CONSOB

COMMISSIONE NAZIONALE PER LE SOCIETA' E LA BORSA

ANNUAL REPORT 2004

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COMMISSIONE NAZIONALE PER LE SOCIETÀ E LA BORSA

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ANNUAL REPORT 2004

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Financial Markets Developments

I. LISTED COMPANIES

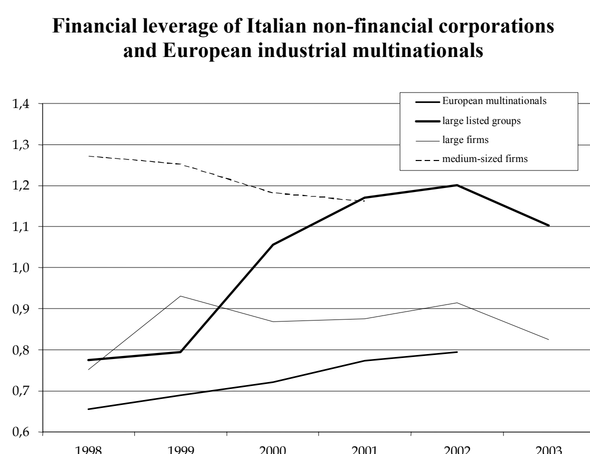
Financial structure and profitability

The level and composition of the financial debt of large listed non-financial groups have undergone structural change in recent years.

Reversing a trend dating back to 1999, these groups' degree of indebtedness declined, as is confirmed by their financial leverage (the ratio of financial debt to equity), which declined from 1.2 in 2002 to 1.1 in 2003 (Figure I.1).

Figure I.1

Financial leverage of Italian non-financial corporations and European industrial multinationals



Sources: Based on Mediobanca, R&S and Unioncamere data. The large listed industrial groups are those covered by the R&S yearbook (37 listed groups); the European industrial multinationals are those covered by the R&S publication "*Dati cumulativi di 276 multinazionali*" and include 137 groups; the large firms are those covered by the Mediobanca publication "*Dati cumulativi di 1.945 società italiane*" and comprise companies with more than 500 workers; the medium-sized firms are those covered by the Mediobanca-Unioncamere publication "*Le medie imprese industriali italiane*" and comprise a sample of about 3,800 companies with between 50 and 500 workers. Financial leverage is calculated as the ratio of financial debt to equity, defined as the sum of: share capital, reserves and consolidation adjustments, treasury shares, net income for the year and prior-year losses.

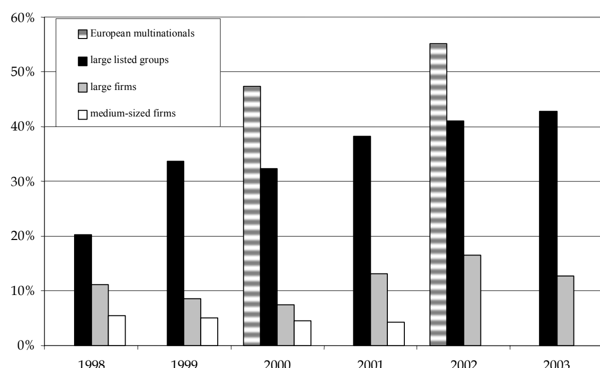
The financial leverage of large listed Italian industrial groups nonetheless remains much higher than that of major European multinationals (for which the latest available annual report data on a sample of 137 industrial groups indicate a financial leverage of 0.8 in 2002). Furthermore, the degree of indebtedness of large listed firms is higher than that of large unlisted firms (a sample of 1,945 firms with 500 or more workers), which in 2003 had a financial leverage of about 0.8. By contrast, according to the latest available data, in 2001 the financial leverage of medium-sized Italian firms (a sample of around 3,800 companies, nearly all of them unlisted, with between 50 and 500 workers) was similar to that of large listed groups the same year but far higher than that of large firms.

The reduction in the financial leverage of large listed firms has been accompanied by a radical change in the composition of their financial debt. To begin with, the share of bonds in total financial debt rose sharply.

In 1998 the share of bonds in total financial debt was around 20 per cent; by 2003 it had risen to about 43 per cent (Figure I.2). For large listed groups, the share of debt capital raised through the issue of bonds and other financial instruments is now comparable to that of bank borrowing. This development is even more pronounced in the case of European industrial multinationals, more than 50 per cent of whose financial debt consisted of bonds in 2002, compared with around 47 per cent in 2000. By contrast, the share of bonds in total financial debt remains modest for unlisted Italian firms, having grown slightly over four years for large firms, to stand at about 13 per cent in 2003, while for medium-sized firms it remained close to 4 per cent.

