

ref. Forum on Corporate Disclosure

GUIDE TO THE  
DISCLOSURE  
OF INFORMATION  
TO THE MARKET



BORSA ITALIANA  
ITALIAN EXCHANGE

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*Aiaf, Assogestioni, Assonime, Borsa Italiana, ref.-Ricerche per l'economia e la finanza*

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*The Guide is available on the websites of the institutions that took part in the Forum on Corporate Disclosure*

*The Forum on Corporate Disclosure was set up at the beginning of 2001 with a project promoted by the financial community and proposed to ref.-Ricerche per l'economia e la finanza in view of its tradition of independent research and its preparation of the annual Stock Exchange Report. The Forum's objective was to establish, with the active support of Borsa Italiana in its capacity as market regulator and supervisor, recommendations for improving the information on listed companies. The project reflected the interest of the individual parties involved — issuers, market management companies, asset managers, analysts, brokers — in achieving an adequate flow of accurate information that would guarantee the market a quality beneficial to all. A public interest that should not find expression only in regulation but also needs to emerge from practices recognised as appropriate by the financial community. The regulatory action of the supervisory authority, such as that entrusted to the market management company, cannot in fact venture too far into the detailed analysis of cases and behaviour, especially as regards a subject matter, such as disclosure, which is particularly sensitive to changes in the markets and the media. Consequently, between regulatory provisions and operational reality there are grey areas, where the rules are uncertain or lacking or where their application is problematic. Areas where continuous regulatory intervention would be too pervasive, as well as burdensome, whereas self-regulation can operate effectively. This is the consolidated practice abroad, whose adoption Consob has long called for.*

*The work of the Forum followed this approach. The existing legal and regulatory provisions have been supplemented with recommendations suggested by the rules themselves – with account also being taken*

*of Consob's interpretations and moral suasion – and by best international practice, to which constant reference has been made. The recommendations are the result of a consensus reached through constructive confrontation between the various parties involved, which drew constantly on the participants' practical experience.*

*The issues dealt with concern the various kinds of information on listed companies, and the different circumstances and ways in which it is disseminated. The analysis focused on the most significant and problematic aspects and led to the establishment of ten recommendations, supported by extensive comments explaining the reasons behind them and acting as “instructions for use”, with many examples. The common strand running through the various recommendations is the principle of correctness in disclosing information to the market, a function in which issuers, the main source of information, play a leading but not exclusive role. It particularly concerns the day-to-day conduct of listed companies, which is in need of guidance, a constant orientation towards better practices. For issuers, the recommendations prepared by the Forum represent an undertaking aimed at safeguarding the correctness of their conduct vis-à-vis the market and capable of indicating a solution in difficult situations, marked by uncertainty, and thus protecting issuers themselves. However, the recommendations provide guidance for other market participants, too, both in their evaluation of the correctness of companies' disclosures and in their own conduct, which must be consistent with them. The need for reciprocal correctness is reflected in the last recommendation, relating to the conduct of analysts, who, with their reports on companies and securities, complement the financial announcements of issuers, thereby contributing to the production of information for the market.*

*Hence, a guide seemed the most appropriate way of introducing these recommendations. Compliance with them will improve the qua -*

*lity of our market and, at the same time, make life easier for its participants, as well as for Consob and Borsa Italiana, who will be facilitated in their regulatory and supervisory tasks. Contacts between listed companies and Borsa Italiana will be expedited through its Company Announcements office, which has been actively involved in the work of the Forum.*

*We could of course have done more. However a guide such as this is made to be enhanced with comments and feedback, which will be incorporated at a later date if the Forum is maintained, as is our intention — because the relationships developed during this joint effort represent a value to be preserved, an important asset for the development of a market culture.*

*Giorgio Nardozzi*

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Consob executives with special expertise in the matters discussed attended the Forum as observers, offering a valid contribution to discussions.





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## RECOMMENDATION 1

### GENERAL CRITERIA

***1. Issuers and the persons controlling them should communicate with the market in compliance with criteria of correctness, clarity and equal access to information.***

***2. Issuers and the persons controlling them should refrain from disclosing information to the market for merely promotional purposes.***

This recommendation reflects the essential characteristics information needs to have in order for it to perform its function efficiently and is therefore a general condition for issuers' disclosure of information.

