6.)

Under the proposed new text of Article 83-novies of the CLFI (which amends Article 31 of the Euro Decree), intermediaries are required to issue the notification for attendance at shareholders' meeting provided for in Article 83-sexies (paragraph 1) under request by the account-holder; the notifications regarding who is legitimated to exercise voting rights at the GM are issued by the intermediaries without an express request by the legitimated persons, unless they have expressly objected to the issuance of such notifications.

If the Italian legislature adopts this provisions, Italian listed companies will have two different categories of shareholders: First, shareholders who do not object to the issuance of the notification to the company (that is, do not object to the disclosure of their identity) even when they decide not to vote. Second, objecting shareholders who expressly do not allow their intermediary to send the company an automatic notification for attendance if they decide not to vote.

This means that Italian listed companies will know the identity of all their non-objecting-shareholders (whether or not they decide to vote at the GM), but not the identity of the objecting-shareholders who decide not to participate and vote at the GM. We believe this provision does not offer a definitive solution to the issues related to the identification of shareholders and update of the shareholder book of Italian listed companies. (See our discussion in Section 13.9 below.)

The draft LD does not establish any deadline for the intermediary to send the notification for attendance at shareholders' meeting to the company. Under the proposed Article 81 of the CLFI, a Regulation issued by Consob, in agreement with the Bank of Italy, has to establish the forms, modalities, and terms for the issuance and revocation of the notifications for attendance. The Regulation must also identify the intermediary responsible for the issuance and revocation of the notifications. (We highlight this issue and discuss it in Section 7.1.3.)

In Section 7.1.3, we described the provisions established by the joint Regulation issued by the Bank of Italy and the Consob on February 22, 2008, which regulates the content and issuance of notifications for attendance at shareholders' meeting. We recommend that Consob and the Bank of Italy amend the joint Regulation and require intermediaries to send the notification for attendance at the GM by the record date (that is, under our recommendation, 2 business days before the GM). Intermediaries are already required to send the notifications to the company electronically (see Section 7.1.3).

Under the draft LD, in order to exercise ownership rights besides voting (such as: the right to place new items on the GM agenda or table resolutions, to inspect the shareholder book, to present lists of nominees, and to ask questions before the meeting) a shareholder must present a certification issued by the intermediary attesting the participation of the financial instruments to which the right is attached in the CSD system and specifying the shareholder right that may be exercised. (See proposed Articles 83-quinquies and 83-novies of the CLFI).

As we explained in Section 4.3.1, within two business days of the date of receipt of an application from a shareholder, the intermediary must issue the certification and make the corresponding financial instruments unavailable (that is, block the financial instruments) until the certification is returned or ceases to be effective.[256]

While the draft LD expressly abolishes the share-blocking requirement to exercise the right to participate and vote at the GM and the right to present lists of candidates for the election of the board of directors and statutory auditors (see below section 13.10), the blocking requirement established by the joint Regulation issued by the Bank of Italy and Consob to exercise any other ownership right is not abolished. We recommend the Italian legislature to regulate this point in the draft LD. The joint Regulation should then be amended accordingly. We also believe that the joint

[256] Articles 21 and 22 of the joint Regulation issued by the Bank of Italy and Consob.

Regulation issued by the Bank of Italy and Consob should clearly establish that the certification must be sent to the company electronically in the same manners prescribed for the issuance of the notification for attendance at shareholders' meeting.

13.8 Reorganization of the provisions regarding the central depository system

The draft LD reorganizes the provisions regarding the central depository system for dematerialized securities and concentrate them in the CLFI. Under the proposal, apart for the changes required by the introduction of the new record date system, the Italian shareownership registration system maintains the characteristics that we described in Section 4.

As we explain in Section 12.2.6, we believe Italy should move to a centralized registration system where the CSD keeps the official shareholder book thus giving companies instant access to updated information on the company's shareholder base. In other words, a centralized system eliminates the need for other and more costly shareholder identification processes. (See Section 12.2.6 for more details on our recommendations.)

13.9 Identification of shareholders and the shareholder book

The draft LD does not establish a mechanism for the identification of shareholders of listed companies.

In Section 4.3, we describe the provisions regulating the updating of the shareholder book. The draft LD continues to require intermediaries to send companies the names of their clients-shareholders only when one of the specific events established by the law takes place.[257] Because of this, the shareholder book of listed companies will not offer a complete picture of the shareholder base but only an occasional historical "snap-shot" of it. That is, under the proposed Article 83-novies of the CLFI, assuming that none of the shareholders who decide not to vote at the GM objects to the issuance of the notifications for attendance by their intermediaries, the company will obtain a complete picture of its shareholder base as it appears close to the time of the GM only.

As we have said above (Section 13.7), we do not believe this mechanism of automatic notifications for attendance at the shareholders' meeting can be seen as the definitive solution. We

[257] Proposed Article 83-novies of the CLFI

recommend the Italian legislature to introduce an efficient mechanism for the identification of shareholders.[258]

13.10 Election of directors and statutory auditors

In the introduction to the second consultation document, the Department of Treasury specifies that the record date mechanism has been introduced to facilitate the presentation of list of candidates for the election of members of the board of directors and statutory auditors.[259]

In Section 3.3.3, we describe the "*voto di lista*" (slate vote) mechanism for the election of the board of directors and the board of statutory auditors. In order to be allowed to present a list of candidates, shareholders must own a minimum percentage of the outstanding share capital. The share capital requirement cannot be above 2.5% (or a different percentage established by Consob in a regulation).

The draft LD abolishes the share-blocking requirement for the presentation of the lists. Under the proposed Article 147-ter of the CLFI, the ownership of the minimum share capital required by the articles of association is calculated taking into account the shares that are credited to the account of the shareholder at the close of business on the 30th day of open market (trading days) prior to the GM date in first call. Any transaction (credited or debited to the account) that takes place after the 30th day before the GM is not relevant to determine the entitlement to present a list. Companies are required to make the list of candidates presented by shareholders available to the public at least 21 days before the GM. In particular, the lists must be made available to the public at the company's registered office and published on the company's web site as well as in the manners prescribed by the Consob Regulation of Issuers (which implements Article 113-ter - paragraph 3 - of the CLFI).

As we discuss in Section 13.3, the notice convening a GM called to elect members of the board of directors and board of statutory auditors must be published 40 days before the meeting date. According to the Department of Treasury, the 40-day term has been introduced to allow the

[258] Under the draft LD, listed companies are required to update the shareholder book in conformity with the notifications sent by intermediaries within 30 days. (Proposed Article 83-undecies of the CLFI.)

[259] *"Attuazione della direttiva 2007/36/CE relativa all'esercizio di alcuni diritti degli azionisti di societá quotate, Seconda Consultazione, 24 July 2009"* (Implementation of the Directive 2007/36/CE regarding the exercise of certain voting rights of the shareholders of listed companies, Second Consultation). The Consultation Document is available at http://www.dt.tesoro.it

presentation of the lists by shareholders sufficiently in advance and their publication at least 21 days before the meeting date. There is no provision regulating the deadline by which shareholders must deposit the list within the 21-day term before the GM. This means that companies are free to set any deadline before the 21-day term by which they have to publish the lists. We believe the legislature should set a single deadline for all listed companies by which shareholders must deposit lists of nominees. The deadline should be as close as possible to the 21-day term. A single regime for all Italian companies will help avoid confusion.

At the moment no provision exists that establishes requirements for the publication of lists of candidates by the board of directors. We recommend that, in the case of a GM called to elect the members of the board of directors or statutory auditors, companies be required to publish the list of candidates presented by the board (and any other document required by the law) together with the GM notice (that is, at least 40 days before the GM). Assuming (as we recommend) that the legislature sets a deadline for shareholders to deposit the list of candidates very close to the 21-day term for the publication of the lists presented by shareholders, the publication of the list of candidates presented by the board together with the GM notice will give shareholders enough time to study the list (and the profile of candidates) and to decide whether or not they want to present an alternative list of candidates.

13.11 Right to put items on the agenda of the GM and to table draft resolutions

In Section 12.2.7, we discuss how, in our opinion, the Italian legislature ought to regulate the shareholder right to add new items on the GM agenda and table draft resolutions.

Under the proposed new text of Article 126-bis of the CLFI, shareholders representing (separately or jointly) at least 2.5% of the share capital of a listed company have the right to request additions to the GM agenda and table draft resolutions. This right must be exercised within 10 days of the publication of the GM notice or within 5 days of the publication in the case of GMs whose notice has to be published at least 21 days before the meeting. The requests must be submitted in writing also following what is prescribed by special law regulating electronic documents.

As required by the *"Legge comunitaria"* 2008, the text of Article 126-bis of the CLFI confirms the 2.5% threshold and establishes the shareholder right to table draft resolutions. The deadline for shareholders to exercise these rights is brought from 5 to 10 days of the publication of the GM

notice. Within the same deadline, shareholders are required to submit a report about the proposed agenda items to be discussed at the GM and the proposed draft resolutions.

As recommended in Section 12.2.7, we believe shareholders should be given more time to exercise the right to add new items to the GM agenda and table draft resolutions. In our opinion, the Italian legislature should increase the response time form 10 to 15 days. (See our discussion in Section 12.2.7).

The draft LD does not amend the deadline for the publication of the shareholder additions by the company as we recommended (see Section 12.2.7). In fact, the proposed 126-bis of the CLFI requires companies to issue a notice of the shareholders' additions at least 10 days before the GM; this must be done in the same manners prescribed for the publication of the GM notice. Within the same deadline, the board of directors must publish the report submitted by shareholder accompanied by their comments, if any. The report must be published in the same manner as the publication of the GM notice (see Section 13.4) and made available to the public at the company's registered office.

We recommend that the Italian legislature considers the entire timeline for the exercise of rights to add new items to the GM agenda and table draft resolutions which we propose in Section 12.2.7 above, and amend Article 126-bis of the CLFI accordingly.

Under the proposed Article 126-bis of the CLFI, shareholder requests must be submitted in writing also following what is prescribed by special laws regulating electronic documents. We recommend that the Italian legislature clarify in Article 126-bis that the right must be exercised by sending a written request to the company either by mail (in hard copy form) or by electronic means (fax or email). Consob Regulation of Issuers could then further clarify these requirements.

13.12 Right to ask questions related to items on the GM agenda

In Section 12.2.8, we discuss how, in our opinion, the Italian legislature should regulate the shareholder right to ask questions related to items on the GM agenda before and during the GM.

Under the proposed Article 127-ter of the CLFI, directors are required to answer questions related to items or draft resolutions on the GM agenda asked during the GM. The company's articles of association may establish the shareholder right to ask questions before the GM. Questions asked before the GM are answered during the GM, unless the company's articles of association state

otherwise.

In regulating that no answer has to be given at the GM if the relevant information is already available on the company's web site, the Italian legislature should clarify that the relevant information must be available on the company's web site:

- in a question and answer format; and

- for a period of at least 8 days prior to the GM and during the GM. (See our discussion in Section 12.2.8)

With regard to the right to ask questions before the GM, we suggest that the Italian legislature follows our recommendations in Section 12.2.8 and:

1) provided that they identify themselves in the form required by the law, allows shareholders to ask questions regarding the business to be dealt with at the GM before the meeting;

2) clarifies that questions must be sent in writing either by mail or by electronic means to the company at the mail and email addresses indicated in the GM notice; and

3) requires companies to answer any written question before the GM only if these are received in sufficient time to allow for a response to be prepared.

In regulating the right to ask questions before the GM, Article 127-ter should also clarify how shareholders have to identify themselves. In order to be allowed to exercise this right, shareholders should be required to prove the ownership of at least one voting share in the company. As a proof of ownership, rather than filing a certification of ownership in paper form with the company, shareholders should be allowed to have their intermediaries notify the company electronically (like the notification for attendance at the shareholders' meeting). (For more details, see our discussion in Section 12.2.8).

13.13 Participation and voting in absentia

13.13.1 Proxy Voting

Right to vote by proxy

In Section 8.1, we describe the Italian proxy voting system.

The draft LD amends Article 2372 of the Civil Code and:

- grants shareholders of listed companies an unfettered right to be represented at the GM and vote by proxy;

- eliminates limits on who can be appointed as a proxyholder so that shareholders of listed companies can grant a proxy also to a member of the administrative, management, or supervisory body of the company or a controlling shareholder or controlled entity; and

- establishes the right of proxyholders to hold a proxy from more than one shareholder without limitation as to the number of shareholders of a listed companies so represented.

This is consistent with our earlier recommendation in Section 12.2.9. Furthermore, we also recommend that the Italian legislature clarifies that the proxyholder enjoys the same rights to speak and ask questions during the GM as those to which the represented shareholder would be entitled.[260]

Under proposed Article 135-bis of the CLFI, a shareholder with the right to vote at the GM can appoint only one proxyholder for each meeting; represented shareholders can always indicate substitutes. However, a shareholder who holds shares of a company in more than one securities account can appoint a proxyholder for each security account, provided that for the shares credited to the account the company has received the notification for attendance at the shareholders' meeting regulated by the proposed Article 83-sexies of the CLFI. Moreover, when the person indicated as the account holder in the notification for attendance acts on behalf of a client, she can grant a proxy to each of her clients or to any third party designated by a client. If so established in the proxy form, the proxyholder can be replaced by a substitute of her choice.

As highlighted in Section 12.2.9 above, the SRD establishes an obligation for proxyholders to cast votes in accordance with the instructions issued by the appointing shareholders. We recommend that the Italian legislature gives this principle legal basis and introduces it in Article 135-bis of the CLFI.

