

## Newsalert

Consob Resolutions concerning the lowering of the initial thresholds for disclosure obligations for significant shareholdings and declarations of intent

Consob resolutions concerning the lowering of the initial thresholds provided for the significant shareholdings disclosure obligation pursuant to Article 120, paragraph 2, of the Consolidated Financial Act and for declarations of intent pursuant to paragraph 4 *bis* of that Article for 104 Italian listed companies with a widely held shareholder base.

By Resolutions no. 21326 and no. 21327, dated April 9, 2020 (respectively, “**Resolution 21326**” and “**Resolution 21327**”), Consob has strengthened the transparency regime for the **significant shareholdings disclosure obligation** pursuant to Article 120, paragraph 2, of the Consolidated Financial Act and for “**declarations of intent**” pursuant to paragraph 4 *bis* of that Article for 104 issuers with a “widely held” shareholder base and expressly named by Consob (see chart below).

Both the Resolutions have effect only temporarily, for three months, **from April 11, 2020 until July 11, 2020** (unless revoked earlier).

The resolutions have been adopted by Consob pursuant to Article 17 of the Law Decree no. 23 of April 8, 2020 (for more detailed information see Chiomenti Newsalert dated April 8, 2020, available [here](#)), providing for “*Urgent measures related to access to credit and fiscal requirements for enterprises, golden powers in the strategic sectors as well as provisions related to health and employment matters, extension of administrative and procedural terms*” (the so called “**Liquidity Decree**” or “**Enterprises Decree**”), within the measures aimed at guaranteeing the efficiency and transparency of the corporate control market in light of potential speculative actions on the securities of listed companies, in this particular economic and financial situation related to the COVID-19 outbreak.

\* \* \* \* \*

Relevant thresholds pursuant to Article 120, paragraph 2, of the Consolidated Financial Act: Resolution 21326

As has been noted, the Liquidity Decree has amended Article 120, paragraph 2 *bis* of the Consolidated Financial Act stating that Consob may “*where motivated by the requirement to protect investors and for efficiency and transparency of the corporate control market and capital markets*” establish, “*for a limited period of time and for companies with ~~an high current market value and~~*”

~~with~~ a particularly widely held shareholder base, thresholds lower than that provided under paragraph 2 [i.e. 3% of the voting capital, for companies other than SMEs, and 5% for SMEs]”.

After deletion – by the legislator – of the reference to “*high current market value*”, Consob has intervened on the matter, extending the lowering of the **initial threshold for the significant shareholdings disclosure obligation** (pursuant to Article 120 of the Consolidated Financial Act) for 104 companies having a widely held shareholder base.

In particular, the initial threshold has been lowered to (i) **1%, for issuers other than SMEs** (see Section A of the chart below) and (ii) **3%, for SME issuers** (see Section B of the chart below).

Given the above, shareholders with a holding, as at **April 11, 2020**, exceeding the abovementioned thresholds must make the relevant notification under Article 120 of the Consolidated Financial Act **within 10 business days from that date**. The exemptions from the significant shareholdings disclosure obligations under Article 119-bis of the Issuers' Regulation remain applicable <sup>(1)</sup>.

Resolution no. 21326 also specifies that those investors who have already disclosed their shareholding exceeding the new initial threshold in compliance with the previous resolution no. 21304 dated March 17, 2020 are not required to make a new disclosure.

With reference to SMEs, it should also be noted that, with resolution no. 21320 dated April 7, 2020 (“**Resolution 21320**”) <sup>(2)</sup>, amending certain provisions of the Issuers' Regulation on corporate transparency, Consob also amended (i) Article 2-ter, paragraph 2, providing that any change in SME status must be disclosed to the public with the press release issued by listed companies after the annual shareholders' meeting resolving upon the financial statements and (ii) Articles 117 and 121, stating that “*anyone who, at the time of the loss of the investee company's SME status, holds a shareholding of more than 3% and less than 5%*” must notify Consob and the investee company of such shareholding, within 15 trading days from the date of the aforementioned press release.

#### Declarations of intent pursuant to Article 120, paragraph 4-bis, of the Consolidated Financial Act: Resolution 21327

As has been noted, Article 120, paragraph 4-bis, of the Consolidated Financial Act states that “*should a shareholding equal or higher to the thresholds of 10%, 20% and 25% of the share capital of a listed company be acquired, except as provided for under Article 106, paragraph 1-bis, the person making the communications referred to in paragraphs 2 and following of this Article must declare the objectives it intends to pursue in the following six months*” (so called “*anti scorrierie*” rule).