The criteria of correctness, clarity and equal access to information are given concrete form in the other recommendations set out in the Guide. A general observation regarding compliance with these criteria is appropriate for two reasons. On the one hand it provides an indication for the conduct of issuers, even in situations that are not expressly covered by the Guide; . on the other it serves as a key to the interpretation of each recommendation.

Correctness generally requires issuers and the persons controlling

them to disclose information in a form that is exhaustive and not misleading, paying careful attention to, and whenever possible anticipating, the market's legitimate requests for news, while constantly observing the general interest with regard to the correct functioning of the market.

Clarity concerns the manner in which information is disclosed to the market and implies both completeness and comprehensibility, taking into account the different recipients.

Lastly, equal access to information responds to the conviction, now widespread in the main markets, concerning the unacceptability of any form of selective disclosure of information that is potentially material for the evaluation of financial instruments.

Point 2 is an application of the general criterion of correctness. The disclosure of information that, however true, is not necessary for investors to make informed investment or disinvestment decisions, can cause confusion or prove misleading. Information of an advertising or commercial nature does not fall within the scope of this recommendation and is disseminated in different ways to those used for financial information.

The dividing line between an excess (and hence an abuse) of information and legitimate disclosure activity carried out within the framework of financial communication policies certainly has to be established on a case-by-case basis. The reference to the "merely" promotional nature of information can serve as a first selection criterion with a view to applying the recommendation correctly.

The following types of announcements can be considered examples of information disclosed for merely promotional purposes: 1)

research into new products prior to the existence of any reliable commercial prospects; 2) generic partnership or business agreements; and 3) mere intentions.

On the other hand, the recommendation does not apply to announcements of planned public offerings or tender offers or to the advertisements connected with such operations, which are subject to special regulation.



## RECOMMENDATION 2

### INFORMATION LIKELY TO HAVE A SIGNIFICANT EFFECT ON THE PRICE OF LISTED FINANCIAL INSTRUMENTS

- 1. Issuers and the persons controlling them should disclose material information promptly to the market.*
- 2. “Disclosure to the market” means making information available pursuant to Article 114.1 of the Consolidated Law on Financial Intermediation and the related implementing provisions.*
- 3. Material information means specific information having a precise content concerning events that occur within the sphere of the activities of issuers, the persons controlling them and their subsidiaries that has not been made public and that if made public would be likely to have a significant effect on the price of listed financial instruments. It concerns both the activities of such persons and the listed financial instruments.*

The obligation to disclose material information promptly has its origin in the objective of efficient price formation; it also reduces the risk of insider trading.

Point 2 defines the meaning of “disclosure to the market”, “disclose to the market” and similar expressions, used frequently in the Guide to indicate the disclosure procedures provided for in current regula-

tions (Article 114 of Legislative Decree 58/ 1998 – the Consolidated Law on Financial Intermediation – and the related implementing provisions), according to which information concerning significant events must be disclosed without unjustified delay by sending a notice to Consob, the market management company and at least two press agencies. For companies whose shares are listed on the regulated markets managed by Borsa Italiana and which are connected to the Network Information System (NIS), disclosure to the market is via that system.

These procedures for disclosing information ensure that it is disseminated as widely and promptly as possible and enable the supervisory bodies to take steps to ensure the market operates efficiently.

In this respect, the disclosure of material information in a press conference or interview, without an appropriate announcement having been distributed to the market, does not allow the competent bodies to carry out the required functions and cannot ensure the necessary dissemination of the information.

With a view to enhancing the timeliness of the information, whenever possible a draft announcement should be prepared prior to the event (for example, if the event to be disclosed is a resolution adopted by the board of directors).

Moreover, in anticipation of the imminent conclusion of major transactions or the formalisation of significant decisions, Consob and Borsa Italiana should be consulted beforehand, in order to evaluate possible market interventions jointly and in greater depth. This does not affect the requirement under current regulations for Borsa Italiana to be informed in advance by telephone of press releases concerning significant events to be issued during trading hours.