The draft LD does not regulate the right of shareholder to appoint a proxyholder by electronic means. The proposed Article 2372 of the Civil Code establishes that the proxy must be given

[260] SRD, Article 10, paragraph 1.

in writing. As we have seen in Section 12.2.9, under the SRD, shareholders must be allowed to appoint proxyholders also by written electronic means. Therefore, we recommend that the Italian legislature amend Article 2372 of the Civil Code to clearly establish that "in writing" also includes by "written electronic means" (such as, email or fax).

Article 135-bis (paragraph 5) regulates the notification of the proxy to the company establishing that the proxyholder can deliver or send, also in electronic form, a copy of the proxy instead of the original. In doing so, the proxyholder must attest, under her own responsibility, the conformity of the copy to the original proxy and the identity of the represented shareholder; in this case the company must keep the copy of the proxy. The proxyholder must keep the original proxy and a record of the received voting instructions for one year after the end of the GM.

As required by Article 31 of the *"Legge comunitaria"* 2008 and with a wording analogous to Article 10 (paragraph 4) of the SRD, the new Article 135-ter of the CLFI regulates potential conflicts of interest between the proxyholder and the represented shareholder. See Section 12.2.9 for an analysis of the requirements established by the SRD in this regard.

Independent proxyholder appointed by the company

Under the proposed Article 135-quater of the CLFI, unless the articles of association state otherwise, listed companies appoint an independent proxyholder for each GM. Shareholders may grant the independent proxyholder a proxy by midnight of the day preceding the GM in first or single call. The proxy may include voting instructions for all or some of the resolutions on the GM agenda and is valid only for the resolutions for which the shareholder has given instructions. Proxy and voting instructions can always be revoked within the above mentioned deadline.

In order to grant a proxy to the independent proxyholder, the shareholder has to sign a proxy form whose content is established by a Consob Regulation. When the company appoints an independent proxyholder, the GM notice must include the identity of the proxyholder and state the manner through which shareholders can grant him/her a proxy clarifying that the proxy is not valid with regard to resolutions for which the shareholder has not given instructions.[261]

The proxy form is collected at the company's expense and the proxy may be granted also in the manner provided for by special laws regulating electronic documents. The independent proxyholder must not find herself in one of the situations described in Article 135-ter and must disclose any

[261] Proposed Article 125 of the CLFI.

conflict of interest that she may have with regard to the resolutions on the GM agenda. Until the beginning of scrutiny at the GM, the proxyholder must keep secret the number of proxy received and the content of the voting instructions.

Proxy solicitation In Section 8.2, we describe the rules of the CLFI and the implementing rules of the Consob Regulation of Issuers that regulate the solicitation of proxies. The draft LD substantially reorganizes the provisions of the CLFI regarding proxy solicitation and collection of proxies.

Considering the introduction of the right of proxyholders to hold a proxy from more than one shareholder without limitation as to the number of shareholders so represented (proposed Article 2372 of the Civil Code), the draft LD repeals all the rules governing the collection of proxies by shareholder associations among their own members.

With regard to the solicitation of proxies, the draft LD:[262]

(a) defines "solicitation" as the seeking of proxies on specific resolutions or accompanied by recommendations, declarations, or other indications able to influence the vote among more than 200 shareholders.[263] Therefore, the promoter is not required to solicit proxies among all the company's shareholders;

(b) abolishes the ownership requirement (1% of the share capital) for a promoter to launch a solicitation allowing any shareholder to do so;

c) abolishes the requirement for the promoter to appoint a professional intermediary to solicit proxies;

(d) establishes that votes received as a result of the solicitation are cast by the promoter; the promoter can be replaced only by a substitute expressly indicated in the proxy form ("*modulo di delega*") and in the proxy statement ("*prospetto*");

(e) establishes that the proxy may also be given for only some of the resolutions or agenda items included in the proxy form. The promoter is required to vote on behalf of the represented shareholder also for items on the agenda for which the promoter has not solicited proxies;

[262]Proposed Articles 136-138 and 142-144 of the CLFI
[263]Proposed Article 136 of the CLFI

in this case the promoter must vote according to the voting instructions given by the shareholder.[264]

Consob is given a mandate to issue a regulation on the transparency and correctness of the solicitation. During the revision of Articles 134-138 of the Regulation of Issuers, Consob should regulate potential conflicts of interest between the promoter and the represented shareholders ensuring adequate transparency and disclosure according to what is established by proposed Article 135-ter of the CLFI.

As we highlight in Section 8.2, in Italy, the request for proxy solicitation is not included in the company's proxy documents; the promoter bears all the expenses of the solicitation. We believe the proposed changes are in the right direction as they tend to reduce the cost of proxy solicitation.

13.13.2 Voting by correspondence or electronically prior to the GM

In Section 8.3.1, we describe the provisions that regulate postal voting under the Italian law.[265]

The new Article 127 of the CLFI (as amended by the draft LD) establishes that, unless the articles of association state otherwise, the right to vote at the GM can be exercised also by correspondence or electronically. The Consob has to establish by means of Regulation the modalities to exercise the vote and the functioning rules of the GM.

Therefore, the articles of association of Italian listed companies may exclude the shareholder right to vote by correspondence (in hard copy form) or by electronic means (such as via fax or email).

Even though the SRD requires EU Member States to "permit companies to offer their shareholders the possibility to vote by correspondence in advance of the GM", in our opinion, the Italian legislature should require listed companies to establish in their articles of association the shareholder right to vote in absentia by correspondence either by post or electronically. We therefore recommend that the Italian legislature revise Article 127 of the CLFI as proposed in the draft LD following the recommendations that we give in Section 12.2.11.

[264] *"Attuazione della direttiva 2007/36/CE relativa all'esercizio di alcuni diritti degli azionisti di societá quotate, Seconda Consultazione, 24 July 2009"* (Implementation of the Directive 2007/36/CE regarding the exercise of certain voting rights of the shareholders of listed companies, Second Consultation). The Consultation Document is available at http://www.dt.tesoro.it

[265] Article 2370 of the Civil Code, Article 127 of the CLFI, and Articles 139-143 of the Consob Regulation of Issuers.

13.13.3 Participation in the GM by electronic means: electronic meetings and direct electronic voting

Under Article 2370 of the Civil Code (as amended by the draft LD), the company's articles of association may allow shareholder participation in the GM by electronic means.

Even though, under the SRD, EU Member States must permit (not require) companies to offer to their shareholders a form of participation in the general meeting by electronic means, in our opinion, the Italian legislature should establish a provision requiring listed companies to offer their shareholders any or all of the forms of participation in the GM by electronic means provided for in Article 8 (paragraph 1) of the SRD. The Consob should be given a mandate to issue implementing provisions regulating the mechanism for the participation in the GM and the exercise of voting rights prior to and during the GM by electronic means.(See our discussion in Section 13.13.3)

13.14 GM Minutes and voting results

In Section 10.1, we describe the formalities for the publication of GM minutes and voting results under the Italian law.

In the consultation document, the Department of Treasury specifies that the Italian law is fully in compliance with Article 14 of the SRD except for the requirement to publish the voting results on the company's web site within 15 days of the GM. Proposed Article 125-ter of the CLFI establishes that voting results must be made available on the company's web site within 15 days of the GM omitting the name of the participants in the GM who voted in favor, against, or abstained. The full list of names of the persons who voted in favor, against, or abstained, must be made available to shareholders who request it.

In Section 12.2.12 we discuss our recommendations to the Italian legislature regarding disclosure of GM minutes. Moreover, since under Italian law the voting results have to be included in the GM minutes (also as an attachment),[266] we recommend that the Italian legislature establishes the same requirements for the publication of GM minutes and voting results. (See our discussion in Section 12.2.12)

[266] Article 2375 of the Civil Code, and Article 85 and Annex 3E of the Consob Regulation of Issuers

13.15 Concluding remarks: Towards "straight through processing"

As pointed out in the introduction to this report, it is useful to benchmark the efficiency of a given voting system against the alternative of "straight-through processing" (automatization of the entire voting process from start to finish). A key element of straight-through processing systems is a centralized share registry (the Central Security Depository or CSD). While virtually all modern capital markets operate through a CSD today, the rule of the CSD in the voting chain may sometimes be improved. In a centralized registration system, the CSD keeps the official shareholder book thus giving companies instant access to updated information on the company's shareholder base. In other words, a centralized system eliminates the need for other and more costly shareholder identification processes. Therefore, we recommend that Italy moves to adopt a centralized CSD system.

We believe the transposition of the SRD represents a unique opportunity for Italy to make voting at the GM of Italian listed companies a low-cost and effective straight trough process. We strongly urge the Italian legislature to use the SRD adaptation process to move towards straight through processing. To do so, Italy should exploit all the available technological capabilities. An example of a currently available technology is a direct electronic voting platform, offered by individual companies rather than by middlemen; this will substantially economize on voting costs. Italian listed companies should start granting this service to their shareholders in order to attract more foreign capital and be competitive on the European market. The objective is to create a system where it is possible for shareholders to have a vote audit trail and end-to-end confirmation of votes.

14 Market practice of large Italian listed companies

In this section we provide detailed information, in table format, on the market practices referenced throughout the report for our sample of twelve Italian listed companies. The companies are: Assicurazioni Generali, Atlantia, Banca Popolare Di Milano, Banco Popolare, Enel, ENI, Fiat Group, Intesa Sanpaolo, Saipem, Telecom Italia, UniCredito Italiano and Unione di Banche Italiane (UBI Banca). These companies are among the largest in Italy. The sample includes three cooperative banks (Banca Popolare Di Milano, Banco Popolare and Unione di Banche Italiane) as these banks

are subject to special governance regulations.

Market practice information for the year 2008 is collected from (1) the companies' web pages, (2) filings to the Italian Stock Exchange (Borsa Italiana), and (3) releases in the Official Gazette (Gazetta Ufficiale Della Republica Italiana). While most companies publish information in English in addition to in Italian, for some companies we were unable to find all the information we required in English.

The report summarizes the following type of information:

- Articles of association/Bylaws.
- Notice of the general meeting 2008. We found no English version for Banco Popular.
- Press release, summary and/or minutes from the general meeting 2008. Not all firms provide the full minutes in English, and we did not find the full minutes in Italian for Fiat and Unione di Banche Italiane.
- Corporate Governance Codes.
- Corporate Governance Reports for 2007.
- Information on ownership structure.

The market practice information is organized in tables 3—10 attached to this report. The tables also include references to laws and regulations. Each table covers the following topics:

- Table 3: Corporate governance structure, board committees and director independence (general discussion in Section 3)
- Table 4: Share classes and ownership structure (Section 3)
- Table 5: Calling a General Meeting (Section 6)
- Table 6: Shareholders' rights and dissemination for GM related information (Section 3 and Section 6)
- Table 7: Criteria for participation and voting in the GM (Section 7)
- Table 8: Ways to vote at the general meeting (Section 8)

- Table 9: Functioning rules of the general meeting (Section 9)
- Table 10: Disclosure of minutes and results (Section 10)

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Table 1

Italy's Regulatory Framework: Company Law, Stock Exchange Listing Rules, Central Securities Depository (CSD) Regulations, and Corporate Governance Code and Guidelines

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1. COMPANY LAW

The Italian Civil Code of 1942
The Civil Code (as amended and integrated by several subsequent laws) regulates the Italian public limited company.

Consolidated Law on Financial Intermediation - CLFI (Legislative Decree No. 58 of February 24, 1998) The Decree significantly reformed the law related to listed companies. It has been lastly amended by Decree Law no. 185 of November 2008 and came into force on November 29, 2008.

Euro Decree (Legislative Decree No. 213 of 1998)
The Decree introduced provisions for the introduction of the EURO into the national legal system and a mandatory dematerialization of the securities of Italian listed companies.

Ministerial Decree No. 437 of 1998
The decree introduced provisions regarding terms and ways to convene general meetings of listed companies.

Legislative Decrees No. 5 and 6 of January 17, 2003
These Decrees introduced a general reform of the Italian corporate governance.

Savings Law (Law No. 262 of 2005)
The law amended the Civil Code and the CLFI and introduced important provisions regarding listed companies' governing and controlling bodies and shareholder rights.

Legislative Decree No. 195 of 2007[267]
The Decree implemented the Transparency Directive[268]

Legislative Decree No. 229 of 2007[269]
The Decree implemented the Directive on Takeover Bids.[270]

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[267]Legislative Decree No. 195 of 2007 "Implementation of the Directive 2004/109/EC on the harmonization of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC". Available at www.consob.it.

[268]Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 (known as Transparency Directive). The directive introduced rules on the harmonization of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC. Available at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:390:0038:0057:EN:PDF.

[269]Legislative Decree No. 229 of November 19, 2007 "Implementation of the Directive 2004/25/CE regarding takeover bids". Available at www.consob.it.

[270]Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids. Available at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0025:EN:HTML.

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Community Law (*"Legge comunitaria"*) 2008 (Law No. 88 of July 7, 2009 - Full title: "Disposizioni per l'adempimento di obblighi derivanti dall'appartenenza dell'Italia alle Comunita' europee - Legge comunitaria 2008")
The *"Legge comunitaria"* is the principal instrument of transposition of the European Union Law into the Italian law system. This law came into force on July 24, 2009.[271]

Consob Regulation No. 11768 of 23 December 1998
This Regulation implements the provisions on markets of the Legislative Decree No. 58 of 1998 and Legislative Decree No. 213 of 1998. The text of the Regulation has been completely replaced in 2008.

