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# Appointment of directors in Italy

## *“Voto di lista”*

**Proxy Access in Italy: it works!**

**How the institutional investors protect their interests in Italian public companies**

*"I firmly believe that providing a meaningful opportunity for shareholders to exercise their right to nominate directors at their companies is in the best interest of investors and our markets. It is a process that helps make boards more accountable for the risks undertaken by the companies they manage."*

Mary L. Schapiro Chairman of SEC

## **Introduction.**

In Italy, the proxy access is effective by a “*Voto di Lista*” voting system. This paper has the goal to explain you how.

As emphasized in the preamble, there is an even more required need to nominate one or more independent members for the boards of listed companies; in Italy this need is guaranteed by “*Voto di lista*”, a way for nomination and election of the Board of Directors and the Board of Statutory Auditors; this slate voting system is a highly innovative and progressive solution to protect the interests of minority stakeholders.

This new and sole in all over the Europe, Italian instrument rivets more and more the attention of the foreign investors allowing their direct participation to the live of the corporation. Even more attractive, the Italian corporative world become also for women directors. Today a very small number of the members of the boards of Italian largest public companies are women. From 2012, it will be compulsory that one third of the members of the boards of Italian public companies shall be formed by less represented gender.

Italy has, in the last years, increased the foreign participation of directors to the board, in important companies such as Eni S.p.A. - IT0003132476; Telecom S.p.A. - IT0003497168, UniCredit S.p.A. - IT0000064854, Enel S.p.A. - IT0003128367, Assicurazioni Generali S.p.A. - IT0000062072; Intesa SanPaolo S.p.A. - IT0000072618, Pirelli & C S.p.A. - IT0004623051. Today in Italy, it is common practice to elect the members of the Boards of Directors and Statutory Auditors through “*Voto di lista*” and investors taking part to this process are not considered at all “activist shareholders”.

Notwithstanding, the Italian market needs more new foreign “fresh air” at the boards’ level; the presence of independent foreign and Italian directors, also women, appointed by institutional investors inside the company’s boards is crucial for Italian system, because it helps to assure the values, like transparency, accountability and disclosure, and it is very important also for the development of international financial system.

This is one of the best tools to protect your investments!

### **1. Slate voting: legal framework.**

In Italy, the slate voting system was introduced, and became compulsory for the nomination in the election of the Board of Directors and the Board of Statutory Auditors by the “minority” shareholders of listed companies controlled by

Government in 1994: at least 1/5 of the members shall be elected from a slate presented by one or more minority stakeholders (Law n.474/1994).

In Italy most of the listed companies are controlled by one or more core shareholders and therefore there is also a need to balance this power.

With the Legislative Decree n.58/1998, the same procedure of voting became mandatory also for the election of statutory auditors of all listed companies of the Italian Stock Exchange.

The Law n.262/2005 extended this legal forecast to the election of statutory directors of all listed companies of the Italian Stock Exchange. The transposition of the EU directive (2007/36/EC) had entailed that the shares blocking before the AGM or EGM was abolished.

Today, under the Italian Consolidate Law on Financial Intermediation, according to the article 147-ter, it is provided that at least one member of Board of Directors shall be elected from the minority slate that obtained the largest number of votes. The same rule, in accordance to the rules of Securities Market Authority, is applicable to the election of a member of the Board of Auditors by minority stakeholders.

## **2. The benefits of the procedure between good practice and accountability: easy to achieve.**

The slate voting system is an important instrument for achieving the following goals:

- ✓ protection of minority stakeholders' interests, forwarding the majority shareholders' interests;
- ✓ encouraging the participation of shareholders;
- ✓ avoiding and protecting from the abuse of power;
- ✓ assuring proper and correct management;
- ✓ increasing the transparency;
- ✓ enhancing the disclosure;
- ✓ providing more cost/efficiency ratio.

The achievement of mentioned benefits is corroborated by the following issues:

- ✓ presentation of the slate of candidates of minority stakeholders can be done by a group of shareholders: this does not constitute the so called "action in concert";
- ✓ no obligation to follow specific rules to select the candidate before the proposal of her/his name;
- ✓ no obligation to block the shares; shareholders are also permitted to include securities loaned to a third party, if they can be recalled and will in fact be recalled at (and only at) the date of presentation;

- ✓ no obligation to have beneficially owned the shares for a minimum period of time;
- ✓ no obligation to continue to hold the shares after slates presentation;
- ✓ no obligation to vote the presented slate;
- ✓ presentation of the slate of candidates appointed by the minority stakeholders is not subjected to any filing to Italian Securities Market Authority;
- ✓ presentation of the slate does not provide any tax or filing fee and the Italian law does not require notary public certification and/or apostille;
- ✓ presentation and the structure of the slate is simple and the knowledge of Italian language is not required.

The last features will be analyzed in the following paragraph. The rules and the procedures described below, related to the appointment to the Board of Directors, are applicable also to the appointment of Statutory Auditors.