The nature of material information identified in Point 3 (it must be



specific and have a precise content) is to be construed according to the typical effect of the dissemination of material information: a sizeable movement in the price of the listed financial instruments concerned. Hence, there can be no material information where the level of specificity and preciseness is so low that it is not possible to evaluate its impact on the price of the financial instruments. Moreover, the information must concern events occurring within the sphere of activity of issuers, the persons controlling them or their subsidiaries, that affect or may affect the assets and liabilities, profitability or financial position of the issuers, or their businesses, meaning thereby not only events concerning their activity (acquisitions, etc.) and organisation (for example the resignation of a managing director or key staff) but also events concerning the financial instruments (for example the conversion of shares, changes to the rights of classes of shares, extension of the time limit for exercising warrants, etc.). Events such as the approval of projects and plans, negotiations and declarations of intent, including those of a bilateral nature, where the significance is not determined by the events themselves, since they are part of complex procedures for the implementation of operations which are significant, do not normally have to be disclosed promptly, except in certain specific situations (see Recommendation no. 3).

In addition to what is specifically provided for in Consob Regulation 11971/1999 on issuers in relation to accounting and budget data, the following is a non-exhaustive list of events that are likely to be significant:

1. entry to, or withdrawal from, a line of business;
2. resignation or appointment of members of the board of directors or auditors;
3. acquisition or disposal of shareholdings, other assets or business divisions;

4. abandonment of the engagement by the auditors;
5. operations involving the share capital and issues of warrants;
6. issues of bonds and other debt securities;
7. changes to the rights of listed financial instruments;
8. losses that significantly reduce the shareholders' equity;
9. mergers and demergers;
10. conclusion, amendment or termination of contracts or agreements;
11. conclusion of procedures relating to intangible assets such as inventions, patents or licences;
12. legal disputes;
13. changes in the company's strategic personnel;
14. operations involving own shares;
15. filing of petitions or issuing of orders for submission to insolvency proceedings;
16. request for admission to insolvency proceedings;
17. transactions with related parties.

A qualified opinion, an adverse opinion or a disclaimer by the auditors is always to be considered a significant event.

The evaluation of the significance of individual events has to be on a case-by-case basis. Thus, in assessing the significance of the resignation of members of the board of directors attention needs to be given, *inter alia*, to the importance of the role they played in the company (for example, taking into account specific responsibilities or powers held) as well as their reasons for resigning (due to their having reached retirement age as opposed to disagreements within the board). In order to judge the significance of corporate actions, the decisive factor may be the quantitative aspect (for example the size of the company

acquired or sold in terms of assets or income in relation to the acquiring or selling company) or the ownership structures of the companies involved (the absorption of a wholly-owned company, for example, is decidedly less significant than the absorption of a 30%-owned company).

With regard to Point 6 it should be noted that when bond issues are a normal way of doing business – as in the case of banks – a single issue might be of little significance for the market.

As regards operations where both the resolution of the board of directors and the subsequent one of the shareholders' meeting are significant (for example the operations referred to in Points 5, 6, 7, 9, 14, 16), the information provided for in this recommendation must be construed as referring to both. This is particularly true in cases where the resolutions of the shareholders' meeting differ from the proposals made by the board.

As regards operations referred to in Point 17, a useful reference point is the concept of related party identified in the international accounting standards (IAS 24 and IAS 28). In brief, according to these standards, parties are related when one of them can control the other or exert a significant influence on the other's financial or operational decisions. The reference made to the IAS does not exclude that other situations may be significant for the purposes of this recommendation. In particular, as regards the concept of related party it is also possible to ascribe significant influence to persons participating, directly or indirectly, in shareholders' agreements concerning the issuer.

Transactions carried out with related parties will, in principle, be of greater significance than those having the same characteristics carried out with third parties; however not every transaction with a rela-

ted party has to be disclosed to the market, only the significant ones. In other words, the size threshold triggering the disclosure obligation may be lower than that for similar transactions carried out with third parties.

The decision regarding the significance of such transactions may also be based on an evaluation of their frequency and nature (commercial or financial) and, above all, of whether or not they are carried out at market conditions and in the normal course of business. Special attention should be paid to the total value of transactions carried out with the same party even if, considered individually, they are not significant.

### RECOMMENDATION 3

PROJECTS, NEGOTIATIONS, DECLARATIONS OF INTENT.

