ROMA CAPITALE

The Mayor

Reg. RA/ 16160

From: the Capitol, 13 March 2014

To: the Chairman of the Acea BoD

To: the Acea Board of Auditors

c.c. Italian Securities and Exchange Commission (CONSOB)

Subject: Reply to note of the Chairman of the Acea BoD Reg. RA/15669 dated 12 March 2014.

The note in question was replied to as follows.

Following the BoD meeting on Monday 10 March of this year ACEA published a press release asserting that it "had asked" Roma Capitale for elements in accordance with art. *126-bis* of the TUF.

However:

- on the one hand these elements were provided by Roma Capitale on Monday morning, before the start of the BoD meeting so the consequent provisions requested by Roma Capitale could be adopted; evidently the ACEA BoD adopted this stance before receiving the elements required by law;

- on the other hand it is untrue that Acea "had asked", as it was only yesterday, Wednesday 12 March that the undersigned Authority received said request, enclosed for the purpose of reference, which strangely was dated 10 March.

With reference to this, the following can be deduced.

Firstly, this shareholder made a request on 3 March 2013, which obliges the BoD to take action.

Be it known however that the agenda of the subjects to discuss in the meeting must be provided with a report in this case drawn up by the shareholder making the request. This shareholder therefore, on the morning of 10 March of this year, before the Acea BoD meeting, consigned said reports.

Be it known however that, in accordance with the same art. *126-bis*, if the directors wish they may also make their evaluations to be enclosed with the agenda.

It is obvious that:
- the obligation of the BoD following the request sent by the shareholder;
- sending the reports by the shareholder making the request;
- the specified full possibility for the directors to make and enclose their own evaluations for each of the items on the agenda;

in principle prevent the BoD having an influence on its own obligation, deriving from the shareholder's request, by insisting the shareholder include other and further content in its report.

In other words, in principle the BoD failed to appraise the contents of the report with discretion, refusing to meet its obligations and implement the shareholder's request.

Nor can said position be taken with the pretention that the reports in accordance with art. *126-bis* are supplemented by the shareholder with "precise details" (though as we shall see for the profiles either already evident in what had

already been sent, or absolutely irrelevant and certainly not considered necessary content in order to fulfil the obligations of the proposing shareholder; and what is more, considering the full powers of the directors to enclose their own assessments).

After all, it cannot be said that in the even recent past, nor in Acea, have items on the agenda of the meeting ever been presented with extensive and detailed reports also concerning future effects and uncertainties as the above note demands. This is even more relevant in consideration of the following.

As can be seen in the note to which we reply, the Acea BoD wishes to **influence** the due development of Roma Capitale's request, demanding that the same, "with precise details":

- states "whether the proposal is to **dismiss** all or some of the directors";
- states whether "there are grounds for just cause for dismissal and a possible cost to be borne by the company following the same dismissal."

So, on this matter, first and foremost it is important to emphasize that this shareholder in the note dated 3 March, on this basis of its own evaluations which are certainly not censurable by the BoD in office, and indicated in the reports in accordance with art. *126-bis* already punctually consigned, proposed the meeting exercise a specific right, acknowledged in the By-laws, to determine a form of corporate *governance* with a BoD no longer consisting of the maximum possible number of members, but rather a lower number.

The report in accordance with art. *126-bis* precisely describes how, notwithstanding the need for an odd number (5 or 7), the choice of this shareholder is to use the minimum number provided for by the By-laws, what's more declaring to be open, in the spirit of full collaboration, to hear other opinions at the meeting.

It is obvious that when the structure of the board of directors (regardless of the names of the directors) is changed (in particular if the number of members is reduced, but also if they are increased) the board must be re-elected unless a resolution has previously been passed to the contrary.

If Roma Capitale were to indicate the subjects who would remain and those who must necessarily not remain in office, as requested in the note to which we reply, also aside from any other considerations, this would be questionable in relation to the role of the minority shareholders and the system used to elect the board of directors through the presentation of lists.