With reference to such provision, the Decree - in order to protect Italian companies from hostile acquisitions made easier to implement by the current health emergency – has provided that Consob may “*where motivated by the requirement to protect investors and for efficiency and transparency of the corporate control market and capital markets*” establish, “*for a limited period and for companies with a particularly widely held shareholder base, a threshold of 5% in addition to the thresholds provided in the first sentence of this paragraph*” (for more detailed information see Chiomenti Newsalert dated April 9, 2020 available [here](#)).

In implementation of the foregoing, Consob, by means of Resolution 21327, has therefore provided that, for the aforementioned **three-month period starting from April 11, 2020**, the disclosure

---

<sup>(1)</sup> These are the “*exemptions*” from the disclosure obligations pursuant to Article 120 of the Consolidated Financial Act, including, by way of example, the compensation and liquidation transactions, the share custodian services, market-maker transactions, stabilization transactions, etc.

<sup>(2)</sup> Resolution 21320 enters into force on the day following the date of its publication in the Italian Official Journal.

obligations relating to declarations of intent for those 104 listed issuers having a widely held shareholder base (*i.e.* not subject to a *de jure* control) set out in the chart below, are triggered **when the initial threshold of 5% is reached or exceeded. The other 10%, 20% and 25% thresholds remain unaffected.**

Pursuant to the “new” Article 122-ter of the Issuers' Regulation, introduced by Resolution 21320 and referred to in Resolution 21327, a declaration of intent is in any case not required:

- a) in the cases provided under Article 49, paragraph 1, letters a) - limited to the case in which a single shareholder holds the majority of the voting rights in the ordinary shareholders' meeting of the listed company - c) <sup>(3)</sup>, d) <sup>(4)</sup> and h) <sup>(5)</sup> of the Issuers' Regulation;
- b) when the acquisition of the shareholding would also trigger the obligation to launch a mandatory tender offer pursuant to Article 106, paragraphs 1 or 1-bis, of the Consolidated Financial Act, and one of the exemptions provided for in Article 49, paragraph 1, letters b) <sup>(6)</sup> or g) <sup>(7)</sup> of the Issuers' Regulation is met;
- c) where an exemption from the significant shareholdings disclosure obligations applies under any of Article 119-bis, paragraphs 3, letters a), b) and c-ter), 5 and 6 of the Issuers' Regulation;
- d) if reaching or exceeding the thresholds is due to changes in the share capital and/or the voting rights, on the basis of the information published by the issuer pursuant to Article 85-bis of the Issuers' Regulation, without prejudice to the provision of the last part of Article 49, paragraph 1, letter d-bis) <sup>(8)</sup>;
- e) for management companies acquiring shareholdings, also in aggregated form, in listed issuers as part of the management activities referred to in Article 116-terdecies, paragraph 1, letter e) of the Issuers' Regulation exercised in accordance with the conditions defined in Directive 2009/65/EU, or for non-EU entities carrying on an activity for which, if they had their registered office or central administration in an EU Member State, the authorization would be required under Directive 2009/65/EU, as well as for Italian AIFs not reserved to professional investors and for EU AIFs whose applicable national law provides for investment limits and conditions equivalent to those laid down by Italian law with regard to AIFs not reserved to professional investors;
- f) where the purchase of shareholding triggers the obligation to make or is made in the context of a public tender or exchange offer disclosed to the market.

\* \* \* \* \*

The chart below lists the issuers to which the new initial 1% threshold pursuant to Article 120 of the Consolidated Financial Act applies (Section A) and the SME issuers to which the new initial

<sup>(3)</sup> *i.e.* when “the shareholding is acquired following a transfer between companies in which the same party or parties have, including jointly and/or indirectly through a subsidiary pursuant to Article 2359, paragraph 1, number 1), of the Italian Civil Code, the majority of voting rights exercisable at ordinary shareholders' meetings or is acquired following a transfer between one of these companies and these parties”.

<sup>(4)</sup> *i.e.* when “exceeding the threshold is due to the exercise of option, subscription or conversion rights previously held”.

<sup>(5)</sup> *i.e.* when “it is the result of successions or of gifts between living persons”.

<sup>(6)</sup> *i.e.* when “the relevant threshold is exceeded: 1) in the event of recapitalization of the listed company or other capital strengthening measures when the company is in a crisis [...] 2) in the absence of other purchases made or agreed in the previous twelve months, exclusively by subscribing to a capital increase in the listed company, with the exclusion of option rights, which would make possible, also through debt restructuring, the restoration of the company's debt exposure and to ensure the rebalancing of its financial situation, carried out in implementation of a recovery plan [...]”.