Figure I.2

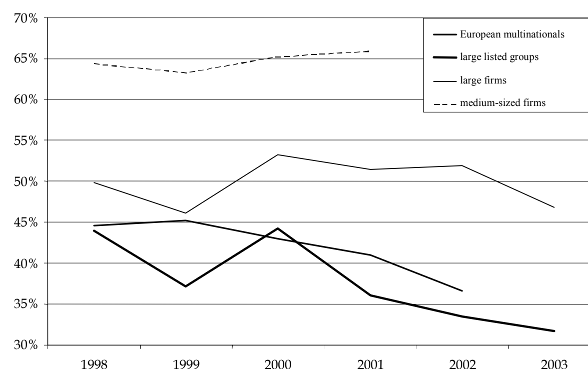
Ratio of bonds to financial debt of Italian non-financial corporations and European industrial multinationals



Sources: Based on Mediobanca, R&S and Unioncamere data. The large listed industrial groups are those covered by the R&S yearbook (37 listed groups); the European industrial multinationals are those covered by the R&S publication "*Dati cumulativi di 276 multinazionali*" and include 137 groups; the large firms are those covered by the Mediobanca publication "*Dati cumulativi di 1.945 società italiane*" and comprise companies with more than 500 workers; the medium-sized firms are those covered by the Mediobanca-Unioncamere publication "*Le medie imprese industriali italiane*" and comprise a sample of about 3,800 companies with between 50 and 500 workers.

Figure I.3

Ratio of short-term financial debt to total financial debt of Italian non-financial corporations and European industrial multinationals



Sources: Based on Mediobanca, R&S and Unioncamere data. The large listed industrial groups are those covered by the R&S yearbook (37 listed groups); the European industrial multinationals are those covered by the R&S publication "*Dati cumulativi di 276 multinazionali*" and include 137 groups; the large firms are those covered by the Mediobanca publication "*Dati cumulativi di 1.945 società italiane*" and comprise companies with more than 500 workers; the medium-sized firms are those covered by the Mediobanca-Unioncamere publication "*Le medie imprese industriali italiane*" and comprise a sample of about 3,800 companies with between 50 and 500 workers.

Secondly, as bonds are mainly medium and long-term liabilities, the increase in their share in the total financial debt of large listed groups led to a sharp contraction in that of short-term debt. The proportion of short-term debt fell steadily between 1998 and 2003, from 44 to around 33 per cent (Figure I.3).

A very similar trend can be seen for European industrial multinationals, whose ratio of short-term debt to total financial debt fell from 45 to around 37 per cent between 1998 and 2002. By contrast, the financial structure of other Italian firms did not display notable changes in this respect. According to the latest available data, as of 2001 the short-term debt ratio was still close to 50 per cent for large firms and around 65 per cent for medium-sized firms.

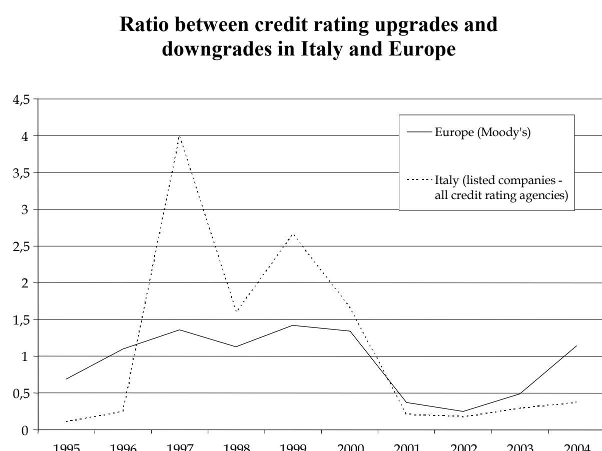
Turning to the credit ratings of listed companies, the performance over time of the ratio between credit rating upgrades and downgrades by independent rating agencies (Figure I.4) signals a slight improvement in cyclical conditions in Italy. Although far weaker and more hesitant, the improvement reflects the trend at European level, where upgrades outnumbered downgrades for the first time since 2000.

The activity of the rating agencies was particularly intense in 2004. For the majority of issuers, the outcome of credit reviews was either the confirmation of the previous rating or the publication of reports on the outlook for rating changes in the short or medium term. As regards actual changes in ratings, there were 8 downgrades involving 4 listed companies (Finmatica, Fiat, Banca Antonveneta and Reno de

Medici) and 3 upgrades (Banca popolare di Verona e Novara, Banca popolare di Milano and Edison).

Figure I.4

Ratio between credit rating upgrades and downgrades in Italy and Europe



Sources: Based on Moody's, Standard and Poor's and FitchRating data for Italy; Moody's "*European credit trends: 2004 Review & 2005 Outlook*", January 2005, for Europe.

As regards defaults, excluding two cases of bond restructuring the five cases of actual default on the bond market in Italy involved Finmatica, Fin.part and Tecnodiffusione, among listed companies, and two unlisted companies. The bonds in default had a total face value of almost €600 million. This figure is significantly lower than the value of defaults in 2002 (Cirio) and 2003 (Parmalat and Giacomelli).