Consob Regulation No. 11971 of 14 May 1999
This regulation implements the provisions of issuers of the Legislative Decree No.58 of 1998. The text of the Regulation has been last modified and integrated by Consob Resolutions No. 16840 of 19 March 2009, No. 16850 of 1 April 2009, and No. 16893 of 14 May 2009.

Consob Regulation No. 16191 of 29 October 2007
This Regulation implements the provisions on markets of the Legislative Decree 58 of 24 February 1998.[272] The text of the Regulation has been last amended by Consob Resolution No. 16530 of June 25, 2008.

Rules Governing Central Depositories, Settlement Services, Guarantee Systems and Related Management Companies of February 22, 2008[273]
The rules have been jointly issued by the Bank of Italy and Consob.

2. STOCK EXCHANGE LISTING RULES

Rules of the Markets Organized and Managed by Borsa Italiana[274]
The most up to date version of the Rules came into force on June 22, 2009.

Instructions accompanying the Rules of the Markets organized and managed by Borsa Italiana[275]
The most up to date version of the Instructions came into force on June 22, 2009.

[271] Available at http://www.senato.it/parlam/leggi/messaggi/c2320a.htm.
[272] Available at www.consob.it (last accessed on April 2009).
[273] Available at www.consob.itdocumentienglishlawsbi_consob_post_trading_20080222.htm.
[274] Available at www.borsaitaliana.it (last accessed on April 2009)
[275] Available at www.borsaitaliana.it (last accessed on April 2009).

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3. CENTRAL SECURITIES DEPOSITORY (CSD) REGULATIONS

Centralized Administration Services Terms and Conditions[276]
The Terms and Conditions have been approved by Monte Titoli's Board of directors and came into force on October 31, 2008.

Manuale dei Servizi - Gestione Accentrata ("Services Manual - Central Administration")[277]
The Services Manual has been issued by Monte Titoli in December 2004.

4. THE CORPORATE GOVERNANCE CODE AND GUIDELINES

Corporate Governance Code of March 14, 2006[278]
The Code has been issued by the Corporate Governance Committee, Borsa Italiana S.p.A, and replaces the Corporate Governance Code issued in 1999 and amended in 2002.

Guidelines for the Preparation of the Report on Corporate Governance of February 2002[279]
The Guidelines have been published by Borsa Italiana and are based on Italian and international best practice that issuers of listed shares can follow in preparing their annual reports on corporate governance.[280]

Handbook on Corporate Governance Reports of February 2004[281]
The handbook has been published by Borsa Italiana and Assonime (the Italian Association of Listed Companies).

[276] Available at www.montetitoli.it (last accessed on April 2009).
[277] Available at www.montetitoli.it (last accessed on April 2009).
[278] Available at www.borsaitaliana.itchisiamoufficiostampacomunicatistampa2006codiceautodisciplina.en_pdf.htm
[279] Available at www.borsaitaliana.itoldpdfitsubsitesocietquotateeiposcorporategovernancelineeguidainglese_pdf.htm.
[280] The principles set out are therefore not binding on listed companies. The aim of the document is to contribute to the establishment of a standard of disclosure of information on corporate governance that will enable investors to assess and compare different models of corporate governance more effectively.
[281] Available at www.borsaitaliana.itdocumentiregolamenticorporategovernanceguidaassonimecorpgovfebbr2004en.en_pdf.htm.

Table 2
Shareownership structure of Italian listed companies at the end of 2006

Types of shareholders	**% of Italian Stock Exchange capitalization held**
Individual Investors/Households	27%
Public Sector	10%
Private Non-Financial companies/organization	26%
Private Financial enterprises	23%
Foreign Investors	14%

Source: "Shareownership Structure in Europe", Federation of European Securities Exchanges (FESE), December 2008

Table 3
Corporate governance structure, board committees and director independence

Recap (Section 3): Italian companies have three possible governance structures from which to choose. These structures are distinguished by the make up of the board, control of the audit, and establishment of various committees, among other governance issues. The governance structure selected by a respective company also impacts how the annual general meeting operates. The revised Italian Corporate Governance Code provides new definitions for roles, powers, and composition of the board of directors and its internal committees, as well as of the board of auditors. Italian law and the governance code demand a certain level of independence by directors:

- For one-tier companies, at least 1/3 of the members of the board of directors must meet specific requirements of independence.
- For two-tier companies, when the members of the management board are more than 4, one of them must meet specific requirements of independence.
- For companies with a traditional governance structure, at least one of the members of the board of directors, or two if the board of directors is composed of more than seven members, should satisfy specific independence requirements.

Companies may in their articles of association include additional independence requirements as established in codes (such as the Corporate Governance Code) drawn up by Borsa Italiana, market regulators or trade associations. Such requirements are strongly recommended by the Corporate Governance Code. Companies with a traditional governance structure must have a board of auditors elected by the GM with the function to supervise the board of directors. There are no regulations requiring a separation of the functions of CEO and Chairman. The Corporate Governance Code recommends avoiding the concentration of corporate powers one single individual. None of the companies in our sample have combined the two roles within the same individual.

Table abbreviations: AoA- Articles of Associations; BoD - Board of Directors; BoA - Board of Auditors; GM - General Meeting; OGM - Ordinary General Meeting; EGM - Extraordinary General Meeting; CG Code - the local corporate governance code; FY- Financial Year.

	Governance Structure	**Board of Directors' Committees**	**Board of Directors: Size, Tenure and Director Independence**	**Board of Auditors: Size**
Sample				
ENI	Traditional structure	1) Internal Control and 2) Compensation	**In AoA:** BoD to consist of between 3 and 9 members as decided by the GM. Directors elected for up to 3 years. If BoD size is 5 or less; at least 1 director to be independent. If BoD size is more than 5, at least 3 directors to be independent.	**In AoA:** BoA to consist of 5 effective members and 2 alternate members. Professional and honor requirements as set forth by Ministerial Decree nr 162. The Chairman of the BoA to be elected as based on described procedures.
UniCredito Italiano	Traditional structure	1) Internal Control/ Risk, 2) Strategic, 3) Corporate Governance, Human Resources, and Nomination and 4) Remuneration	**In AoA:** BoD to consist of between 9 and 24 members as decided by the GM. Directors elected for 3 years. At least 3 directors to meet independence criteria as established by law and at least 5 directors to meet independence criteria as indicated by the Corporate Governance Code.	**In AoA:** BoA to consist of 3 effective members and 2 alternate members. The Chairman of the BoA to be elected as based on described procedures.

Table 3 continued from previous page

	Governance Structure	**Board of Directors' Committees**	**Board of Directors: Size, Tenure and Director Independence**	**Board of Auditors: Size**
Intesa Sanpaolo	Two-tier structure	1) Control, 2) Strategy, 3) Financial Statement, 4) Nomination and 5) Remuneration	**In AoA: Management Board** to consist of between 7 and 11 members as decided by the Supervisory Board. Members elected for 3 years. At least 1 member of the Management Board must meet independence criteria as established by law. **Supervisory Board** to consist of between 15 and 21 members as decided by the GM. Directors elected for 3 years. Must meet independence criteria as established by law and at least 6 members to meet independence criteria as indicated by the Corporate Governance Code and at least 4 directors to be auditors	NA
Enel	Traditional structure	1) Internal Control and 2) Compensation	**In AoA:** BoD to consist of between 3 and 9 members as decided by the GM. Directors elected for up to 3 years.	**In AoA:** BoA to consist of 3 effective members and 2 alternate members. Professional and honor requirements as set forth by Ministerial Decree nr 162. The Chairman of the BoA to be elected as based on described procedures.
Assicurazioni Generali	Traditional structure	1) Internal Control and 2) Remuneration	**In AoA:** BoD to consist of between 11 and 21 members as decided by the GM. Directors elected for 3 years. At least 1/3 must meet independence criteria as established by law.	**In AoA:** BoA to consist of 3 effective members and 2 alternate members. Their functions, duties and terms of office are defined by the law. The Chairman of the BoA to be elected from the minority list.
Telecom Italia	Traditional structure	1) Executive, 2) Internal Control, 3) Disclosure and 4) Appointment and Remuneration	**In AoA:** BoD to consist of between 7 and 19 members as decided by the GM.	**In AoA:** BoA to consist of 5 effective members and 4 alternate members. Their functions, duties and terms of office are defined by the law. The Chairman of the BoA to be elected from the minority list.

Table 3 continued from previous page

	Governance Structure	**Board of Directors' Committees**	**Board of Directors: Size, Tenure and Director Independence**	**Board of Auditors: Size**
Fiat Group	Traditional structure	1) Internal Control, 2) Strategic, 3) Nominating and CG and 4) Compensation	**In AoA:** BoD to consist of between 9 and 15 members as decided by the GM.	**In AoA:** BoA to consist of 3 effective members and 3 alternate members. Their functions, duties and terms of office are defined by the law. The Chairman of the BoA to be elected as based on described procedures.
Atlantia	Traditional structure	1) Internal Control and CG, 2) Remuneration and 3) Environmental and Social Responsibility	**In AoA:** BoD to consist of between 7 and 15 members as decided by the GM. Directors elected for 3 years. If BoD size is 7 or less; at least 1 director to be independent. If BoD size is more than 7, at least 2 directors to be independent.	**In AoA:** BoA to consist of 5 effective members and 2 alternate members. Elected for 3 years. The Chairman of the BoA to be elected as based on described procedures.
Saipem	Traditional structure	1) Audit and 2) Compensation	**In AoA:** BoD to consist of between 5 and 9 members as decided by the GM. Directors elected for 3 years. If BoD size is 7 or less; at least 1 director to be independent. If BoD size is more than 7, at least 3 directors to be independent.	**In AoA:** BoA to consist of 3 effective members and 2 alternate members Professional and honor requirements as set forth by Ministerial Decree nr 162. The Chairman of the BoA to be elected as based on described procedures.
Unione di Banche Italiane (UBI Banca)	Two-tier structure	1) Internal Audit, 2) Accounting, 3) Appointments and 4) Remuneration	**In AoA: Management Board** to consist of between 7 and 11 members as decided by the Supervisory Board. Members elected for 3 years. At least 1 member of the Management Board must meet independence criteria as established by law. **Supervisory Board** to consist of 23 members. Directors elected for 3 years. Must meet independence criteria as established by law and at least 3 directors to be auditors.	NA

Table 3 continued from previous page

	Governance Structure	**Board of Directors' Committees**	**Board of Directors: Size, Tenure and Director Independence**	**Board of Auditors: Size**
Banco Popolare	Two-tier structure	1) Audit and 2) Nomination and Remuneration	**In AoA: Management Board** to consist of 12 members. Members elected for 3 years. At least must meet independence criteria as established by law. **Supervisory Board** to consist of 20 members. AoA includes a specification on which provinces the members should be from. Directors elected for 3 years. All must meet independence criteria as established by law, at least 4 members to meet independence criteria as indicated by the Corporate Governance Code and at least 2 directors to be auditors.	NA
Banca Popolare di Milano	Traditional structure	1) Executive, 2) Internal Control, 3) Financing, 4) Remuneration and 5) Members' relations	**In AoA:** BoD to consist of between 16 and 20 members as decided by the GM. Directors elected for 3 years.	**In AoA:** BoA to consist of 5 effective members and 4 alternate members. Elected for 3 years. The Chairman of the BoA to be elected as based on described procedures.

Table 4
Share classes and ownership structure

Recap (Section 3): Italian companies can issue ordinary shares, preference shares (normally without voting rights) and saving shares (non-voting preference shares). Six of the twenty largest companies have issued non-voting preference shares. Recently listed companies seem to issue one type of share only. Preference and saving shares holders only have the right to vote at meetings that directly affect their interests, in extraordinary meetings for savings shares and special meetings for saving shares. Saving shares can be in bearer form. Ownership and voting limits on ordinary shares are allowed. Among the twenty largest companies, six operate with ownership ceilings, two with voting right ceilings and four have holders with special rights ("golden shares"). No company issue ordinary shares with multiple voting rights. Cooperative banks have an ownership limit of 0.5%. Golden shares are issued to the Ministry of Economy and Finance (MoEF) including its subsidiary CDP at several companies. (Information on top twenty companies taken from the 'Report on the Proportionality Principle in the European Union,' at http://ec.europa.eu/internal_market/company/docs/shareholders/study/final_report_en.pdf.)

Table abbreviations: AoA- Articles of Associations; BoD - Board of Directors; BoA - Board of Auditors; GM - General Meeting; OGM - Ordinary General Meeting; EGM - Extraordinary General Meeting; CG Code - the local corporate governance code; FY- Financial Year; MoEF-Ministry of Economy and Finance.