1. *Events such as declarations of intent, including those of a bilateral nature, approvals of projects, negotiations and all trading and other actions, directed towards the conclusion of an operation constituting a significant event under Recommendation no. 2, should be disclosed to the market if there are both:*
  - a. *unmistakable signs that, despite the adoption of suitable procedures for keeping the information regarding the events in question confidential, the confidentiality obligations have not been observed by those who have had access to the information; and*
  - b. *good reasons for expecting a successful outcome of the operations of which such events are initial or intermediate phases. Care should be taken in the disclosure to point out the uncertainty regarding the final outcome of the events.*
2. *For the purpose of Point 1 letter a), the confidential nature of information is not considered to have been violated if for official reasons issuers or the persons controlling them communicate the information in question to third parties legally or contractually bound to secrecy.*
3. *Issuers and the persons controlling them and, where appropriate, their subsidiaries should adopt suitable procedures for maintaining the confidential nature of material information up to the time it is disclosed to the market.*

This recommendation responds to the general criterion of the correctness of disclosures. In the light of current regulations the obligation to inform the market even in the absence of the circumstances set forth in Recommendation no. 2 exists only where there is a sizeable movement in the price of the financial instruments concerned owing to public information that has not been officially disclosed (leaks or rumours: see Recommendation no. 8). Consob itself has explained that disclosure to the market of information relating to agreements or transactions that are not sufficiently defined can alter the regular operation of the market. Premature disclosure to the market can thus only be justified where it is necessary to guarantee conditions of equal access.

According to this recommendation and in keeping with these indications, listed companies should not wait until a leak has actually occurred before disclosing information to the market. It is necessary, however, to identify criteria that are as objective as possible to guide the conduct of issuers and at the same time avoid actions that tend to alter the regular operation of the market. This gives rise to the need to peg the duty of disclosure to two general conditions that must occur together: 1) proof that the confidentiality obligations have not been observed, so that inappropriate disclosure of the information becomes highly probable; 2) the existence of good reasons for expecting the operations to which the events in question refer to have a successful outcome.

Unmistakable signs suggesting non-observance of confidentiality procedures include an irregular movement in the price or volume of trading of the financial instruments concerned, even without evidence of inappropriate disclosure of the information.

Point 2 states that issuers or the persons controlling them who, according to the circumstances and type of event, involve third parties

(lawyers, auditors, financial consultants, banks, contractual counterparties, etc.), do not violate the confidential nature of material information. In fact, if certain recipients of the information are bound by law to business or professional secrecy, or the issuer itself imposes the obligation of confidentiality on the parties involved, neither the ban on the selective disclosure of information nor the procedures intended to maintain the confidential nature of the information can be deemed to have been violated. The procedures referred to in Point 3 are also adopted by subsidiaries according to their importance within the group. They may also contain rules of conduct intended to ensure the aforementioned third parties observe the confidential nature of material information.





## RECOMMENDATION 4

### DISCLOSURE OF INFORMATION IN GENERAL MEETINGS

- 1. Material information may be disclosed in general meetings only if it has been disclosed to the market beforehand.*
- 2. If material information is disclosed inadvertently in a general meeting, it must be promptly disclosed to the market.*
- 3. If persons present at a general meeting raise questions concerning events in respect of which the conditions for application of Recommendations no. 2 and 3 do not exist, directors may use the expression “no comment” or the like.*

Shareholders' meetings provide an opportunity to establish a useful dialogue between directors and shareholders. However, they cannot be considered a suitable channel for disclosure to the public of material information and disclosing information just to a general meeting is a form of selective disclosure.

Moreover, in response to criteria of prudence and correctness, issuers should also comply with this recommendation for the disclosure to a general meeting of facts in respect of which there is reasonable doubt as to their ability to have a significant effect on the price of the financial instruments concerned.

If an issuer cannot avoid disclosing an item of material information in a general meeting, it must also be disclosed to the public in

accordance with current regulations. Specific questions raised by shareholders, fear of an imminent leak of material information, or the receipt of information during the meeting, may lead the issuer to deem it appropriate and necessary to disclose the information in the general meeting. In such cases, however, it is necessary to reconcile the need for disclosure to the general meeting with the requirement for equal access by the market. In order to comply with the procedures for prior disclosure of material information to the market, a short interruption of the proceedings may prove essential to allow the issuer to draw up and distribute the notice containing the material information.

Under current regulations, if the general meeting takes place during trading hours, the notice containing the material information must be sent first to Consob and the market management company; only after fifteen minutes have passed, can the information be disclosed to the public and then to the general meeting.