### **3. Slate voting system and operative rules.**

The shareholders have the right to present the slate of candidates, together or with others, when they hold between 0,5 and 4,5%, of the share capital also in accordance with thresholds established by Italian Securities Market Authority every year, to elect from one to three independent directors.

Minority shareholders are permitted to aggregate holdings in order to meet the requested threshold: this presentation of the slate of candidates can be done together without making them to “act in concert” according to Italian law system. The presentation of a slate by group of minority shareholders, beyond, does not require any prior written agreement between them nor any filing to Italian Securities Market Authority.

Each shareholder can present and vote one slate. Each slate can be filed by one or more shareholders.

The slate has to be presented at least 25 days before the date of AGM. Most of the time the slate can be presented through electronic means, such as certified e-mails.

Since there is no obligation to comply with any specific previous approval by the corporation to select the candidate/s there is a chance of wide participation of foreign directors, including women, at the boards level.

Each slate can contain the name of one or more candidates, listed in the numerical sequence. The slate indicates which are the candidates to be qualified “independent directors” in accordance to the laws and the Italian Stock Exchange - Code of Conduct.

Shareholders must only demonstrate the minimum ownership of the shares required to file the slate on the date of presentation by means of an electronic communication issued by the authorized custodian/agent bank/s to the corporation 21 days before AGM. It is not necessary to own the voting securities before the date of presentation nor to hold them after such date.

At AGM the candidates on the top of the list, who have obtained the highest number of votes from among the other lists submitted and voted by shareholders, are elected: at least one of the members of the Board of Directors shall be elected from a slate presented by one or more minority shareholders.

Companies are not permitted to opt out of the access rules described above.

#### **4. About Trevisan & Associati**

For longer than 20 years, we act as proxy voting agent on behalf of the most important national and international institutional investors, their global agents and custodian banks. Furthermore, our firm has long been providing consulting and assistance in matters regarding corporate governance, in particular, representing and providing legal aid to institutional investors in their valuations of the fairness and transparency of the conduct of issuers and of administrative and regulatory bodies, with respect to the principles of corporate governance, according to international standards and to local and particular codes of discipline and self-discipline.

Since 2008, we have been advising several Italian and foreign investors in their presentation of the slates for the appointment of directors and statutory auditors of Italian listed companies including Astaldi S.p.A. - IT0003261069; Atlantia S.p.A. - IT0003506190; Autogrill S.p.A. - IT0001137345; Banca Popolare di Milano società cooperativa a r.l. - IT0000064482 - Finmeccanica S.p.A. - IT0003856405; Fondiaria-Sai S.p.A. - IT0001463071; Luxottica S.p.A. - IT0001479374; Mediaset S.p.A. - IT0001063210; Telecom S.p.A. - IT0003497168; UniCredit S.p.A. - IT0000064854; Banca Popolare dell'Etruria e del Lazio S.p.A. - IT0000060878; Enel S.p.A. - IT0003128367; Assicurazioni Generali S.p.A. - IT0000062072; Intesa SanPaolo S.p.A. - IT0000072618; Snam Rete Gas S.p.A. - IT0003153415; Ansaldo S.p.A. - IT0003977540; Eni S.p.A. - IT0003132476; Parmalat S.p.A. - IT0003826473; Pirelli & C S.p.A. - IT0004623051; Premuda S.p.A. - IT0003676282; Saipem S.p.A. - IT0000068525;

We are also providing legal assistance to Assogestioni and its associates, that is the leading Italian Association of Investment Companies managing mutual funds, investment funds, closed-end funds, exchange traded funds.

## What we offer concerning “voto di lista”?

Regarding the appointment of directors and statutory auditors by institutional investors through “voto di lista” our Law Firm provides the following services:

1. Information and advise how to present the slate for each “target” company selected by investor/s in accordance with thresholds established by Italian Securities Market Authority and company’s by-laws;
2. Assistance and advise how to select the candidates proposed by investors, providing them with all information and documentation both in Italian and English to accept in advance the nomination and be elected;
3. Coordination among the group of shareholders presenting the slate/s, providing them with all required legal forms and documentation both in Italian and English, to be filled and signed in accordance to the laws and the company’s by-laws, including instructions to the custodian and/or subcustodian/agents to fulfill the minimum required shares ownership to file the slate;
4. Filing and/or deposit of the slate/s, including the relevant documentation and formats of the candidates, on behalf of shareholders, in accordance to laws and company’s by-laws
5. Attendance and voting by proxy at the AGM on behalf of the shareholders who presented the slate/s.

The accomplishment of the procedure described above will be not “time consuming” and the related legal costs are very low, especially compared to the benefits you will be able to achieve.

Beyond the mentioned advantages of the “*voto di lista*” system, we finally remind you that one of the most important benefit you can achieve now is to allow propositions and candidatures from foreign candidates.

If you are interested or you have questions, please don’t hesitate to contact us at following address:

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Yours faithfully

Ekaterina Andreitchikova

Dario Trevisan

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