	Classes of shares	**Limitations on ownership and voting rights**	**Ownership structure (as of end 2007 or newer if available on company web-page)**	**Other control enhancing structures Part of pyramid structure Shareholder agreements**
Sample				
ENI	Ordinary	**In AoA:** Ownership limit 3% (except for the MoEF/CDP). **Golden share:** The Ministry has veto power on certain issues and can appoint one board member with no voting rights.	Italian 62%: (MoEF 20%, CDP 10%, Others 32%) Foreign 38%: 4 shareholders holding >2%	Part of pyramid MoEF controls 10% though direct ownership as well as 7% through 70% ownership in CDP (holding 10% in ENI)
UniCredito Italiano	Ordinary and . Saving with no voting rights (0.3% of share capital)	In AoA: Voting cap 5%	Italian 45% Foreign 55% Individuals 97% 5 shareholders holding >2%	No other structures
Intesa Sanpaolo	Ordinary shares and saving shares (7% of share capita)l.	**In AoA:** Each share entitle its owner to one vote	9 shareholders holding >2%, the largest one holds 8%. No other shareholder information on web-page.	Part of pyramid Shareholder agreement
Enel	Ordinary shares	**In AoA:** Ownership limit of 3% (except for the Ministry of Economy and Finance/CDP). **Golden share:** The Ministry has veto power on certain issues and can appoint one board member with no voting rights.	Italian 20%: (MoEF 21%, CDP: 10 %) Foreign 80% Retail investors 35%, Institutional investors: 34 %	Part of pyramid MoF controls 21.4% though direct ownership as well as 14% through 70% ownership in CDP (holding 20% in ENEL)

Table 4 continued from previous page

	Classes of shares	**Limitations on ownership and voting rights**	**Ownership structure (as of end 2007 or newer if available on company web-page)**	**Other control enhancing structures Part of pyramid structure Shareholder agreements**
Assicurazioni Generali	Ordinary shares	**In AoA:** Each share entitle its owner to one vote	Italian 72% Foreign 28% Retail shareholders 35% Institutional 31% 7shareholders >2% (total 34%)	Shareholder agreement
Telecom Italia	Ordinary and Savings (31% of share capital)	**In AoA:** Nothing on voting rights **Golden share:** The Ministry has veto power on certain issues.	Italian 69%: (Institutional l6%, TELCO 25%, Others 28%) Foreign 31% 2 shareholders >2%	Part of pyramid Shareholder agreement
Fiat Group	Ordinary, Savings (8% of share capital) with no voting rights and Preference (6.2% of share capital) with voting rights on EGMs	**In AoA:** Nothing on voting rights	IFIL Investments: 30% FMR LLC: 5% Institutional investors EU: 29% 5 shareholders¿ 2% (total 71%)	Part of pyramid
Atlantia	Ordinary shares	**In AoA:** Nothing on voting rights	Sintonia 38% Abertis 7% Fondazione 7% Aabar Investments 3% Generali 3% Free float 40%	
Saipem	Ordinary and Saving (less than 1% of share capital) with no voting rights	**In AoA:** Nothing on voting rights	Eni: 43% 3 shareholders >2% (total 52%)	
Unione di Banche Italiane (UBI Banca)	Ordinary	**In AoA:** No Shareholder is allowed to hold a number of shares greater than the maximum number allowed by the law (ie 0.5%). The Shareholders is entitled to one vote whatever the number of shares held.	No shareholder can hold more than 0.5%	

Table 4 continued from previous page

	Classes of shares	**Limitations on ownership and voting rights**	**Ownership structure (as of end 2007 or newer if available on company web-page)**	**Other control enhancing structures Part of pyramid structure Shareholder agreements**
Banco Popolare	Ordinary	**In AoA:** No Shareholder is allowed to hold a number of shares greater than the maximum number allowed by the law (ie 0.5%). The Shareholders is entitled to one vote whatever the number of shares	No shareholder can hold more than 0.5%	
Banca Popolare di Milano	Ordinary and Saving	**In AoA:** Ownership limit of 0.5%. The Shareholders is entitled to one vote whatever the number of shares.	No shareholder can hold more than 0.5%	

Table 5
Calling a General Meeting

Recap (Section 6): For all the sample companies, general meetings are called for 1st, 2nd and (sometimes) 3rd call in the initial notice. Meetings were normally held on second call due to quorum not being met on first call. Some companies send out an additional very brief notice for the second/third call.

Table abbreviations: AoA- Articles of Associations; BoD - Board of Directors; BoA - Board of Auditors; GM - General Meeting; OGM - Ordinary General Meeting; EGM - Extraordinary General Meeting; CG Code - the local corporate governance code; FY- Financial Year.

	Meeting date	**Power to convene a GM**	**GM Notice (Notification date)**	**GM Notice (Publication)**
Laws and regulations	**OGM:** Within 120 days of end FY. Within 180 days if certain conditions are met. **EGM:** Without delay. Within 30 days if requested by shareholders	**One-tier/Traditional:** BoD **Two-tier:** Management Board normally or Supervisory Board if certain conditions are met. **Shareholders** representing $\geq$ 10% of the share capital. AoA may state a lower threshold. **The Court** may call if the board fails to call as requested.	**OGM and EGM:** At least 30 days prior to the meeting. Meeting must be reconvened within 30 days if first notice does not include date for second call and this notice must be at least 8 days before the GM date. **Exceptions: At least** 20 days prior to the meeting for a GM convened to vote on the liquidation of the company and 15 days for a GM related to a takeover. **GM requested by shareholders:** At least 20 days prior to the meeting.	Official Gazette or at least one newspaper indicated in the AoA. Borsa Italiana: To receive the notice one day before the publication in the press. CONSOB recommendation: At least two newspapers (of which one should be a financial paper). No obligation to send to registered shareholders.
Market practice	**In AoA:** Within 120 days after the financial year. OGMs normally held in the second half of April.	AoA do not normally state a lower threshold for shareholder right to request an EGM.	Large companies normally state at least 2 weeks in the AoA, but they normally give the notice at least 5 weeks before the meeting.	Normal to only state the Official Gazette as required publication in the AoA. Normal to publish in other newspapers, which normally mentioned in the minutes of the GM.
Company Sample				
ENI	**In AoA:** OGM within 180 days after the accounting year end.	**In AoA:** Not mentioned.	03.04.08 (10 weeks) The first notice includes date for second call. New notice (short) for second call.	**In AoA:** The Official Gazette or Il Sole 24 Ore, Corriere della Sera and Financial Times. **In GM minutes:** The Official Gazette, Il Sole 24 Ore, La Repubblica, Corriere della Sera, Milano Finanza, Financial Times and The Wall Street Journal.

Table 5 continued from previous page

	Meeting date	**Power to convene a GM**	**GM Notice (Notification date)**	**GM Notice (Publication)**
UniCredito Italiano	**In AoA:** Within the terms of law	**In AoA:** Not mentioned.	27.03.08 (6 weeks) The first notice includes date for second and third call. New (short) notice for second call.	**In AoA:** The Official Gazette
Intesa Sanpaolo	**In AoA:** OGM within 120 days after the accounting year, but can be extended to 180 days if required so based on law.	**In AoA:** GM called by Mngmt Board, but can also be called by Supervisory Board. Shareholders representing >5% of share capital can request an EGM.	27.03.08 (5 weeks) The first notice includes date for second call. New notice (short) for second call.	**In AoA:** The Official Gazette and Il Sole 24 Ore **In GM minutes:** The Official Gazette, Il Sole 24 Ore, La Stampa, Corriere della Sera, Financial Times and The Wall Street Journal.
Enel	**In AoA:** OGM within 120 days after the accounting year end.	**In AoA:** Not mentioned.	26.04.08 (6 weeks) The first notice includes dates for second and third call. New notice (short) for second call.	**In AoA:** The Official Gazette **In GM minutes:** The Official Gazette, Il Sole 24 Ore, La Repubblica and Corriere della Sera
Assicurazioni Generali	**In AoA:** OGM within 120 days after the accounting year, but can be extended to 180 days if required so based on law.	**In AoA:** GM called by BoD, can also be called by Board of Auditors. Shareholders representing the quorum required by law can request an EGM.	20.03.08 (5 weeks) The first notice includes dates for second and third call. New notice (short) for second call.	**In AoA:** The Official Gazette **In GM minutes:** The Official Gazette, Il Sole 24 Ore and Il Piccolo
Telecom Italia	**In AoA:** Not mentioned.	**In AoA:** GM called by BoD and when required in accordance with the law.	11.03.08 (5 weeks) The first notice includes date for second call. No new notice.	**In AoA:** Not mentioned **In GM minutes:** The Official Gazette, La Repubblica, Corriere della Sera, Il Sole 24 Ore, Milano Finanza, Finanza & Mercati and Financial Times.
Fiat Group	**In AoA:** OGM within 120 days after the accounting year.	**In AoA:** GM called by BoD and when required in accordance with the law.	27.02.08 (5 weeks) The first notice includes dates for second call. No new notice.	**In AoA:** The Official Gazette or La Stampa and Il Sole 24 Ore

Table 5 continued from previous page

	Meeting date	**Power to convene a GM**	**GM Notice (Notification date)**	**GM Notice (Publication)**
Atlantia	**In AoA:** OGM within 120 days after the accounting year, but can be extended to 180 days if required so based on law.	**In AoA:** GM called by BoD, can also be called by Board of Auditors.	20.03.08 (5 weeks) The first notice includes date for second call. New notice (short) for second call.	**In AoA:** The Official Gazette or Il Sole 24 Ore **In GM minutes:** Il Sole 24 Ore, Milano Finanza and Finanza & Mercati.
Saipem	**In AoA:** OGM within 120 days after the accounting year, but can be extended to 180.	**In AoA:** GM called by BoD.	20.03.08 (5 weeks) The first notice includes date for second call. New notice (short) for second call.	**In AoA:** Il Sole 24 Ore, Corriere della Sera and and la Republica. **In GM minutes:** Il Sole 24 Ore, La Repubblica and Corriere della Sera.
Unione di Banche Italiane (UBI Banca)	**In AoA:** OGM within 120 days after the accounting year, but can be extended to 180.	**In AoA:** GM called by Mngmt Board or Supervisory Board. Shareholders representing >10% can request an EGM to be called which must be called within one month of the request.	02.04.08 (4 weeks/28 days) The first notice includes date for second call. No new notice.	**In AoA:** The Official Gazette
Banco Popolare	**In AoA:** OGM within 120 days after the accounting year, but can be extended to 180 days if required so by law.	**In AoA:** GM called by Mngmt Board or Supervisory Board. Shareholders representing >5% can request an EGM to be called.	01.04.08 (5 weeks) The first notice includes date for second call. No new notice. Notice only in Italian.	**In AoA:** The Italian Official Gazette and at least one daily newspaper. **In GM minutes:** The Official Gazette, Avenire, Milano Finanza and some local newspapers.
Banca Popolare di Milano	**In AoA:** OGM within 120 days after the accounting year.	**In AoA:** GM called by BoD. Must call an EGM if more than 2000 shareholders with voting rights ask for it.	19.03.08 (5 weeks) The first notice includes date for second call. No new notice.	**In AoA:** The Italian Official Gazette or Il Sole 24 Ore. In two national newspapers.

Table 6
Shareholders' rights and dissemination for GM related information

Recap (Section 3 and Section 6): Under Italian law, there is no limit placed on the shareholder right to ask questions related to items on the agenda before and during the general meeting. In fact, the Italian law does not address how the GM should function. Shareholders of Italian companies may submit proposals before the general meeting. The proposals can not be on matters mandatory for the GM or that are covered by proposals from the BoD. Shareholders representing at least the share of capital as stated in the company's AoA may present their own list of candidates for the BoD. Each shareholder can only participate in the presentation of one list, each candidate can only appear on one list and shareholders can only vote on one list. BoD is required to assign at lest one board seat to a director from the shareholder list receiving most votes. The member elected from the shareholder list must satisfy specific requirements of integrity, experience and independence. The articles of association specify the rules for how the election takes place. For companies with traditional governance structure, shareholders may also present their own list of candidates and for the board of statutory auditors (BoA). The presentation, deposit and publication of candidate lists for the board of auditors are the same procedures as for candidates for the BoD.

Table abbreviations: AoA- Articles of Associations; BoD - Board of Directors; BoA - Board of Auditors; GM - General Meeting; OGM - Ordinary General Meeting; EGM - Extraordinary General Meeting; CG Code - the local corporate governance code; FY- Financial Year.

	Shareholder proposal	**Shareholder candidates for the BoD and Statutory Auditors**	**Annual report/GM related information When before the GM**
Laws and regulations	At least 2.5% of the share capital represented Within 5 days from the publication of the GM notice Company must send out notice of added items at least 10 days before the meeting.	Mandatory to adopt the "Voto di Lista" mechanism. Threshold: To be given in the AoA, depends on size of company, but may not be above 2.5%. The company must make the list available at the office, the web-page and at the stock exchange at least 10 days before the GM.	The agenda, the financial statement, the director and auditor reports must be made available at the latest 15 days before the GM. Information related to certain extraordinary operations must be made available at least 30 days before the GM. The compensation plan must be made available at the latest 15 days before the meeting, a press release to be sent to Borsa Italiana and published on the company's web-page.
Market practice	Shareholder proposals has not been very common in Italy	List must normally be deposited at the company 10 or 15 days before the GM. It varies for when the proof of ownership must be given, but very often is must be given when the list is deposited. It is market to publish the notice in one or more Italian newspapers.	Financial statement normally available as soon as adopted by the BoD. Annual report available normally 2-3 weeks in advance of the GM.