The recommendation also establishes that if material information is inadvertently disclosed to the general meeting (for example, if a director should refer to a fact or an event that he believes has already been made public by the company; or if it is realised only afterwards that the information disclosed is likely to have a significant effect on the price of the financial instruments concerned), the situation must be put right as promptly as possible. The market must therefore be informed as soon as the significance of the information is recognised.

The third point of the recommendation is consistent with the prohibition on selective disclosure. Shareholder's right to information is subordinate to the principle of equal treatment of investors as regards access to material information. In particular, the recommendation refers to cases where the general meeting is held while the significant event is in the process of formation.

## RECOMMENDATION 5

### MEETINGS WITH MARKET PARTICIPANTS

- 1. Where issuers organise, or take part in, restricted meetings with financial analysts, institutional investors or other market participants, they should give prior notice to Consob and the market management company with regard to the place, date, time and main items on the agenda and send them the documentation available to participants, at the latest to coincide with the meeting.*
- 2. Issuers and the market management company should make the documentation available to the public using suitable means.*
- 3. If the meetings are open to all market participants without distinction, issuers should also arrange for representatives of the specialised media to attend the meeting.*
- 4. Issuers intending to disclose forecasts, objectives or other material information in meetings with market participants should disclose the information in advance to the market.*
- 5. If forecasts or other items of material information are disclosed inadvertently in a meeting, the issuer should immediately disclose them to the market.*

This recommendation is based on the prohibition of selective disclosure of information in meetings with financial market participants. According to market practice there are at least three types of

contact between issuers and members of the financial community for the disclosure of information: 1) restricted meetings, often organised by a financial intermediary on behalf of one or more issuers, in which market participants are selected and invited to meet the issuer; 2) individual meetings between a single market operator (usually a financial analyst) and an issuer, held at the request of the former or at the invitation of the latter and not open to any other participants; 3) meetings open to all market participants, in which there is no selection of the parties entitled to attend. Such meetings may actually take place between an issuer and just a few participants, but what distinguishes them from the other types is that any operator can attend. The recommendation commented here is concerned with meetings of types 1) and 3), although Points 4 and 5 also apply to individual meetings. It was not considered appropriate to make individual meetings subject to the disclosure obligations applicable to the other types of meetings, to avoid discouraging a practice that is physiological and useful to the market. However, issuers should refrain from disclosing any information in such meetings where there is any doubt regarding its significance (and hence regarding the obligation to disclose it to the market).

Although it is to be hoped that issuers will adopt a policy aimed at implementing procedures for meeting with the financial community that conform as much as possible to the “open-door” principle, each issuer or financial intermediary must be free to choose other forms of meeting. At all events it is necessary to ensure information symmetry among the parties involved, and in particular between the market participants attending a meeting and the investing public. Observance of the principle of equal access to information can be guaranteed by allowing the information intended for participants in meetings to be made available beforehand to the public as well as to Consob and Borsa Italiana.

On the other hand, the rules for announcing the date, time and place of meetings will have to differ according to whether the meeting in question is to be restricted or open. If a meeting is restricted to certain parties, it seems logical for the event to be notified in advance only to those invited, Consob and Borsa Italiana. As regards restricted meetings, it is not considered necessary to request the presence of representatives of the specialised media, since it is thought sufficient, for the purpose of disclosing the information in question to the public, for the documentation distributed at such meetings to be sent to the market management company. It will therefore be up to the issuer to evaluate, in compliance with the principle of correctness, the need for media representatives to attend. If a meeting is open to all interested market participants, the issuer should announce the date, time and place to all investors. For this purpose, the issuer should use its own website or other means, in accordance with best market practice (e.g. the websites organised and managed by market participants for the distribution of information communicated to them by issuers on the basis of express or implied agreements, or the Aiaf “*Filo Diretto*” website).

The invitation to representatives of the specialised media must be construed as including not only the financial press but also other media in a position to distribute the information to the general public (e.g. specialised information agencies).



