Council of Institutional Investors®
The voice of corporate governance

Via Email

Federico Freni
Undersecretary of State
Ministry of Economy and Finance &
Secretariat of the TUF Commission

October 4, 2024

Dear Mr. Freni:

I'm writing on behalf of the Council of Institutional Investors (CII) regarding the recently adopted "Capital Markets Law" ("*Legge Capitali*"), published in the Official Journal on March 13, 2024, and the reform of the Consolidated Law on Finance ("TUF") currently under discussion.

CII is a nonprofit, nonpartisan association of U.S. public, corporate and union employee benefit funds, other employee benefit plans, state and local entities charged with investing public assets, and foundations and endowments with combined assets under management of approximately $5 trillion. CII members are major long-term shareowners with a duty to protect the retirement savings of millions of workers and their families, including public pension funds with more than fifteen million participants – true "Main Street" investors through their pension funds. Our associate members include non-U.S. asset owners with about $4.8 trillion in assets, and a range of global asset managers with approximately $55 trillion in assets under management. CII is a leading voice for effective corporate governance, strong shareowner rights and sensible financial regulations that foster fair, vibrant capital markets. CII promotes policies that enhance long-term value for global institutional asset owners and their beneficiaries.

Jurisdictions may face calls to reduce corporate governance requirements or to entrench favored parties under the belief that these actions are necessary to remain competitive. However, such a race to the bottom does not promote the kind of capital formation that is in the long-term interest of investors and countries.

Annual General Meetings

Board slate

We support the continued approach of allowing the election of minority directors at Italian companies via the *voto di lista* process for all listed companies in Italy and believe that overly complicated election procedures should be avoided. Such procedures risk limiting opportunities to nominate director candidates and thus may disenfranchise investors unfamiliar with complex rules or who are unable to participate at in-person only, closed-door meetings.

CII policy provides that shareholders should have meaningful opportunities to suggest or nominate director candidates and to suggest processes and criteria for director selection and evaluation. Furthermore, boards should establish clear procedures to encourage and consider board nomination suggestions from long-term shareowners and should respond positively to

shareowner requests seeking to discuss incumbent and potential directors. We understand that investors have become familiar with the long-standing *voto di lista* process and the changes to the director nomination process risk adding further complexity without an identifiable benefit to shareholders.

Closed Door Meetings

Annual and special meetings of shareowners are important opportunities to meet with the board who represents them and ask questions and express their views. During the annual general meeting, shareowners should have the right to ask questions, orally or in writing. Directors should provide answers or discuss the matters raised, regardless of whether the questions were submitted in advance. While reasonable time limits for questions are acceptable, the board should not ignore an important question because it comes from a shareowner who holds a small number of shares or who has not held those shares for a certain length of time.

We are concerned that "closed door" annual general meetings (AGMs) with participation only allowed through designated representatives would significantly limit the ability of shareholders, especially minority shareholders, to participate at shareholder meetings and understand and provide input on the board's and management's rationale for various strategic and governance decisions. Given these barriers, such "closed door" meetings may lead to less investment in Italian-listed companies if investors view such meetings and the resultant board actions as less transparent and not benefiting from investors' perspectives.

CII policy provides that companies should make shareowners' expense and convenience primary criteria when selecting the time, format and location of shareowner meetings. Registration and proof of ownership requirements should not be onerous. Additionally, appropriate notice of shareowner meetings, including notice concerning any change in meeting date, time, place, format or shareowner action, should be given to shareowners in a manner and within time frames that will ensure that shareowners have a reasonable opportunity to exercise their franchise.

We are also concerned about how closed-door AGMs may intersect with the new two-stage voting process for the board and whether this will limit shareholders' ability to select their board representatives.

Agenda

Appropriate notice of shareowner meetings, including notice concerning any change in meeting date, time, place, format or shareowner action, should be given to shareowners in a manner and within time frames that will ensure that shareowners have a reasonable opportunity to exercise their franchise. Each ballot item should clearly identify and describe the subject matter and pertinent information, including the identity of the proponent or lead filer.

Loyalty Shares

CII policy provides that each share of common stock should have one vote. Corporations should not have classes of common stock with disparate voting rights.

Voting rights should be proportionate to economic ownership in order to prevent misalignment of interests. Empirical evidence indicates that loyalty share, also known as "time-phased voting,"

schemes are not associated with longer holding periods.[1,2] Thus, instead of supporting long-term investors, such approaches may instead serve to entrench insiders.

With loyalty shares in place, ideas for long-term value creation no longer must necessarily have the confidence of the company's broad ownership base. This can be problematic for the following reasons:

• The structure is likely to disproportionately empower founders/managers who have substantial stakes from IPO, and who sometimes fall victim to myopia or conflicted behavior that can destroy value;

• The structure may disproportionately empower particular long-term institutional investors, who even when independent of management are not always right – they may champion bad/idiosyncratic ideas; and

• The structure may disproportionately empower governments with an equity stake, including governments that place long-term value lower on the list of priorities (as we have experienced with this mechanism in France).

There are also implementation concerns:

• The loyalty share structure can be designed to require holders entitled to extra voting rights to opt in; the extra step means that many retail and overseas long-term holders may continue to vote on a one share, one vote basis, exacerbating the influence of those long-term holders who opt-in (e.g., insiders, sophisticated investors, domestic holders);

• While advances in technology could resolve this concern over the next several years, the fact remains that the system for tracking ownership at present is highly complex and not conducive to assigning voting rights according to the beneficial owner's holding period. In markets that allow for loyalty shares, some companies, recognizing this ownership tracking challenge, have resorted to an honor system whereby holders specify on the proxy card their voting rights. This raises questions of vote integrity; and

• Other loyalty proposals have required holders to register their shares to gain the super-voting rights. From past experience, many asset managers will be highly reluctant to do that. If only a minority of shares held long-term by independent shareholders take advantage of super-voting rights, the extra power of insiders, who are sure to take advantage of this, will be amplified and extended.

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[1] The Capital Market Consequences of Tenure-Based Voting Rights: Evidence from the Florange Act, Management Science (2022) by Thomas Bourveau, Francois Brochet, and Alexandre Garel. Compare to Encouraging long-term shareholders: The effects of loyalty shares with double voting rights, Finance (2024) by François Belot, Edith Ginglinger, and Laura Starks.

[2] Loyalty Shares with Tenure Voting: Does the Default Rule Matter? Evidence from the Loi Florange Experiment, Journal of Law and Economics (2020) by Marco Becht, Yuliya Kamisarenka, and Anete Pajuste.

Mergers with Unlisted Companies

We are also concerned about the impact of mergers with unlisted companies on institutional investors. In particular, such mergers could leave institutional investors with illiquid shares of companies not traded on public markets. The current rights to liquidate these shares should be the consideration provided to other shareholders, rather than the arithmetic average of the closing prices in the six months preceding the publication of the notice of call of the shareholders' meeting called to approve the merge currently provided by Article 2437-ter, paragraph 3, of the Italian Civil Code.

In conclusion, we encourage the Italian Ministry of Economy and Finance and the TUF Commission to ensure that shareholder meetings are accessible to investors, rights and processes associated with the board nomination process are clear and reasonable to use, and that mergers with unlisted companies do not provide opportunities to take advantage of institutional and retail shareholders.

Thank you for the opportunity to provide the above comments and we are available for further discussion at your convenience. Please feel free to reach out to me at bob@cii.org at any time.

Sincerely,

Robert McCormick