Table 6 continued from previous page

	Shareholder proposal	**Shareholder candidates for the BoD and Statutory Auditors**	**Annual report/GM related information When before the GM**
Sample			
ENI	**In AoA:** The right to propose resolutions are set out. **In GM Notice:** The right to propose resolutions is mentioned.	**In AoA:** Threshold: At least 1% of share capital Deposit list: At company at least 10 days before the date of first call. Publish: In at least 3 Italian newspapers within the deposit deadline. Entitlement: At company at least 5 days before the date of first call. **In Notice:** The right to propose list of board candidates is mentioned.	23.05.08: (2 weeks): Annual Report and agenda related documentation available at the company office, web-page and at the stock exchange. **In AoA:** The BoD own slate of directors must be published in at least 3 Italian daily newspapers at least 20 days before first call date.
UniCredito Italiano	**In AoA:** The right to propose resolutions are set out. **In Notice:** Nothing mentioned on shareholder proposals.	**In AoA:** Threshold: At least 0.5% of share capital. Deposit list: At company at least 15 days before the date of first call. Publish: In at least 2 Italian newspapers within the deposit deadline. Entitlement: When list is deposited **In Notice:** The right to propose list of board candidates are mentioned.	11.04.08 (2.5 weeks): Annual report and agenda related documentation available at company office, web page and the stock exchange. **In AoA:** The procedure of the BoD own slate not specified.
Intesa Sanpaolo	**In AoA:** The right to propose resolutions are set out. **In Notice:** Nothing mentioned on shareholder proposals.	**In AoA:** Threshold: At least 0.5% of share capital. Deposit list: At company at least 15 days before the date of first call. Publish: Not specified. Entitlement: When list is deposited **In Notice:** Nothing mentioned	11.04 08 (2.5 weeks): Annual report and agenda related documentation available at company office and the stock exchange. **In AoA:**The procedure of the BoD own slate not specified.
Enel	**In AoA:** The right to propose resolutions are set out. **In Notice:** Nothing mentioned on shareholder proposals.	**In AoA:** Threshold: At least 1.0% of share capital.Deposit list: At company at least 10 days before the date of first call. Publish: In at least 3 Italian newspapers Within deposit deadline. Entitlement: At company at least 5 days before the date of first call. **In Notice:** The right to propose list of board candidates are outlined.	23.05.08 (2 weeks): Annual Report and agenda related documentation available at company office and the stock exchange. **In AoA:** The BoD own slate of directors must be published in at least 3 Italian daily newspapers at least 20 days before first call date.

Table 6 continued from previous page

	Shareholder proposal	**Shareholder candidates for the BoD and Statutory Auditors**	**Annual report/GM related information When before the GM**
Assicurazioni Generali	**In AoA:** The right to propose resolutions are set out. **In Notice:** Nothing mentioned on shareholder proposals.	**In AoA:** Threshold: As laid down by law Deposit list: At company at least 15 days before the date of first call. Publish: Not specified. Entitlement: At company at least 10 days before the date of first call. **In Notice:** The right to propose a list of board candidates are outlined. Mention here the threshold to be 0.5%	17.03.07 (5 weeks): Annual Report available at company office and the stock exchange. **In AoA:** The BoD own slate of directors must files least 20 days before first call date. No specification on publication.
Telecom Italia	**In AoA:** The right to propose resolutions are set out. **In Notice:** The right to propose resolutions are outlined.	**In AoA:** Threshold: At least 0.5% of share capital. Deposit list: At company at least 15 days before the date of first call. Publish: Not specified. Entitlement: Date not specified. **In Notice:** The right to propose a list of board candidates are outlined.	06.03.08 (5 weeks): Annual report available at the company office and on web site. **In AoA:** The BoD own slate of directors must be published in at least 1 Italian daily newspaper at least 20 days before first call date.
Fiat Group	**In AoA:** The right to propose resolutions are set out. **In Notice:** The right to propose resolutions are outlined.	**In AoA:** Threshold: As laid down by law. Deposit list: At company at least 15 days before the date of first call. Publish: Not specified. Entitlement: When list is deposited **In Notice:** The right to propose a list of board candidates are outlined.	15.02.08 (6 weeks): Annual report available at the company office and on web site. **In AoA:** The procedure of the BoD own slate not specified.
Atlantia	**In AoA:** The right to propose resolutions are not mentioned **In Notice:** The right to propose resolutions are outlined.	**In AoA:** Threshold: At least 1.0% of share capital. Deposit list: At company at least 15 days before the date of first call. Publish: At least 10 days before the date of the first call according to law. Entitlement: At company at least 2 days before the date of first call. **In Notice:** The right to propose a list of board candidates are outlined.	14.03.08 (5 weeks): Annual Report 05.04.08 (2.5 weeks): Proposals on agenda items, director's report and corporate governance report available at company office and stock exchange. **In AoA:** The procedure of the BoD own slate not specified.

Table 6 continued from previous page

	Shareholder proposal	**Shareholder candidates for the BoD and Statutory Auditors**	**Annual report/GM related information When before the GM**
Saipem	**In AoA:**In AoA: The right to propose resolutions are set out. **In Notice:** The right to propose resolutions are outlined.	**In AoA:** Threshold: At least 2.0% of share capital. Deposit list: At company at least 15 days before the date of first call. Publish: As set forth by law. Entitlement: When list is deposited **In Notice:** The right to propose a list of board candidates are outlined.	13.03.08 (5 weeks): Annual report 05.04.08 (2.5weeks): Financial statement, proposals on agenda items, director's report and corporate governance report available at company office and stock exchange. **In AoA:** The procedure of the BoD own slate not specified.
Unione di Banche Italiane (UBI Banca)	**In AoA:**: The right to propose resolutions are set out. **In Notice:** The right to propose resolutions are outlined.	**In AoA:** Threshold: At least 500 shareholders or representing >0.5% of the share capital Deposit list: At company at least 15 days before the date of first call. Publish: Not specified. Entitlement: At company at least 90 days before the date of first call. **In Notice:** The right to propose a list of board candidates are outlined.	20.03.08 (5 weeks): Annual Report **In Notice:** Documentation concerning the items on the agenda available within the time limits prescribed by legislation **In AoA:** The BoD own slate of directors must be presented at least 15 days before first call date. No specification on publication.
Banco Popolare	**In AoA:** The right to propose resolutions are not mentioned **In Notice:** The right to propose resolutions are outlined.	**In AoA:** Threshold: At least 500 shareholders or representing >0.5% of the share capital Deposit list: At company at least 15 days before the date of first call. Publish: Not specified Entitlement: As set forth by law. **In Notice:** The right to propose a list of board candidates are outlined.	29.03.08 (5 weeks): Financial statements **In AoA:** The procedure of the BoD own slate not specified.
Banca Popolare di Milano	**In AoA:** The right to propose resolutions are not mentioned. **In Notice:** The right to propose resolutions are not outlined.	**In Regulations:** Threshold: At least 300 shareholders or representing >0.5% of the share capital Deposit list: At company at least 15 days before the date of first call. Publish: Not specified Entitlement: At company at least 90 days before the date of first call.	17.03.08 (4.5 weeks): Annual Report 03.04.08: (2 weeks): Documentation concerning the items on the agenda and the corporate governance report available at company office, web page and stock exchange.

Table 7
Criteria for participation and voting in the GM

Recap (Section 7): Entitlement to vote is based on the share register and holdings of the intermediaries. Shareholders can obtain entitlement to vote in three ways, depending on what is provided for in the company's articles of association:

1. Notification for attendance and deposit with blocking of shares at the earliest 2 days before the first call date and. Some companies allow shares to be withdrawn with voting rights subsequently being lost
2. Notification for attendance within 2 days before the first call date
3. Notification for attendance within the commencement of the meeting on first call

For all three methods, the notification for attendance is issued by the intermediary and sent electronically to the company. Shareholders must apply to the intermediary for issuance of such notification. If a meeting goes to second/third call, no new notification has to be applied for, but the intermediary is obliged to inform the company about any changes in the shareholding. In the case of non-blocking (2 and 3 above), shares traded after the notification will lead to shareholder losing voting entitlements, so this is not a real record date system. Under Italian law, however, only the persons whose name has been registered in the shareholder book for at least 90 days have the right to vote at the GM of cooperative banks.

In the second column we have included information on custodian and proxy voting agent deadlines as experienced by NBIM in 2008: "Cut Off date" indicates the deadline for NBIM to cast their votes on the proxy advisor system, "Blocking Date" is given by the custodian for all companies also for those where the company itself does not block and "Record Date" is not a real record date in the Italian market but indicates the date when the custodian will issue the notification for attendance which states the number of shares the shareholder is entitled to vote for. The day count in parenthesis indicated the number of week day (wd) (ie not including Saturdays and Sundays) from the deadline date including the meeting date at first call/second call. In the cases when a meeting falls on a Saturday or Sunday, these days are included in the count.

Table abbreviations: AoA- Articles of Associations; BoD - Board of Directors; BoA - Board of Auditors; GM - General Meeting; OGM - Ordinary General Meeting; EGM - Extraordinary General Meeting; CG Code - the local corporate governance code; FY- Financial Year.

	Notification for attendance (NFA) **Entitlement to vote** **Blocking** **Other requirements for attendance**	**Relevant deadlines for NBIM** **Cut Off for voting (1.call/2. call/3.call)** **Blocking (1.call/2. call/3.call)** **"Record" (1.call/2. call/3.call)**
Laws and regulations	Shareholders must request notification for attendance to be issued by the intermediary who will send it electronically to the company within given deadlines as stated in the AoA. Entitlement to vote is based on this notification for attendance. The law does not mandate deposit and blocking of shares anymore. Holders of shares of cooperative banks must be registered for at least 90 days to obtain the right to vote. No admission card is required by law.	

Table 7 continued from previous page

	Notification for attendance (NFA) **Entitlement to vote** **Blocking** **Other requirements for attendance**	**Relevant deadlines for NBIM** **Cut Off for voting (1.call/2. call/3.call)** **Blocking (1.call/2. call/3.call)** **"Record" (1.call/2. call/3.call)**
Market practice	Notification for attendance must normally be at company within two days before the meeting on first call. The market deadline for voting (and instructing the intermediary to send the notification) is at least a few days earlier than this. Most large companies seem to have abolished the requirement in their AoA for deposit and blocking. Despite this, many custodians still seem to operate with a blocking requirement. To attend the meeting, shareholders are normally asked to display a copy of the notice for attendance issued by the intermediary.	Italian custodians seem to generally still (soft) block shares due the variations of options down to the individual issuer. Based on this uncertainty, voting agents tend to operate with both a blocking date and a record date for all companies.
Sample		
ENI	**In AoA:** Notification must be received at least 2 wd before the first call date. **In Notice:** Shareholders may ask intermediary to withdraw the notice for attendance, but will then lose voting rights. No specification of required additional documentation for attendance.	Meeting: 09.06.08/10.06.08 Cut Off: 28.05.08 (8wd/9wd) Blocking: 02.06.08 (5wd/6wd) Record: 05.06.08 (2wd/3wd) Company: No deposit and no blocking. Notification must be received at least 2 wd before the first call date.
UniCredito Italiano	**In AoA:** Notification must be received at least 2 wd before the first call date. The notice of the meeting may specify that the notification will also be applicable for subsequent calls. **In Notice:** If quorum not reached, another notification must be received by company no later than 2 wd before the second call date. Shareholders must provide a copy of the notification for attendance to the GM	Meeting: 28.04.08/29.04.08/08.05.08 Cut Off: 16.04.08 (8 wd/9 wd/16wd) Blocking: 21.04.08 (5 wd/5 wd/13 wd) Record: 24.04.08 (2 wd/3 wd/10 wd) Company: No deposit and no blocking. Notification must be received at least 2 wd before the first call date.
Intesa Sanpaolo	**In AoA:** Notification must be received within the commencement of the meeting on first call. **In Notice:** Shareholders should bring a copy of the notification for attendance to the GM.	Meeting: 28.04.08/30.04.08 Cut Off: 16.04.08 (8 wd/10 wd) Blocking: 21.04.08 (5 wd/7 wd) Record: 28.04.08 (0 wd/2 wd) Company: No deposit and no blocking. Notification must be received within the commencement of the meeting on first call.

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	Notification for attendance (NFA) **Entitlement to vote** **Blocking** **Other requirements for attendance**	**Relevant deadlines for NBIM** **Cut Off for voting (1.call/2. call/3.call)** **Blocking (1.call/2. call/3.call)** **"Record" (1.call/2. call/3.call)**
Enel	**In AoA:** Must deposit shares at least two days prior to the meeting and do not withdraw them before the meeting has taken place. Notification must be received timely in accordance with applicable law. **In Notice:** Company must have received timely notice from intermediary. Shareholders must deposit shares at least two days prior to the meeting and not withdraw them before the meeting has taken place. Shareholders should bring a copy of the notice certifying their voting rights to the GM.	Meeting: 09.06.08/.10.06.08/11.06.08 Cut Off: 28.05.08 (8 wd/9 wd/10 wd) Blocking: 05.06.08 (2 wd/3 wd/4 wd) Record: NA Company: Blocking at least 2 wd before the meeting on first call.
Assicurazioni Generali	**In AoA:** Notification must be received at least 2 wd before the first call date, or within a different term if indicated in the notice of the meeting. **In Notice:** Notification must be received at least 2 wd before the first call date. No blocking. No specification of required documentation for attendance.	Meeting: 22.04.08/.24.04.08/26.04.08 Cut Off: 16.04.08 (4 wd/6 wd/8 wd) Blocking: 15.04.08 (5 wd/7 wd/8 wd) Record: 18.04.08 (2 wd/4 wd/6 wd) Company: No deposit and no blocking. Notification must be received at least 2 wd before the first call date.
Telecom Italia	**In AoA:** Notification must be received at least 2 wd before each meeting. **In Notice:** No blocking, but must deposit shares. Shareholders may ask intermediary to withdraw the notification of attendance, they will then lose voting rights. Shareholders should bring a copy of the notification for attendance to the GM.	Meeting: 12.04.08/.13.04.08/14.04.08 Cut Off: 03.04.08 (7 wd/8 wd/9wd) Blocking: 07.04.08 (5 wd/6 wd/7 wd) Record: 10.04.08 (2 wd/3 wd/4 wd) Company: No deposit and no blocking. Notification must be received at least 2 wd before each meeting.
Fiat Group	**In AoA:** Notification must be made in accordance with applicable law, i.e. the date for the deposit which is 2 wd before the meeting. **In Notice:** Must deposit shares at least two wd before the meeting. Shareholders should bring a copy of the notification for attendance to the GM.	Meeting: 28.03.08/.31.03.08 Cut Off: 18.03.08 (8 wd/9 wd) Blocking: 21.03.08 (5 wd/6 wd) Record: 26.03.08 (2 w/3 wd) Company: Notification must be received at least 2 wd before the first call date.
Atlantia	**In AoA:** Notification must be received at least by the date stipulated by statue. All restrictions on share transfers are released after that date. **In Notice:** Must obtain the relevant certificate within the legally required term.	Meeting: 21.04.08/.22.04.08 Cut Off: 10.04.08 (7wd/8 wd) Blocking: 14.04.08 (5 wd/6 wd) Record: 17.04.08 (2 wd/3 wd) Company: No deposit and no blocking. Notification must be received within the commencement of the meeting on first call.