<sup>(7)</sup> *i.e.* when “it is consequent to merger or demerger transactions approved by resolution of the shareholders' meeting of the company whose securities would otherwise have to be subject to an offer and, without prejudice to the provisions of Articles 2368, 2369 and 2373 of the Italian Civil Code, without the contrary vote of the majority of the shareholders present at the shareholders' meeting, not including the shareholder who acquires the shareholding above the relevant threshold and the shareholder or shareholders who hold, also through being in concert with each other, the majority shareholding, also a relative majority shareholding, provided that it exceeds 10%”.

<sup>(8)</sup> Which provides that “unless the interested entity has acquired, also in concert, a shareholding which, calculated in relation to the total number of securities issued by the issuer that grant the right to vote on the same matters, exceeds the thresholds indicated in paragraphs 1, 1-bis, 1-ter and paragraph 3, letter b), of Article 106 of the Consolidated Financial Act”.

threshold of 3% applies (Section B), as well as the new threshold of 5% for "*declarations of intent*" (both Sections).

Section A - (1%)	Section B - (3%)
A2A Spa	Acotel Group Spa
Anima Holding Spa	Acsm-Agam Spa
Assicurazioni Generali Spa	Aeroporto Guglielmo Marconi Di Bologna Spa
Astm Spa	Alkemy Spa
Atlantia Spa	Avio Spa
Azimut Holding Spa	Banca Farmafactoring Spa
Banca Mediolanum Spa	Banca Finnat Euramerica
Banca Popolare di Sondrio Scpa	Banca Sistema Spa
Banco Bpm Spa	Basic Net Spa
Bper Banca Spa	Bastogi Spa
Cerved Group Spa	Be Think, Solve, Execute Spa
Enel Spa	Bf Spa
Eni Spa	Bialetti Industrie Spa
Finecobank Banca Fineco Spa	Bioera Spa
Hera Spa (Holding Energia Risorse Ambiente)	Borgosesia Spa
Infrastrutture Wireless Italiane Spa -Inwit	Caleffi Spa
Interpump Group Spa	Carel Industries Spa
Intesa Sanpaolo Spa	Cellularline Spa
Iren Spa	Centrale Del Latte D'italia Spa
Italgas Spa	ChI - Centro HI Distribuzione Spa
Italmobiliare Spa	Cir Spa
Leonardo - Società Per Azioni	Class Editori Spa
Mediaset Spa	Coima Res Spa Siiq
Mediobanca - Banca Di Credito Finanziario Spa	Compagnia Immobiliare Azionaria - Cia Spa
Moncler Spa	Credito Valtellinese Spa
Ovs Spa	Csp International Fashion Group Spa
Pirelli & C. Spa	Digital Bros Spa
Prysmian Spa	Dovalue Spa
Saipem Spa	El.En. Spa
Salini Impregilo Spa	Enervit Spa
Sanlorenzo Spa	Eprice Spa
Saras Spa Raffinerie Sarde	Equita Group Spa
Snam Spa	Esprinet Spa
Società Cattolica di Assicurazione Società Cooperativa	Eukedos Spa
Telecom Italia Spa	Eurotech Spa
Terna - Rete Elettrica Nazionale Spa	Gabetti Property Solutions Spa
Unicredit Spa	Gedi Gruppo Editoriale Spa
Unione di banche italiane Spa	Gruppo Mutuonline Spa
Unipol Gruppo Spa	Guala Closures Spa
	Igd - Immobiliare Grande Distribuzione Siiq Spa
	Illimity Bank Spa
	Itway Spa

# CHIOMENTI

	La Doria Spa
	Lventure Group Spa
	Molecular Medicine Spa
	Mondo Tv Spa
	Olidata Spa
	Openjobmetis Spa
	Orsero Spa
	Prima Industrie Spa
	Ratti Spa
	Rcs Mediagroup Spa
	Retelit Spa - Reti Telematiche Italiane Spa
	Risanamento Spa
	Rosss Spa
	Sabaf Spa
	Saes Getters Spa
	Safilo Group Spa
	Tamburi Investment Partners Spa
	Techedge Spa
	Tesmec Spa
	Tiscali Spa
	Trevi - Finanziaria Industriale Spa
	Txt E-Solutions Spa
	Unieuro Spa

*For further information your usual Chiomenti contacts are available.*