## RECOMMENDATION 6

### FORECASTS

- 1. Forecasts are taken to mean issuers' predictions concerning their assets and liabilities, profits and losses and financial position or quantitative objectives for their operations. They must include an indication of the main underlying assumptions.*
- 2. If forecasts are made using specific indicators, or charts/tables showing accounting data or other summary documents, issuers should ensure not only that the information is disclosed on a continuous basis but also that the items do not change over time.*
- 3. Whenever forecasts are included in documents intended for the public pursuant to legal and regulatory provisions, issuers should disclose such information to the market at the latest at the same time as the documents in question are published.*
- 4. Issuers should check whether forecasts previously disclosed to the market are consistent with undisclosed information in their possession on the results subsequently achieved or later forecasts. They should disclose any significant divergences promptly to the market, explaining the reasons.*
- 5. Issuers should inform the market of their evaluations of significant divergences between the results expected by the market and their own forecasts already disclosed to the market.*

**6. “Results expected by the market” means the consensus estimate of an issuer’s results according to professional analysts of the issuer’s financial instruments, in accordance with best international practices.**

The operation of financial markets requires the dissemination and analysis not only of historical but also of forward-looking information with regard to issuers’ operational performances and their balance sheets and financial situations. Forecasts can significantly influence investors’ expectations, their decisions to buy and sell financial instruments and prices and turnover.

Forecasts help to reduce the uncertainty surrounding investors’ expectations. There is thus a connection between the quality and quantity of issuers’ forecasts and financial market efficiency.

In principle, the dissemination of forward-looking information is optional and can either concern forecasts or quantitative objectives for issuers’ operations, as also explained in Consob Regulation 11971/1991 on issuers.

Such information can, in fact, comprise data to be included in accounting documents summarising operations (for example, sales, margins, financial charges, items of extraordinary income, taxes, net financial position) or generally considered to be important for the formation of investors’ expectations (e.g. investments/disinvestments, dividend policy).

The fact that forecasts, albeit optional, can affect investors’ expectations and consequently the price of an issuer’s financial instruments justifies Consob’s regulatory decision to require issuers to disclose them to the market in the same way as material information.

It is to be hoped that issuers will put in place a policy for disclo-



sing forward-looking information to the market, as also recommended by Consob. As things stand, however, it has been thought preferable to leave it to them to evaluate the desirability of following such a course. In any case, it seemed useful to give some indications concerning the content of forward-looking information and the ways of disclosing it.

In this connection, it is worth noting the importance of compliance with the general criteria of clarity and correctness (see Recommendation 1), which are in fact similar to those provided by law for the preparation of annual accounts.

The criterion of correctness calls for continuity in the how and when of disseminating forecasts. If their dissemination is sporadic or discontinuous, they lose much of their value and may be suspected of serving purely promotional ends. The criterion of continuity is not laid down in rigid terms: it is left to issuers to choose how to implement it in the light of the specific characteristics of their own businesses and disclosure strategies. Moreover, an issuer would not be censurable for waiving its disclosure policy and not disseminating forecasts on a customary date if the information was likely to be misleading owing to unforeseen circumstances (e.g. a recently announced acquisition operation or a major company reorganisation).

In accordance with the principle of correctness, if an issuer chooses to disclose certain earnings indicators – based on the relevant sector or the company’s specific business – the market should be able to compare them over time.

Forecasts should be accompanied by a clear indication of the main underlying assumptions, including those relating to factors beyond issuers’ control. The flexible formulation of the recommendation allows issuers to adapt the contents to the different types of disclosure

(press releases, quarterly reports, prospectuses, etc.). If forecasts are made in the form of ranges, these should not be so wide as to make the information of little or no value.

In order to ensure equal access to information contained in documents required by laws or regulations (e.g. prospectuses drawn up for public offerings or tender offers, disclosure documents required for important corporate actions or the directors' report on operations in annual and interim reports), the information should also be disclosed to the market, at the latest at the same time as the documents are published.

Lastly, it was thought appropriate to develop Consob's guidelines concerning forecasts and profit warnings. In accordance with the principle of correctness, issuers should inform the market promptly of any significant divergences they observe with respect to the forecast data they have already communicated to the market and should specify the causes. Issuers should clearly indicate which of the assumptions underlying the original forecasts have changed or proved to be incorrect.

Moreover, forecast revisions should be disclosed in a similar form to that used for the original forecasts and announced before final figures are available, as soon as issuers realise, in the light of the new information, that the original forecasts are no longer correct or that the targets originally announced will not be achieved.

For the sake of clarity issuers should accompany forecasts with the warning that divergences with respect to the underlying macroeconomic and microeconomic assumptions could cause the final results to be significantly different.

Particular problems may arise in practice when forecasts, instead of being disclosed in an *ad hoc* announcement, are included in an omnibus communication. In such cases, the forecast data should be shown separately, for example by putting them in a special section of the announcement, which should contain a warning that the data are forward-looking, specify whether they are forecasts or objectives, and indicate the main factors that could cause significant divergences.

