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Original
The Outgoing Board’s Slate: Regulatory Framework and Critical Issues / Rainelli, P.. - (2026).

Availability:
This version is available at: 11583/3010783 since: 2026-05-12T14:43:49Z

Publisher:

Published
DOI:

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29 November 2026

ALERT MEMORANDUM

The Outgoing Board's Slate: Regulatory Framework and Critical Issues

January 15, 2026

Law No. 21 of March 5, 2024 (the "Capital Markets Law")[1], in addition to granting the Government a mandate for a comprehensive revision of Legislative Decree No. 58 of 1998 (the "Financial Markets Act"), directly amended the regulatory framework governing the slate voting mechanism for the election of the board of directors of public companies (the "Board"). The Capital Markets Law introduced a new Article 147-*ter*.1 into the Financial Markets Act, expressly sanctioning (albeit with conditions) the right of an outgoing Board to submit its own slate of candidates for renewal of the Board. The legislator delegated to Consob the adoption of implementing provisions which, following a prolonged drafting process, were introduced into Consob Regulation No. 11971/1999 (the "Issuers' Regulation") upon the entry into force of Consob Resolution No. 23725 of October 29, 2025.[2]

- **The outgoing Board may submit its own slate of candidates for renewal of the Board, if the bylaws so provide, subject to (i) a resolution of the Board approved by a 2/3 majority of incumbent directors, and (ii) the slate containing a number of candidates equal to the number of directors to be elected increased by 1/3**
- **The deadline for filing and disclosure of the Board's slate is brought forward to the 40th day prior to the date of the shareholders' meeting**
- **If the Board's slate receives the highest number of votes:**
  - **a second vote is held at the shareholders' meeting on each candidate included in the Board's slate, in which all shareholders present or represented at the meeting may participate; and**
  - **20% to 49% of the renewed Board's seats are drawn proportionally from the two runner-up slates (if any)**
- **Where the Board's slate receives the highest number of votes, the chair of the control and risk committee must be entrusted to an independent director drawn from a different slate**

If you have any questions about the topics covered in this memorandum, please reach out to your regular firm contact or the authors listed below.

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1 The full text of the Capital Markets Law is available here.

2 Consob Resolution No. 23725 entered into force on November 13, 2025. Its full text is available here.

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I. Background

Following the reform, Article 147-*ter* of the Financial Markets Act continues to govern the "traditional" slate voting mechanism, providing that the procedure for appointment of Board members of public companies is based on slates of candidates submitted by shareholders holding a minimum stake (as set out in Article 144-*quater* of the Issuers' Regulation).[3]

In the absence of legislative guidance, a lively debate arose over the years concerning the possibility of granting the outgoing Board, through a bylaws provision, the right to submit its own slate of candidates. This proposal initially raised concerns, partly influenced by a 2007 Italian Supreme Court ruling which declared a similar bylaws clause unlawful in relation to the appointment of the board of statutory auditors.[4]

Still in the absence of any specific legislative framework, a number of issuers started introducing bylaws provisions enabling the outgoing Board to submit to the shareholders' meeting a slate of candidates for renewal of the Board. By the end of 2020, 52 listed companies had adopted such a mechanism in their bylaws, including Unicredit, Telecom Italia, Mediobanca and BPER.[5] In light of its widespread adoption, Consob intervened with Guidance Note No. 1/22 of January 21, 2022, in an effort to channel and regulate the developments observed in practice.

In this context, Article 12, para. 2, of the Capital Markets Law introduced Article 147-*ter*.1 into the Financial Markets Act, on the one hand recognizing the outgoing Board's right to submit its own slate of candidates for renewal of the Board and, on the other hand, introducing a considerably more complex mechanism compared to the traditional slate voting model set out in Article 147-*ter* of the Financial Markets Act.

The recent adoption of implementing provisions into the Issuers' Regulation represents the final step in a reform process developed over several years, shaped by two public consultations with market participants[6], a non-binding opinion issued by the Council of State[7], and extensive debate among commentators.