This is also true in consideration of the fact that individual shareholders (including the undersigned majority shareholder) merely have the powers to present candidates for nomination to the BoD, and not to directly elect the same, to subsequently and autonomously "decide" who will be a member of the board.

The BoD is in fact elected by the meeting, so it is only right and respectful to refer any initial evaluation concerning the structure and then the nomination of the members of the board to the same.

The above is clearly explained by this shareholder in the note dated 3 March 2014 as the meeting is requested, if the reduction in the number of board members is approved, to resolve on the "appointment of the board of directors".

Furthermore, the above-mentioned effects are also mentioned in the report pursuant to art. *126-bis* with the council resolution to which we refer, sent to ACEA in good time.

If we may, the second demand in the note to which we reply is even more unusual.

In fact, it is once again mentioned that this shareholder requested to include the following items on the agenda:

- Reduction of the Board of Directors;

(if the previous point is approved)

- Appointment of the Board of Directors;

- Appointment of the Chairman

(in any case)

- Determination of the Board of Directors' fees.

As explained above, also to protect the rights of the other shareholders, one of the natural effects of a legitimate change to the structure of the board of directors will be the need to reconstitute the same; the only exception to this is if the meeting passed a prior resolution with other provisions.

Obviously, in abstract terms and in accordance with applicable legal institutions, nothing excludes the possibility that the new board of directors is partly or entirely composed of members who previously held office as Company directors. Again in terms of the description of institutions, changing the structure of the board of directors is ontologically different to the "dismissal" of one or more members of the board, which would in principle prevent (also in terms of comprehensibility) the re-election of those dismissed.

For said reasons, the reference in the letter to profiles pursuant to just cause have no direct relevance to the proposed resolutions.

The elements referred to in the note to which we reply, inaccurately portraying the same as conditions to implement the request of the undersigned shareholder, can only be considered after all subsequent future and possible variations:

- if the reduction of the number of members on the board is approved under the sovereignty of the meeting;
- once ascertained, after electing the board of directors with a modified structure - also by voting on the basis of the list system and therefore on the basis of the proposals of all shareholders with a right to present a list -, which and how many of the current directors will no longer be required for said office;
- whether, in the absence of said impediment they wish to claim any compensation for the termination of their mandate in full knowledge of the provision of the law according to which there would at that point be not only objective but also subjective grounds against any claim pursuant to just cause; and also without accepting other mandates which by law would annul

in full or in part the same claim for compensation for termination of mandate.

Furthermore, in relation to the entirely hypothetical costs for the company, to which the note refers in the caption, it is necessary to consider the overall effects of the decisions the meeting is called on to take, in due application of the By-laws, on the forth item requested by this shareholder ("Determination of the Board of Directors' fees").

What is more, what makes the demand in the note to which we reply absolutely improper, is also the banal consideration that all the hypothetical costs to which the note refers derive from elements that in fact and by law are openly available to every shareholder.

Therefore, once again it appears odd that the BoD influences proper obligations with its own questionable (and therefore wrong) evaluations, and we once more request that the actions required by law are implemented.

In conclusion.

The BoD cannot exercise interlocutory and preclusionary powers to influence the obligation to implement the shareholder's request, on the basis of its own discretional evaluations concerning the contents of reports punctually sent. In fact, the directors have full rights to enclose their own assessments to the same when publishing the agenda, obviously assuming the relevant responsibility for the content and effects of the same.

The grounds were described above merely for the purpose of providing complete information because also in merit the demands cannot be upheld. Even though the BoD has no power of judgement over the same, this shareholder has drawn up the reports in observance, as must be the case, in appropriate terms without superfluous elements in proper compliance with the proposed subjects.

The shareholder agrees to enclose this letter with the agenda, which we demand be implemented without further delay, notwithstanding duly giving notice that any further delay could severely damage this shareholder and the company.

This letter is sent to the Board of Auditors to guarantee observance of the law in the Company with a copy as required sent to the Consob.

Prof. Ignazio R. Marino

(handwritten signature)