Market expectations are generally taken to be those contained in reports prepared by financial analysts (both independents and employees of institutional investors or financial intermediaries). In accordance with the principle of correctness, issuers should not only verify that the results expected by the market are in line with the forecasts/objectives they have already announced, but should also disclose any significant divergences that arise between market expectations and their own updated estimates.

This clearly implies the need to define “market expectations”. According to a recent statement by Consob, “the overall assessment resulting from the collection of opinions expressed by analysts, also referred to as the consensus estimate, is normally summarised and made available to the public in various ways by the media”. This statement requires clarification bearing in mind that the identification of the market consensus constitutes the basis for correct monitoring by issuers and any necessary corrective interventions on their part. However, rarely can we talk of agreement among all those who carry out research on a certain issuer or financial instrument.

The concept of “market consensus” takes into account the various information sources recognised by international practice, which are basically of two kinds. If the issuer’s financial instruments are widely

covered by analysts, the consensus may be considered to be expressed by the information relating to the expected results distributed by independent institutions or agencies whose activity consists precisely in the preparation and distribution of such information (for example I/b/e/s, First Call etc.). If, on the other hand, the financial instruments are covered by just a few analysts, the consensus may be considered to coincide with the average of their estimates.

In this case the issuer should disclose— for example by means of a notice on its website – the names of those researching its activity and financial instruments on a continuous and professional basis.

## RECOMMENDATION 7

### WEBSITES

**1. *Subject to fulfilment of obligations regarding the disclosure of material information, issuers should have a website on which to make the information needed for informed investment decisions available to the public.***

**2. *In particular, the following should be posted in a special section of issuers' websites, preferably in English as well as Italian: the company's constituent instrument and bylaws, the annual accounts, the consolidated accounts if any, the half-yearly report, the quarterly report, information disclosed to the market, and, before the end of meetings with market participants, any documentation distributed therein.***

Technological progress and competition bring continuous changes to the channels used by professional investors and the public to procure information. The Internet is becoming increasingly important as a source of information, especially the websites of issuers and information providers.

Regulatory authorities consider this to be a natural development and have acknowledged both the legitimacy of issuers using a variety of traditional and innovative channels to disclose information and the usefulness of the latter in making the public's access to information more uniform.

At present, however, the Internet on its own can neither ensure a sufficiently uniform distribution of new information nor adequately fulfil the disclosure obligations established by laws, regulations or stock exchange listing rules. It is, therefore, a useful additional channel, but not a replacement for the traditional ones.

Consob has laid down some guidelines concerning use of the Internet for disclosure purposes, with special reference to procedures for managing and updating websites. In particular, issuers should:

- base the use of their websites on the principle of correctness, avoiding the pursuit of merely promotional objectives;
- ensure the accuracy, completeness and up-to-dateness of the website, with special reference to its financial content;
- organise the website content in a consistent and uncomplicated manner, giving importance to usability and ease of access and providing in particular for the date and, where necessary, the time of updates to be indicated and, in the case of especially complex websites, for a map of the website, a search engine, etc. to be made available;
- observe the principle of continuity, unless there is good cause. The purely sporadic (unsystematic) posting of documents and information would in fact make the instrument of little use.

In order to raise the standard of disclosure via this channel, the recommended content of websites is based on the rules laid down by Borsa Italiana for companies belonging to the *Star* segment, with the addition of the constituent instrument and bylaws.

Over time, issuers' websites should also acquire "historic depth", so as to facilitate the retrieval of information and give greater signifi-

cance to the more recent data. For example, websites should contain the periodical accounting statements for prior years, as well as the announcements issued in recent years in fulfilling material information disclosure obligations.

Accounting documents should be posted on issuers' websites after they have been duly approved by the competent bodies.





## RECOMMENDATION 8

### RUMOURS

***1. If, while the markets are closed or during the pre-opening phase, there is public information that has not been officially disclosed to the market and that is likely to have a significant effect on the price of the financial instruments concerned, issuers or the persons controlling them should evaluate the need to inform the public as soon as possible as to the truthfulness of the information, and supplement and correct its content where necessary.***

The regulations issued by Consob require listed companies to disclose information if the two following conditions are both met: 1) there is public news concerning issuers' assets and liabilities, profits and losses or financial position or their business performance that has not been officially disclosed; and 2) there has been a significant change in the market price of the financial instruments concerned with respect to the previous day's official price.