Table 7 continued from previous page

	Notification for attendance (NFA) **Entitlement to vote** **Blocking** **Other requirements for attendance**	**Relevant deadlines for NBIM** **Cut Off for voting (1.call/2. call/3.call)** **Blocking (1.call/2. call/3.call)** **"Record" (1.call/2. call/3.call)**
Saipem	**In AoA:** Notification must be received at least 2 wd before the first call date.	Meeting: 21.04.08/.28.04.08 Cut Off: 10.04.08 (7 wd/12 wd) Blocking: 14.04.08 (5 wd/10 wd) Record: 17.04.08 (2 wd/7 wd) Company: No deposit and no blocking. Notification must be received at least 2 wd before the first call date.
Unione di Banche Italiane (UBI Banca)	**In AoA:** Notification must be received at least 2 wd before the first call date The shareholder cannot withdraw the shares or the relevant certification before the meeting. **In Regulation:** Admittance to the meeting is subject to personal identification and copy of communication indicated in the notice. **In Notice:** Registered shareholders for at least 90 days to exercise voting rights, ie blocking 25.04.08 (2 wd before first call date). Deposit and blocking (since must have been registered for 90 days).	NBIM has not voted on this meeting due to the requirement of being a registered shareholder for 90 days, i.e. 90 days blocking.
Banco Popolare	**In AoA:** Notification must be received at least 2 wd before the first call date. Registered shareholders for at least 90 days to exercise voting rights. **30.04.08** (2 wd before first call date). Deposit and blocking (since must have been registered for 90 days). **In Regulations:** Attendants have to show proof of personal identity and show adequate documentation; identity document, attendance certification proxies.	NBIM has not voted on this meeting due to the requirement of being a registered shareholder for 90 days, i.e. 90 days blocking.
Banca Popolare di Milano	**In Notice:** Notification must be received at least 2 wd before the first call date. Only shareholders having been registered for at least 90 days prior to the meeting date on the first call may attend. **16.04.08** (2 wd before first call date). Deposit and blocking (since must have been registered for 90 days).	NBIM has not voted on this meeting due to the requirement of being a registered shareholder for 90 days, i.e. 90 days blocking.

Table 8
Ways to vote at the general meeting

Recap (Section 8): Shareholders can either attend the meeting themselves or have a proxyholder attending the meeting. Some companies have opened up for voting via regular mail. Very few, if any, companies allow participation and voting through telecommunications means.

Table abbreviations: AoA - Articles of Associations; BoD - Board of Directors; BoA - Board of Auditors; GM - General Meeting; OGM - Ordinary General Meeting; EGM - Extraordinary General Meeting; CG Code - the local corporate governance code; FY - Financial Year.

	Voting in absentia **Postal voting and direct electronic voting** **To follow meeting by electronic means**	**Proxy Voting** **Representative appointed by the shareholder** **Deadline for sending required documentation**
Laws and regulations	The AoA can allow postal voting. Shareholders must use a specific voting card to be received by the company no later than 48 hours before the meeting. Shareholders must still request the notification for attendance to be issued. The AoA can allow shareholders to vote by electronic means.	Anyone can act as shareholder appointed proxyholder, except members of administrative or controlling bodies and employees of the company/its subsidiaries, i.e. can not vote through company appointed representative. The AoA may set further limitations. Written proxy must be brought to the meeting.. Shareholders must still request the notification for attendance to be issued. Limit on how many shareholders a proxy may represent, depending on the size of the company. Proxy representative can speak at the meeting. Split and partial voting do not seem to be any problem
Market practice	Only a small minority of companies allow voting by mail. Very few, if any, companies allow participation and voting through telecommunications means, nor to cast votes electronically ahead of the meeting.	Proxy forms are not attached to the GM notice. How vote instructions are given depends on agreement between shareholder and proxyholder. A proxyholder must identify himself at the GM. Some companies ask the written proxy to be sent to the company ahead of the meeting.
Sample		
ENI	**In AoA:** Vote by mail is allowed. **In Notice:** Card to be requested from company or one of the named depositaries. To be returned to company by mail 3 days ahead of the meeting.	**In AoA:** Shareholders may be represented by person appointed by written proxy. **In Notice:** Requested to send copy of written proxy at least 2 days before the meeting.
UniCredito Italiano	Postal voting not adopted in the AoA	**In AoA:** Shareholders may be represented by proxy. Does not need to be a shareholder. No request for sending copy of written proxy in AoA, Regulations or Notice
Intesa Sanpaolo	Postal voting not adopted in the AoA	**In AoA:** Shareholders may be represented by proxy subject to restrictions established by law. No request for sending copy of written proxy in AoA, Regulations or Notice
Enel	Postal voting not adopted in the AoA	**In AoA:** Any shareholder entitled to participate in a meeting may appoint a proxy. **In Notice:** must send copy of written proxy at least 2 days before the meeting

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	Voting in absentia **Postal voting and direct electronic voting** **To follow meeting by electronic means**	**Proxy Voting** **Representative appointed by the shareholder** **Deadline for sending required documentation**
Assicurazioni Generali	Postal voting not adopted in the AoA	**In AoA:** Shareholders may be represented by proxy. No request for sending copy of written proxy in AoA, Regulations or Notice
Telecom Italia	**In AoA:** Vote by mail is allowed **In Notice:** Card to be requested from company or a depositary. To be returned to company by mail no later than 48 hours before the meeting	**In AoA:** Shareholders may be represented by proxy subject to restrictions established by law. **In Notice:** Requested to send copy of written proxy in advance of the meeting.
Fiat Group	Postal voting not adopted in the AoA. **In AoA:** The meeting can be held from multiple locations linked by telecommunication systems. The locations must be listed in the notice of the meeting.	**In AoA:** No mentioning of proxyholder. **In Regulations:** Requested to show the written proxy at the meeting.
Atlantia	Postal voting not adopted in the AoA	**In AoA:** Shareholders may be represented by proxy. The Chairman to decide on the right of proxyholders to be heard at the meeting. No request for sending copy of written proxy in AoA, Regulations or Notice.
Saipem	Postal voting not adopted in the AoA **In AoA:** The meeting can take place via video-conference given certain conditions.	**In AoA:** Shareholders may be represented by proxy. **In Notice:** Requested to send copy of written proxy at least 2 days before the meeting.
Unione di Banche Italiane (UBI Banca)	Postal voting not adopted in the AoA	**In AoA:** Shareholders may be represented by another shareholder given a written proxy. Each proxyholder may not represent more then three shareholders. No request for sending copy of written proxy in AoA, Regulations or Notice
Banco Popolare	Postal voting not adopted in the AoA	**In AoA:** Shareholders may be represented by another shareholder given a written proxy. Each proxyholder may not represent more than one shareholder. No request for sending copy of written proxy in AoA, Regulations or Notice
Banca Popolare di Milano	In AoA: Postal voting is not allowed.	**In AoA:** Shareholders may be represented by another shareholder given a written proxy. Each proxyholder may not represent more than two shareholders. **In Notice:** Requested to show the written proxy at the meeting.

Table 9
Functioning rules of the general meeting

Recap (Section 9): Quorum requirements for the OGM is for first call that at least 50% of voting shares are represented and for second call there is no quorum requirements. A majority is sufficient to approve resolutions if not higher requirement established by the company's AoA. For the EGM (and special GM), the quorum requirements is for first call that at least 50% of voting shares are represented, for second call that at least 1/3 of voting shares are represented and for third call that at least 1/5 of voting shares are represented. 2/3 majority is required to approve resolutions if not higher requirement established by the company's AoA. For cooperative banks the quorum requirements are normally different and can be set by the company. For both OGM and EGM, unless the law otherwise states, the shares for which it is not possible to exercise voting rights are counted in order to determine the quorum, 'constitutive quorum'. These shares are not counted in order to determine the 'deliberative quorum'.Under Italian law, no rules are provided for the functioning of the GM. Companies have normally adopted rules for functioning of the general meeting as part of their articles of association, which among other things regulate shareholder right to ask questions and the procedure of how election of the BoD will take place. The Corporate Governance Code (Article 11, Criteria 11.C.5.) establishes that the Board of Directors shall propose for approval at the shareholder meeting such regulations.

Table abbreviations: AoA - Articles of Associations; BoD - Board of Directors; BoA - Board of Auditors; GM - General Meeting; OGM - Ordinary General Meeting; EGM - Extraordinary General Meeting; CG Code - the local corporate governance code; FY - Financial Year.

	Quorum requirements Majority requirements	**Role and powers of the Chairman of the meeting**	**Shareholders' right to ask questions and post counterproposals**	**Voting by poll or show of hands**
Laws and regulations	For companies other than cooperative banks: **Quorum requirements:** OGM 50% first call, no requirement second call EGM 50% first call, 1/3 second call and 1/5 third call. **Majority requirements:** OGM simple majority if not higher established by AoA. EGM 2/3 majority if not higher established by AoA.	Chairman elected by meeting if not specified in the AoA. Power to resolve any questions in respect of voting rights and to ascertain the voting results. The AoA can establish specific rules and the chairman of the meeting has the power to regulate this. CG code: BoD shall propose the approval of functioning rules	No legal rules for the functioning of the GM. The AoA can establish specific rules. BoD is not obliged to answer questions in the meeting or on the web site. The law does not place any limit on the shareholder right to ask questions before and during the meeting.	The GM minutes should include the voting results and name of shareholders voting in favour, against of abstain. So voting can not be regarded confidential, with the exception of the lection of the BoD.
Market practices	Not common to specify majority requirements in AoA.	AoA establishes normally who should be the chairman. The Companies have normally adopted functioning rules of the general meeting.	The Chairman of the meeting sets normally the max duration of each intervention and the number of interventions per person.	Normally by poll, either with a remote where all votes are counted or by card where only abstentions and against are counted

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	Quorum requirements Majority requirements	**Role and powers of the Chairman of the meeting**	**Shareholders' right to ask questions and post counterproposals**	**Voting by poll or show of hands**
Sample				
ENI	**In AoA:** Resolutions must be taken with the majority required by the law.	**In AoA:** Chairman of the BoD, or in his absence, CEO, or otherwise a person duly delegated by the BoD, failing which the meeting may elect its own chairman. **In Regulation:** Decides on voting and attendance entitlement, directs the meeting and sets max duration of each intervention.	**In Regulations:** Max duration: Normally 15 minutes per intervention. Number of interventions: Normally only ones on each item Answers given by: Chairman (or the one he appoints) at the end of all interventions on each item. In total max two hours to answer questions. Shareholders may not reply to the answers.	**In Regulation:** Voting by poll. Shareholders voting against/abstain shall give their name to the staff in charge.
UniCredito Italiano	**In AoA:** Resolutions must be taken with the majority required by the law.	**In AoA:** Chairman of the BoD or in his absence one of the Deputy Chairmen, or otherwise one of the members of the BoD or elected by the meeting. Decides on voting and attendance entitlement.	**In Regulations:** Max duration: Normally 10- 15 minutes per intervention. Number of interventions: Each person may intervene a second, but shorter, time. Counterproposals: Providing that they are relevant and do not involve an amendment or addition being made to the issues being discussed. The Chairman decides on acceptance of such proposals.	**In AoA:** Open voting, i.e. not confidential **In Minutes:** Ballot.
Intesa Sanpaolo	**In AoA:** Resolutions must be taken with the majority required by the law.	**In AoA:** Chairman of the Supervisory Board, or in his absence one of the Deputy Chairmen, or otherwise the Chairman of the Management Board or in his absence of the Deputy Chairman, or elected by the meeting. Decides on voting and attendance entitlement, preside over the discussions and determine voting procedures.	Regulations on the shareholder meeting is referred in the Corporate Governance report, but we have not been able to find such regulations on the company webpage	The votes against each agenda item is given in the minutes

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	Quorum requirements Majority requirements	**Role and powers of the Chairman of the meeting**	**Shareholders' right to ask questions and post counterproposals**	**Voting by poll or show of hands**
Enel	**In AoA:** Resolutions must be taken with the majority required by the law.	**In AoA:** Chairman of the BoD, or Deputy Chairman or a person designated by the board or a person elected by the meeting. **In Regulation:** Decides on voting and attendance entitlement, directs the meeting, and shall predetermine the time limit for speaking. Set order in which resolutions are put to a vote. Decide the procedure for expressing, recording and counting votes.	**In Regulations:** Max duration: Normally 10 minutes per intervention. Number of interventions: Normally only ones on each item, but can be given a brief rejoinder. Counterproposals: Shareholder speaking may also make proposals.	**In Regulation:** Shareholders who vote against or abstain must giver their name to the auxiliary personnel.
Assicurazioni Generali	**In AoA:** Resolutions must be taken with the majority required by the law.	**In AoA:** Chairman of the BoD, or vice chairman, or a member of the board appointed by the BoD, otherwise the meeting will elect a chairman. The chairman may resolve at any moment to expand or reduce the duration of the various interventions on the different agenda items.	**In Regulations:** Max duration: Normally 15 minutes per intervention. Number of interventions: Participants who have already taken the floor may only reply once and for a period not exceeding five minutes. Counterproposals: Can make proposals for each of the topics of the debate.	**In AoA:** Resolutions shall be passed by open vote. Electronic equipment may be used to facilitate the collection of votes. A poll may be taken on each item of the agenda after the item has been discussed or after all or some items have been discussed.
Telecom Italia	**In AoA:** Resolutions must be taken with the majority required by the law.	**In AoA:** Chairman of the BoD, his/hers substitute or person elected by majority of the share capital present at the meeting. Ascertain the identity and right to attend of those present; direct the business; ensure orderly conduct, establish how each poll is to be conducted.	Regulations on the shareholder meeting is referred in the AoA and on the webpage, but we have not been able to find such the document on the company webpage	**In AoA:** By Poll.