II. The outgoing Board's slate for renewal of the Board

a. Legal standing and conditions for submitting the slate

Pursuant to Article 147-*ter*.1 of the Financial Markets Act, the submission of a slate by the outgoing Board requires: (i) an express bylaws provision; (ii) a resolution of the Board approved by a qualified majority of 2/3 of its members; and (iii) the slate containing a number of candidates equal to the number of directors to be elected increased by 1/3.

The slate submitted by the outgoing Board must also comply with the following requirements generally provided for by the Financial Markets Act for Board elections of listed companies: (i) the requirements on gender balance in the composition of the Board; (ii) the requirement that at least one elected director be drawn from a runner-up slate; and (iii) the requirement that at least one or two (as applicable) elected directors be independent, in accordance with Article 147-*ter*, paras. 1-*ter*, 3, and 4, of the Financial Markets Act.

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3 Under Italian law, Board terms may not exceed three years. The Board size is determined by the bylaws and, when the bylaws set forth a range, by a vote at the shareholders' meeting called to appoint the new Board. While the law does not prohibit staggered boards, the general practice is to renew the Board in its entirety at the end of each term.

4 Italian Supreme Court, Section I, September 13, 2007, no. 19160.

5 The data can be found in Consob Guidance Note No. 1/22 of January 21, 2022, available here.

6 The report illustrating the results of the preliminary consultation is available here. The report illustrating the results of the second consultation is available here.

7 The opinion of the Council of State (Section I, July 24, 2025, no. 00751) is available here.

The outgoing Board may submit its own slate of candidates for renewal of the Board, if provided for in the bylaws and subject to (i) a Board resolution approved by a qualified majority of 2/3 of incumbent directors and (ii) the slate containing 1/3 more candidates than the number of seats to be filled

b. Deadline for filing and disclosure of the slate

The deadline for filing and disclosure of the outgoing Board's slate (in accordance with the procedures set out in Article 147-*ter*, para. 1-*bis*, of the Financial Markets Act) is brought forward to the 40th day prior to the date of the shareholders' meeting. Under the general framework of Article 147-*ter*, para. 1-*bis*, the slate must instead be filed at least 25 days prior to the date of the shareholders' meeting, and made available to the public at least 21 days beforehand.

The deadline for filing and disclosure of the Board's slate is brought forward to the 40th day prior to the date of the shareholders' meeting

c. Voting and seat allocation mechanism

If the outgoing Board's slate receives the highest number of votes, the shareholders' meeting must hold a further, separate vote on each candidate included in the slate. The candidates who obtain the most votes in this second round are elected (up the number of seats inuring to the Board's slate). Only in the event of a tie is the progressive order in which the candidates are listed on the slate decisive. The first vote therefore serves to select the winning slate, while the selection of the directors to be drawn from the winning slate takes place through voting on individual candidates.

During the consultation phase, Consob had initially taken the view that only those shareholders who had voted in favor of the Board's slate in the first instance should be allowed to participate in the second vote on each candidate, in order to (i) avoid duplication of voting rights for those who had supported other slates, and (ii) contain possible disruptive manoeuvres by shareholders opposed to the Board's slate.

However, before issuing its final provision, Consob considered it appropriate to seek a non-binding opinion from the Council of State on this point. The Council of State responded that the wording of Article 147-*ter*.1 did not justify any subjective limitation, and Consob embraced this interpretation. Accordingly, the newly-enacted Article 144-*quater*.1, para. 3, of the Issuers' Regulation provides that all shareholders present at the meeting, either directly or through a representative, may participate in the second vote on each candidate.