Preferably, issuers or the persons controlling them will evaluate the need to inform the public in the presence of rumours, even if these have not yet affected prices because the market is either closed or in the pre-opening phase. When it is clear that the rumours will have a significant effect on the price of the financial instrument concerned once trading begins, issuers should comment on the information,

where possible. This will avoid their having to intervene only after there has been a significant price effect.

With regard to rumours, it should be pointed out that “public” information must be understood to include that published by national media (the press, news agencies, other mass media) or on specialised websites having credibility with market participants.

## RECOMMENDATION 9

### DUAL LISTING

***1. Where issuers disclose information on foreign markets over and above that required or disclosed on the Italian market, they should disclose it to the latter as well, using procedures that ensure investors have access, simultaneous if possible, to the same information.***

The Consob regulation on issuers provides that “Issuers of financial instruments that are also listed on the markets of other EU countries shall make the additional information provided in such countries available to the public”, while issuers of financial instruments that are also listed on the markets of non-EU countries must make “the additional information provided in such countries available to the public if it is important for the evaluation of the financial instruments on the Italian market”.

This recommendation spells out the need to ensure simultaneous access to information by Italian investors with respect to those of other countries, provided, of course, that this is possible (particularly bearing in mind the various time zones and hence the different trading hours of the various markets). Secondly, it provides for any additional information disclosed in non-EU countries to be disclosed on the Italian market as well.

Foreign markets are to be understood as including not only regu-

lated EU and non-EU markets but also all those set up, organised and operated under provisions adopted or approved by the competent authorities according to the applicable laws in each market's home country (e.g. Nasdaq).

Clearly this recommendation applies only to non-material information, since otherwise the disclosure obligation would derive from legal provisions. Issuers may therefore disclose the information by means of press releases indicating the availability of complete texts on their websites. To avoid doubts as to the nature of the information, it might be desirable for such press releases to state that they are issued in compliance with this recommendation and for them to be posted promptly on issuers' websites in addition to the complete text of any announcements made on foreign markets.

## RECOMMENDATION 10

### CONDUCT OF FINANCIAL ANALYSTS

- 1. Financial analysts should perform their professional activity independently and objectively, in accordance with best international practice. Research reports, in whatever form they are issued, should carry the date when the assessment was made and the price of the financial instrument concerned at the time of the recommendation; a clear distinction should always be made between objective elements, for which sources should be indicated, and opinions. When making a recommendation and/or setting a target price for a financial instrument traded on a regulated market, financial analysts should explain the criteria used, the conditions in which they are valid and the time horizon. The criteria used to arrive at recommendations must be clearly specified.*
- 2. Until material information financial analysts obtain in performing their activity has been disclosed in compliance with the applicable laws, they should not use it either directly or indirectly or communicate it to third parties, including their own clients.*
- 3. Financial analysts should indicate in the documents referred to in Point 1 whether they have a direct or indirect interest in the financial instruments covered by the research; in particular, they should indicate whether they own, directly or indirectly, or hold a position in the financial instruments researched. Analysts should not carry out*

*transactions of the opposite sign to that indicated in their recommendations.*

The research carried out by financial analysts adds value to the financial reports published by issuers. In their activity analysts should observe the principles of independence and correctness as also defined by Consob, which also recommends that they should indicate any professional associations of which they are members.

In their dealings neither issuers nor analysts should engage in conduct that could lead to the selective disclosure of material information. The effective application of rules and codes of conduct serving to prevent this brings direct and indirect advantages for financial analysts: it allows informational symmetry among the analysts researching the same issuer and reduces the “fear” that a negative rating might jeopardise the relationship with the company. Moreover, analysts’ “competitive advantage” comes to depend not so much on a privileged relationship with the issuer as on their ability to carry out original research.

Point 3 refers to conflicts of interest involving financial analysts in their personal capacity. It is recommended that analysts should provide full information on any direct or indirect holdings they possess of securities they research. Analysts should also refrain from carrying out personal transactions of opposite sign with respect to what they recommend to clients. Clearly, this provision may not apply in cases where there are pressing personal needs, which should be disclosed beforehand to the financial intermediary for which the analyst works.



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