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	Quorum requirements Majority requirements	**Role and powers of the Chairman of the meeting**	**Shareholders' right to ask questions and post counterproposals**	**Voting by poll or show of hands**
Fiat Group	**In AoA:** Resolutions must be taken with the majority required by the law.	**In AoA:** Chairman of the BoD, or in his absence the vice chairman, otherwise elected by the meeting.	**In Regulations:** Anyone participating in the meeting is entitled to speak and to put forward proposals. The Chairman has the powers to direct the discussion, including limiting speaking time and refuse people to the floor not strictly keeping to the items on the agenda.	**In Regulations:** Votes shall be cast openly.
Atlantia	**In AoA:** Resolutions must be taken with the majority required by the law.	**In AoA/Regulations:** Chairman of the BoD, deputy chairmen, or elected by the meeting. Shall confirm regularity of proxies and decide on the right of holders of such proxies to be heard at the meeting.	**In Regulations:** The Chairman has the powers to direct the discussion, including limiting speaking time and refuse people to the floor not strictly keeping to the items on the agenda. Each shareholder can speak once on each agenda item.	**In Regulations:** Votes shall be cast openly by ballot. Any dissenting or abstaining voters shall be recorded in the minutes.
Saipem	**In AoA:** Resolutions must be taken with the majority required by the law.	**In AoA:** Chairman of the BoD, or a person elected by the meeting. **In Regulations:** Responsible for ascertaining the validity of the proxies and the right of attendance at the meeting. Set voting procedures.	**In Regulations:** Max duration: Normally 15 minutes per intervention. Number of interventions: Normally only ones on each item Answers: In total max two hours to answer questions.	**In Regulations:** The vote is open. Shareholders voting against or abstaining shall provide their personal details to the meeting staff.
Unione di Banche Italiane (UBI Banca)	**In AoA:** OGM/EGM: quorum 5% on first call, OGM no quorum and EGM quorum 0.25% on second call. Majority to approve resolutions, with some exceptions.	**In AoA:** Chairman of the supervisory board, or deputy vice-chairman, or chairman of the management board, or vice-chairman or a person appointed by the meeting itself. Chairman shall ascertain the regularity of the proxies and right of attendance, directing and controlling the meeting, establish voting procedures.	**In Regulations:** Max duration: Normally 5 minutes per intervention. Number of interventions: Those who speak have the right to reply, max 2 minutes Answers given by: Chairman (or the one he appoints) at the end of all interventions on each item. In total max two hours to answer questions. Shareholders may not reply to the answers.	**In Regulations:** Open vote, except for appointment of company officers.

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	Quorum requirements Majority requirements	**Role and powers of the Chairman of the meeting**	**Shareholders' right to ask questions and post counterproposals**	**Voting by poll or show of hands**
Banco Popolare	**In AoA:** OGM/EGM: quorum 10% on first call, OGM no quorum and EGM quorum 0.5% on second call. Majority to approve resolutions, with some exceptions.	**In AoA:** Chairman of the Supervisory Board, by his or her replacement, or otherwise elected by the meeting. Decide on voting and attendance entitlement as well as the proceedings of the meeting.	No regulations for the meeting	**In AoA:** Voting is open.
Banca Popolare di Milano	**In AoA:** OGM/EGM: quorum 10% on first call, OGM no quorum and EGM quorum 1,000 shareholders on second call. Majority to approve resolutions, with some exceptions.	**In AoA:** Chaired by Chairman or one of the deputy chairmen of the board, or one of the directors. **In Regulations:** Chairman decides in the event of a contestation related to the right to attend a meeting. Chairman ensures the meeting is held in an orderly fashion.	**In Regulations:** Max duration: Normally 10 minutes per intervention. Number of interventions: Not specified Answers given by: Chairman (or the one he appoints) at the end of all interventions on each item. In total max two hours to answer questions.	**In Regulations:** Voting by show of hands, except for election of directors and officers which will be voted by secret ballot. If the result of the vote is unclear, the Chairman can have the vote repeated one or more times.

Table 10
Disclosure of minutes and results

Recap (Section 10): SGM minutes to be written without delay and published in a timely manner. Italian companies are not obliged to publish the minutes. The attendance rates included below refers to information given in the minutes reflecting the attendance rate at the beginning of the GM.

Table abbreviations: AoA - Articles of Associations; BoD - Board of Directors; BoA - Board of Auditors; GM - General Meeting; OGM - Ordinary General Meeting; EGM - Extraordinary General Meeting; CG Code - the local corporate governance code; FY - Financial Year.

	Voting results and minutes	**Attendance rate (in minutes)**
Laws and regulations	GM minutes to be written without delay and published in a timely manner. To include a list of shareholders and share capital represented, voting procedure and voting outcome and results (for, abstain, against). For EGMs, the minutes must be written by a notary public. Italian companies are not obliged to publish the minutes.	
Market practice	Some companies disclose the meeting minutes in Italian on their web-pages, but most provide only a summary that includes the voting outcome per agenda item and the % of votes (for/against/abstain) per item. Companies have a press release with the outcome, but not all provide this information in English in addition to Italian.	In the Italian minutes attendance rates are stated, but not normally given in the information published in English.
Sample		
ENI	Full minutes in Italian available on web-page, only abstract in English. Minutes include count of votes (for/ against/abstain), list of names of who voted in favour per agenda item and list of names of shareholders represented at the meeting.	In Italian minutes: 44 %
UniCredito Italiano	Full minutes in English available on webpage. Include count of votes (for/ against/abstain), list of names of who voted in favour per agenda item and list of names of shareholders represented at the meeting.	In English minutes: 28 %
Intesa Sanpaolo	Full minutes in Italian available on web-page, only abstract in English. Minutes include count of votes (for/ against/abstain), list of names of who voted	In Italian Minutes: 53 %
Enel	Full minutes in Italian available on web-page, only abstract in English. Minutes include count of votes (for/ against/abstain), list of names of who voted.	In Italian Minutes: 39 %
Assicurazioni Generali	Full minutes in Italian and English available on web-page, Minutes include count of votes (for/ against/abstain), list of names of who voted. Includes count of votes (for/against/abstain), list names and number of on against/abstained and whether they were voted in person or by proxy.	In Italian Minutes: 38 %
Telecom Italia	Full minutes in Italian and English available on web-page, Minutes include count of votes (for/ against/abstain), list of names of who voted. Includes count of votes (for/against/abstain), list names and number of on against/abstained and whether they were voted in person or by proxy.	In Italian Minutes: 39 %
Fiat Group	Not full minutes available on webpage, neither in Italian nor in English. Only abstract with results and count of votes (for/ against/abstain) available	In abstract: 40 %

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	Voting results and minutes	**Attendance rate (in minutes)**
Atlantia	Full minutes in Italian available on web-page, only abstract in English. Minutes include count of votes (for/ against/abstain), list of names of who voted.	In Italian minutes: 60%
Saipem	Full minutes in Italian available on web-page, only abstract in English. Minutes include count of votes (for/ against/abstain), list of names of who voted.	In Italian minutes: 60%
Unione di Banche Italiane (UBI Banca)	On webpage - only the press release with results only and not the full minutes.	Attendance rate not given on web-page. Minutes not available.
Banco Popolare	Full minutes in Italian available on web-page, only abstract English .Minutes include results (approved or not) and list of names of who voted.	Attendance rate not given in minutes, only number of shareholders.
Banca Popolare di Milano	Full minutes in Italian available on web-page, only abstract English .Minutes include results (approved or not) and list of names of who voted.	Attendance rate not given in minutes, only number of shareholders

Figure 1
Regulatory Framework of Italy's Share-Voting System

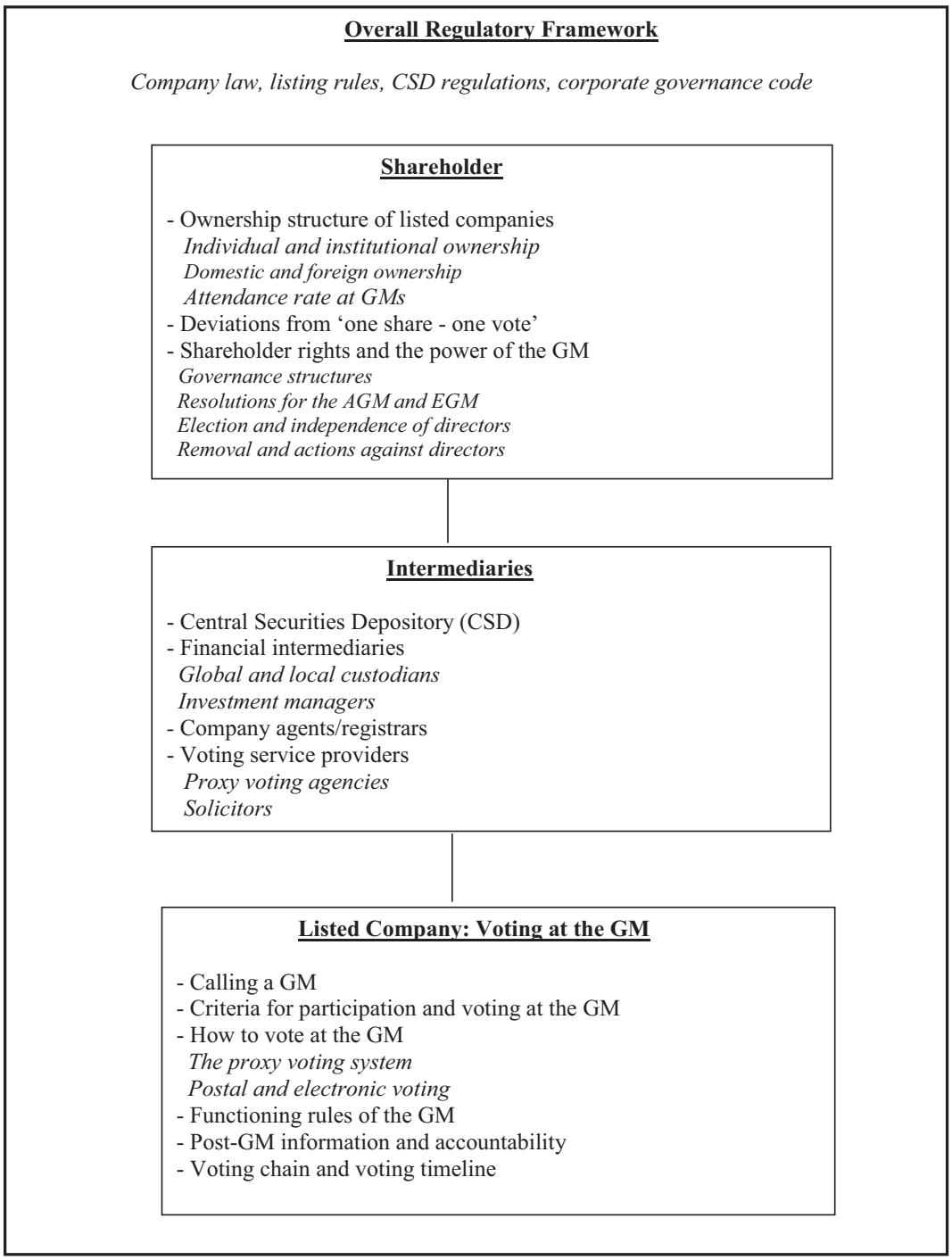


Figure 2
The 2009 Dissemination System for Regulated Information

This figure shows the dissemination system for information that must be disclosed to the public by listed companies (security issuers) as of 2009. Listed companies may decide to disseminate the regulated information either through a so-called SDIR (System for Dissemination of Regulated Information) or directly to media which in turn pass the information on to the public. SDIR guarantees free access to the regulated information received by the issuers to both Consob and Borsa Italiana.

