

[COVID-19 Task Force — Milan](#)

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## Managing Italian Companies with Listed Securities During the COVID-19 Outbreak – Part III (Limits to Market Transactions)

*This third in a series provides practical guidance to help companies cope with the evolving regulatory scenario during the pandemic.*

Due to the global spread of COVID-19, governments and regulators have adopted a variety of measures to support companies with equity and/or debt listed securities. As measures continue to be adopted to address the economic consequences of the epidemic, the regulatory framework applicable to Italian companies with listed securities has also been affected in many ways.

In particular:

- The European Securities and Markets Authority (ESMA) adopted special recommendations addressed to issuers about the disclosure of significant information concerning the impacts of COVID-19 on issuers' financial situation and business activities
- The Italian government issued three major extraordinary decrees, the so-called "Cura Italia" Decree (Law Decree of 17 March 2020), "Cura Italia 2" Decree (President of the Council of Ministers Decree of 22 March 2020) and "Liquidity" Decree (Law Decree no. 23 of 8 April 2020), which, among other points:
  - Introduced simplified formalities to hold shareholders' and board of directors meetings and to vote at such meetings
  - Strengthened the securities regulator's powers to impose stricter reporting requirements of relevant shareholdings in Italian listed issuers
  - Provided public guarantees for financings, provided that beneficiary companies do not, among other actions, distribute dividends and carry out buy-back transactions.
- The Italian Securities Commission (CONSOB) introduced a ban of short sales with respect to shares traded on the *Mercato Telematico Azionario* of Borsa Italiana S.p.A. and released its guidance on the shareholders' meetings of listed issuers as well as a warning on financial information (CONSOB Resolution n. 3/2020 of 10 April 2020 and CONSOB Warning of 9 April 2020).

This *Client Alert* is the third in a series, and provides practical guidance by outlining the matters and questions that are most likely to arise in the management of an Italian company with listed equity and/or debt securities and provide some useful tips to address the most relevant corporate and securities law issues that may arise in the current evolving regulatory scenario. This series covers the following topics:

- [Part I: Reporting Obligations and Corporate Meetings](#)
- Part II: Public Guarantees and Lending Relief Measures
- Part III: Limits to Market Transactions

## Limits to Market Transactions

### Are there any limitations on new stock transactions applicable to Italian equity listed companies?

**YES.** CONSOB has imposed stricter reporting obligations for relevant shareholdings in certain Italian-listed issuers and extended the short sale ban on shares traded on the Italian *Mercato Telematico Azionario*.

#### Reporting of relevant shareholdings

CONSOB, exercising the powers granted by the Liquidity Decree, has lowered the entry threshold of relevant shareholding to be reported in companies with a broad shareholder base. According to Italian law implementing Directive No 2004/109/EC as amended (Transparency Directive) the threshold has lowered:

- From 3% to 1% for [the 39 major companies](#)
- From 5% to 3% for [the 65 small/medium enterprises](#)

The above thresholds are in addition to existing thresholds, which continue to apply. Accordingly, the thresholds applicable to the 104 companies above shall be 1% (only for major companies), 3%, 5%, 10%, 15%, 20%, 25%, 30%, 50% and 66.6%. Such reduced thresholds will be in force until 11 July 2020, unless revoked prior to such date.

#### Takeover plan public declaration

The Liquidity Decree has amended a provision the government adopted in 2017, which aimed to better protect Italian investors and the integrity of the Italian market in case of takeovers. Under that provision, anyone acquiring a share capital stake in an Italian equity listed issuer higher than 10%, 20% or 25%, is required to make certain disclosures, in addition to the reporting of the relevant shareholding (indicated above). Those disclosures to the public, the relevant issuer, and CONSOB include key information to unveil any takeover plan, for example:

- If the shareholder intends to make additional purchases and take control of the issuer or acquire a stake capable of influencing the management and strategy of the issuer
- If the shareholder intends to propose the appointment of new directors or the revocation of those in office
- If the shareholder intends to enter into shareholders' agreements

- If the shareholder is acting in concert
- How the shareholder has financed the acquisition

Given the low market prices and high volatility due to the COVID-19 outbreak, CONSOB has strengthened these protections by lowering the takeover plan disclosure requirements to a 5% entry reporting threshold. This threshold applies to the 104 companies above, to which the lower general reporting of relevant shareholding also applies. This measure will be in force until 11 July 2020, unless revoked prior to such date.