This solution maximizes shareholders' control but introduces an element of uncertainty regarding the final composition of the Board, which may thus be significantly influenced by shareholders who did not initially support the Board's slate (thereby departing from the order in which the candidates were originally listed on the slate), as highlighted, for example, by Assonime, the association of Italian stock corporations.[8]

The newly-enacted Article 147-*ter*.1 of the Financial Markets Act provides for the following mechanism for allocating seats to runner-up slates (out of the total number of Board seats) when the Board's slate receives the highest number of votes:

a) if the total votes obtained by the other slates (up to two, ranked by the number of votes received) does not exceed 20% of the votes cast, those slates are entitled in the aggregate to at least 20% of the Board seats (rounded upward where the result is not a whole number).[9] This system represents a kind of "minority premium", aimed at preventing the numerical weight of the minorities from translating into merely symbolic representation on the Board; and

b) if the total votes obtained by the runner-up slates (up to two, ranked by the number of votes received) exceeds 20% of the votes cast, only those slates that have achieved a percentage of votes equal to or greater than 3% shall participate in the allocation of seats, proportionally to the votes received – it being understood that the

[8] Assonime's submission in response to the second Consob consultation document on the implementing provisions of Article 147-*ter*.1 of the Financial Markets Act is available here.

[9] The seats reserved to runner-up slates are allocated between them proportionally to the votes received.

majority of directors to be elected must in any case be drawn from the Board's slate (unless otherwise provided for in the bylaws, provided that at least 20% of seats are allocated to those runner-up slates). Votes obtained by slates that have not reached such 3% threshold are instead allocated proportionally to the votes obtained by slates that have exceeded that threshold.

Finally, if the outgoing Board's slate is the only slate duly submitted, all directors to be elected are drawn from that slate.

If the Board's slate receives the highest number of votes: (i) to select which candidates included in the Board's slate are elected, a second vote is held at the shareholders' meeting on each candidate, in which all shareholders present or represented at the meeting may participate; and (ii) the two runner-up slates are entitled to between 20% and 49% of the renewed Board's seats (allocated between them proportionally based on the votes received)

d. Board committee governance

Where the outgoing Board's slate receives the highest number of votes, the bylaws must provide that the Board committee overseeing internal control and risk management (if appointed) be appointed by the Board and chaired by an independent director chosen from among the elected directors who are not drawn from the winning outgoing Board's slate.

Therefore:

a) if the slate receiving the highest number of votes is a slate submitted by shareholders, the chair of the committee may be assigned to a director drawn from that slate; whereas

b) if the slate receiving the highest number of votes is the slate submitted by the outgoing Board, the chair of the committee must be assigned to a director drawn from a different slate.

Where the Board's slate receives the highest number of votes, the chair of the control and risk committee must be entrusted to an independent director drawn from a different slate

e. Further interpretative issues

Several practical issues remain unsolved which neither the legislator nor Consob have expressly addressed, including the following:

- from the heading of the new Article 147-*ter*.1 of the Financial Markets Act ("Board of Directors"), read in conjunction with the concurrent amendment to the heading of Article 147-*ter* ("Directors"), it is unclear whether the intention is to limit the scope of application of the new rules to the election of the Board in the "traditional" (comprising a board of directors and a board of statutory auditors) and "one-tier" (*monistico*) governance systems, therefore excluding the election of the supervisory board in the two-tier system;
- with the exception of the case in which minorities do not obtain more than 20% of the total votes (addressed in point a) of paragraph c. above), no mandatory rounding criterion has been set for the allocation of seats among the slates (downward, upward or by minimum thresholds);
- it is unclear whether the new rules apply exclusively in cases of full renewal of the Board or whether they may also be extended to partial renewals (to the extent contemplated in a company's bylaws);
- it is not expressly clarified whether the bylaws may provide for limitations or additional requirements (similar to those applicable to the Board's slate) also for slates submitted by shareholders;
- the rules do not specify whether abstentions and votes against any slate should be counted for the purpose of calculating the above 20% and 3% thresholds of the "votes cast" mentioned in points a) and b) of paragraph c. above;
- the second shareholder vote on individual candidates requires the adoption of operational procedures that must be coordinated with the rules governing electronic votes, votes by correspondence, and votes through the "designated representative" (*rappresentante designato*).

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