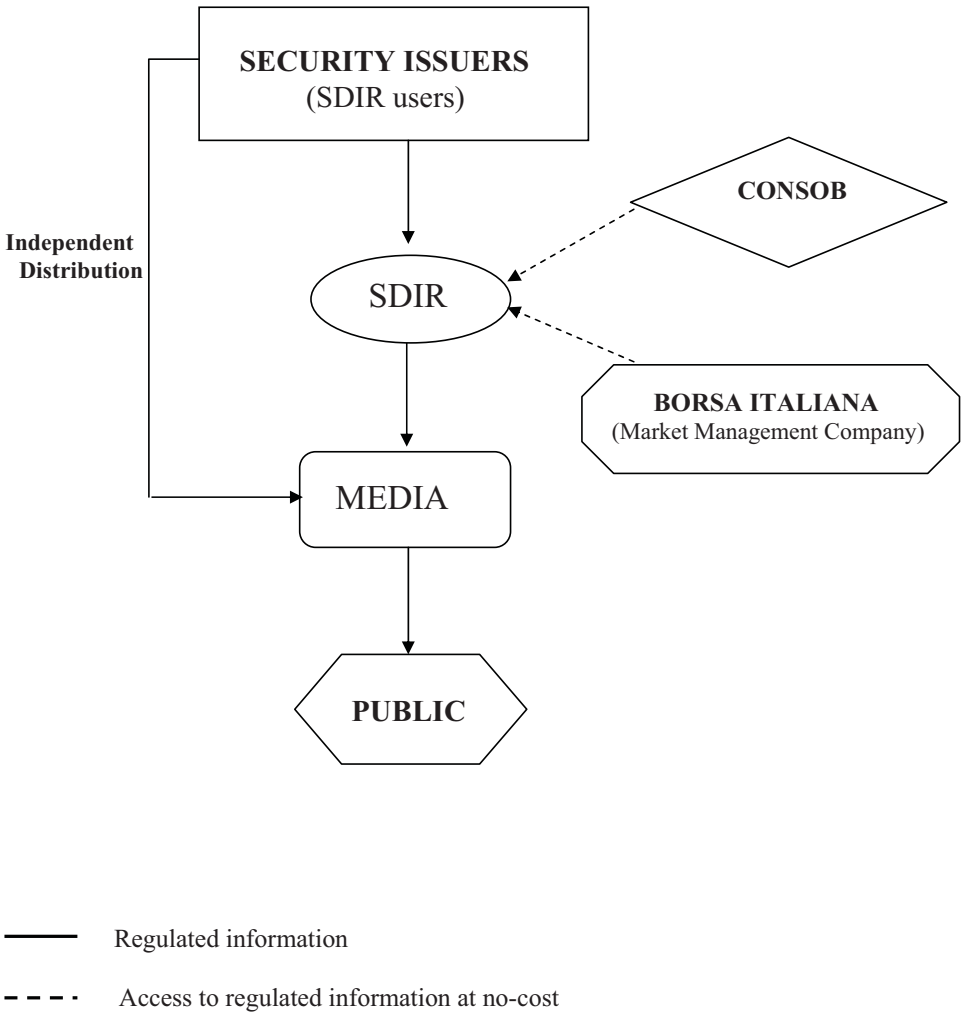


Figure 3
The 2009 Storage and Filing System for Regulated Information

Listed companies (security issuers) are required to identify an Authorized Storage Mechanism (ASM) which maintains all the issuer's regulated information. The companies are required, at the same time, to disseminate the information to the public, to the ASM, and to Consob in connection with the ASM. Information can be transferred to the ASM either through a SDIR (System for Dissemination of Regulated Information) or directly by the company. Once the information is stored at the ASM, the ASM is required to guarantee free access to it to both Consob and the market management company (Borsa Italiana). The ASM must also guarantee public access to stored regulated information within one hour of its receipt and at affordable prices. Listed companies are always required to file regulated information at the market management company (Borsa Italiana).

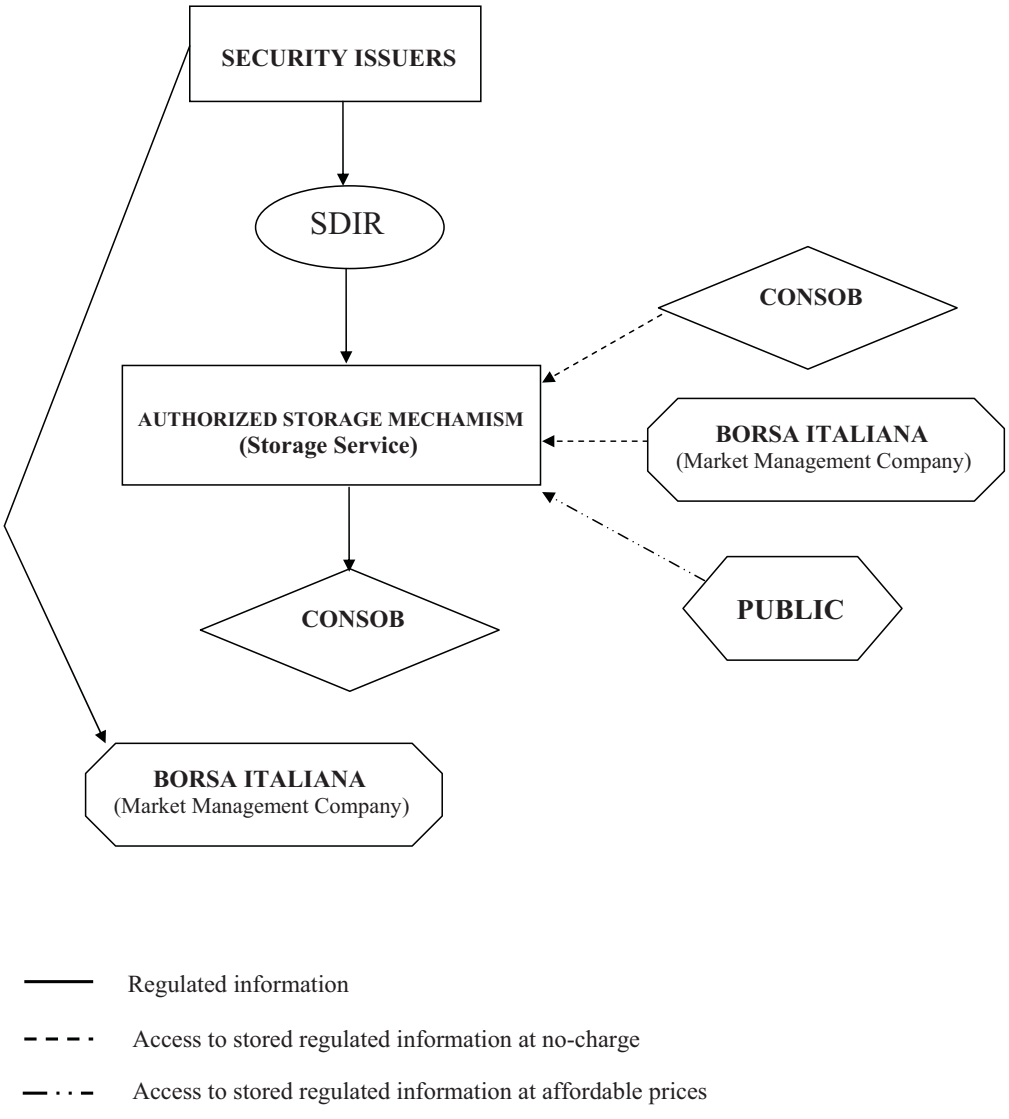


Figure 4
Typical Custody Chain for a Foreign Institutional Shareholder

This figure describes a typical custody chain through which foreign institutional shareholders of Italian listed companies hold their shares. This is a common setup for a foreign large institutional shareholder who appoints a global custodian which does not open an account with the local Central Securities Depository (CSD) and uses its network of local custodians (Italian custodian banks). The local custodians are CSD participants. The institutional shareholder also appoints one or more investment managers that manage part of the shareholder's asset.

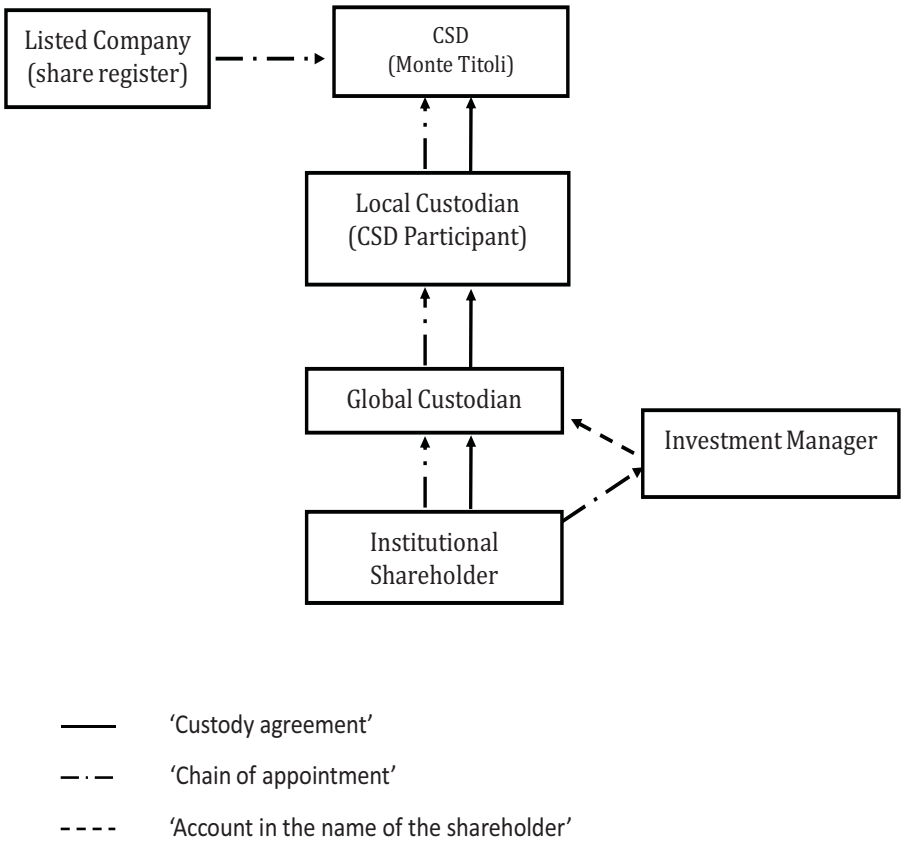
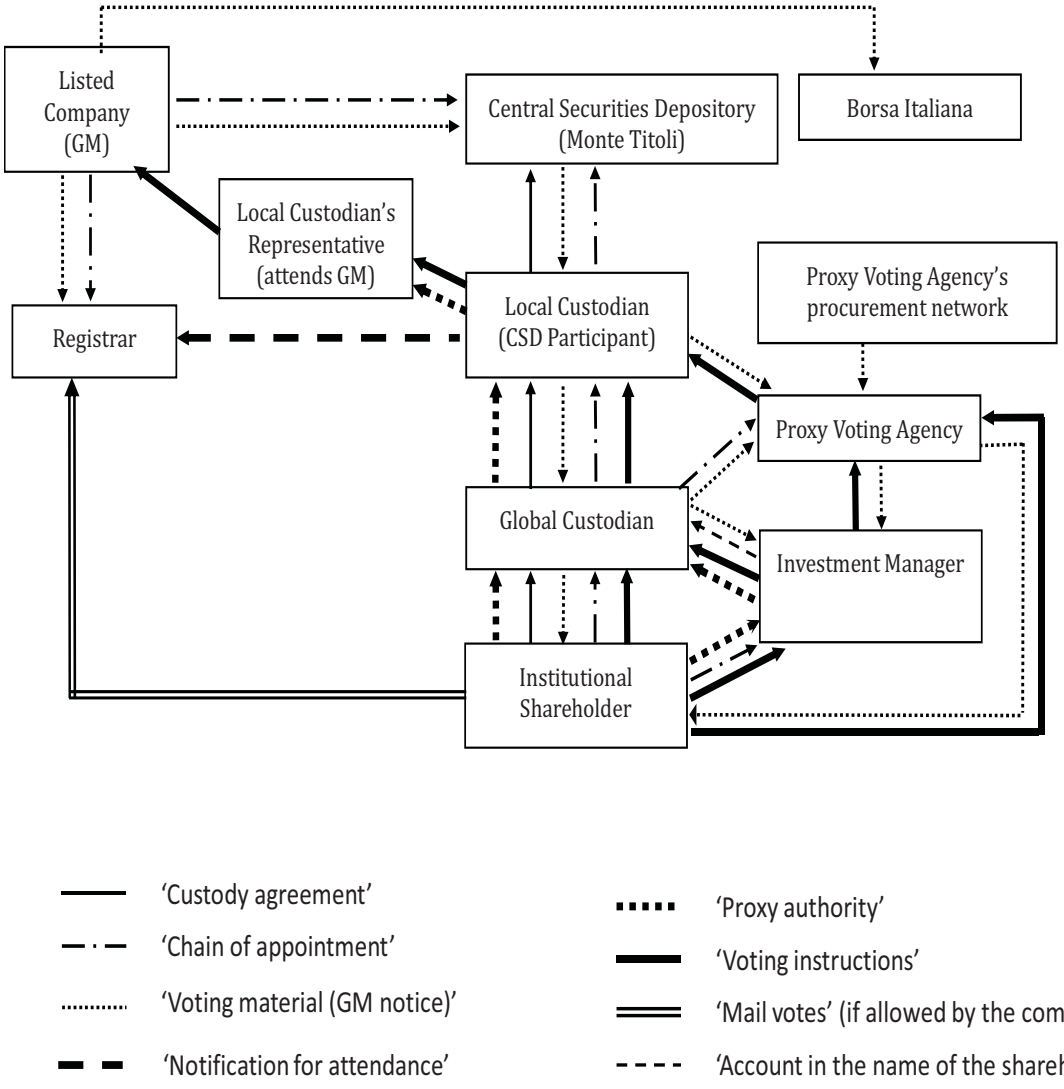


Figure 5
Typical Voting Chain for a Foreign Institutional Shareholder

This figure describes a typical voting chain for a foreign institutional shareholder who wants to exercise voting rights at the general meeting (GM) of Italian listed companies.



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