### **Is there any exemption from the takeover plan public declaration?**

**YES.** CONSOB has recently approved a specific regulatory provision (new article 122-ter, paragraph 1, of Issuers Regulation 11971/1999) detailing the exemptions from the takeover plan declaration. The obligation to publish such a declaration shall not apply:

- When the stake is acquired upon the occurrence of one of the following exemptions from the mandatory takeover bid rules (article 49 of Regulation 11971/1999):
  - When another shareholder already holds the majority of the voting rights in the shareholders' meeting (letter a)
  - Intragroup transfers (letter c)
  - Crossing of the relevant threshold occurs in circumstances which are not under the control of the acquirer (e.g. exercise of option, subscription or conversion rights originally assigned to the acquirer) (letter d)
  - Crossing of the relevant threshold as a consequence of heir succession or donation (letter h)
- When the stake is acquired upon the occurrence of one of the following exemptions from the reporting obligations of relevant shareholdings (article 119-bis of Regulation 11971/1999):
  - When shares are acquired for compensation and settlement purposes only
  - Shares held by custodians
  - Voting rights acquired for stabilization purposes
  - Short transactions provided that voting rights are not exercised

Key Provisions of Law: CONSOB Resolution no. 21327 of 7 April 2020, Art. 120, paragraph 4-bis of Legislative Decree no. 58/1998 and Article 122-ter of CONSOB Regulation 11971/1999.

### **Short sale ban**

CONSOB extended the short sale ban exercising its powers under Article 20(3) of Regulation (EU) 236/2012. The short sale ban will be in place for three months starting from 18 March 2020 and covers all shares traded on the Italian *Mercato Telematico Azionario*. The ban applies to any net short position

taken or increased on any trading venue and includes intraday transactions. The ban excludes (i) market making positions, (ii) trades in indices, provided that the Italian shares covered by the ban do not represent more than 20% of the index weight; and (iii) building up or increasing net short positions exclusively aimed at stemming the equity underlying of convertible bonds or option rights previously purchased.

*Key Provisions of Law:* CONSOB Resolution no. 21303; CONSOB Resolution no. 21326; Art. 120 of Legislative Decree no. 58/1998 and Regulation (EU) 236/2012 and Art. 17 of Liquidity Decree.

**With reference to the CONSOB short sale ban, to what extent does the prohibition apply? What would be the consequences of non-compliance with the ban?**

**IT DEPENDS.** In this respect CONSOB published a series of responses to questions on the interpretation of the ban ([FAQs](#)).

In particular, CONSOB clarifies that the ban only refers to creating or increasing a new net short position and, therefore, an investor who opened a net short position before the ban can reduce or keep it. Keeping a previous net short position unaltered does not infringe the prohibition.

On the other hand, increasing a position after having reduced it is not allowed.

Moreover, if an investor had placed an order that is not executed by the time the ban has entered into force and, if executed, would create or increase a net short position, the investor must cancel that order.

The ban applies to any natural or legal person, irrespective of their country of residence, regardless of whether trading takes place in Italy or in another EU or non-EU country.

According to Article 193-ter of Legislative Decree no. 58/1998, anyone who breaches the measures adopted by competent authorities pursuant to Regulation no. 236/2012 (including the short sale ban) can be fined from €25,000 to €2.5 million.

*Key Provisions of Law:* Art. 193-ter of Legislative Decree no. 58/1998 and Regulation (EU) 236/2012; CONSOB's frequently asked questions on the temporary ban on net short positions of 18 March 2020.

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