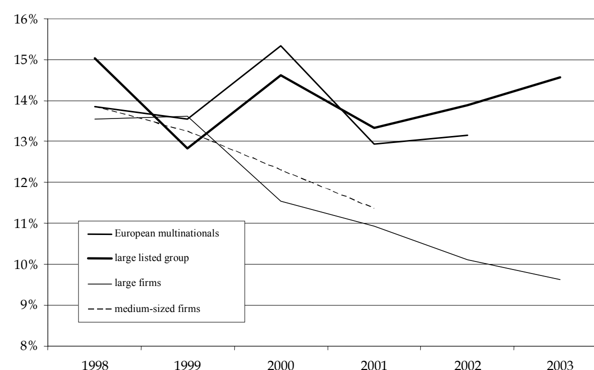
At world level both the number and the value of bond defaults fell sharply, continuing a trend under way since 2002. The default rate on corporate bonds bearing a credit rating fell from 1.7 per cent in 2003 to 0.7 per cent in 2004 in terms of the number of issues and from 1 to 0.4 per cent in terms of value.

As regards developments in earnings and profitability, for large listed groups there was a marked recovery in the return on investment (ROI), measured by the ratio of net operating profit plus net financial income to invested capital.

In 2003 the ROI of large listed groups rebounded to 14.6 per cent, after falling below 14 per cent in the previous two years (Figure I.5). The trend of the profitability of large listed groups is broadly in line with that of European industrial multinationals but clearly divergent from that of other Italian firms. A profitability gap opened in 1999 between large listed firms and other firms, whose profitability thereafter declined without interruption, falling below 10 per cent in 2003.

Figure I.5

Return on invested capital of Italian non-financial corporations and European industrial multinationals



Sources: Based on Mediobanca, R&S and Unioncamere data. The large listed industrial groups are those covered by the R&S yearbook (37 listed groups); the European industrial multinationals are those covered by the R&S publication "*Dati cumulativi di 276 multinazionali*" and include 137 groups; the large firms are those covered by the Mediobanca publication "*Dati cumulativi di 1.945 società italiane*" and comprise companies with more than 500 workers; the medium-sized firms are those covered by the Mediobanca-Unioncamere publication "*Le medie imprese industriali italiane*" and comprise a sample of about 3,800 companies with between 50 and 500 workers. The profitability of invested capital is calculated as the ratio of the sum of net operating profit and financial income to invested capital. Invested capital is defined in turn as the sum of equity and financial debt.

Equity fund-raising and admissions to listing

Equity fund-raising on the main world markets increased in 2004, interrupting the contraction that began in 2002.

The number of capital increases on US markets rose by 16 per cent in 2004, from 839 to 975; the funds raised totaled about $172 billion, about 6 per cent more than in 2003. Activity in Europe expanded at a faster pace: the number of capital increases grew by around 40 per cent, from 861 to 1,201, and the amount of funds raised by 57 per cent, to around $223 billion.

With reference to initial public offerings, in the United States IPOs nearly tripled, both in number (from 88 in 2003 to 245 in 2004) and in value (from $15 billion to about $44 billion). The pattern was similar in Europe, where the number of transactions increased from 143 to 349 and the amount of funds from €16 billion to €52 billion. In particular, on the Euronext Paris and Deutsche Börse markets, which in 2003 had recorded no IPOs, last year there were 16 and 6 respectively totaling more than €4 billion and €2 billion (in the German case, the IPO of Deutsche Postbank AG accounted for a very substantial share: 75 per cent). There was similar growth on the stock markets of the United Kingdom, where IPOs rose from 17 to 42 in number and from €3 billion to around €5 billion in value (Table I.1).

In Italy, equity capital raised through issues of shares and convertible bonds (counting both IPOs and capital increases by already listed companies) totaled €4 billion in 2004 (Table I.2).

The largest offerings, together accounting for 53 per cent of the total funds raised, were by banks (namely Banca Nazionale del Lavoro, Reti Bancarie Holding and Credito Valtellinese).

Table I.1

Admissions to listing on the main European equity markets [1]
(amounts in billions of euros)

	France (Euronext Paris [2])		Germany (Deutsche Börse [3])		U.K. (London Stock Exchange [4])			
	Number of companies	Funds raised	Number of companies	Funds raised	Number of companies	*of which investment companies and preference shares*	Funds raised	*of which investment companies and preference shares*
1996	54	1	20	10	....	....	14	....
1997	63	7	25	3	....	....	11	....
1998	116	7	67	3	84	....	6	....
1999	66	7	134	13	74	*42*	9	*3*
2000	77	12	134	26	133	*51*	18	*5*
2001	20	13	21	3	85	*69*	11	*5*
2002	8	3	5	..	42	*25*	8	*2*
2003	--	--	--	--	17	*13*	3	..
2004	16	4	6	2	42	*25*	5	*2*

Sources: National stock exchanges. The figures refer exclusively to IPOs by domestic companies (excluding spin-offs, mergers and transfers from one segment to another). [1] For France and Germany the data in local currency prior to 1999 have been converted into euros using the fixed euro/franc and euro/DM exchange rates. For the United Kingdom the data have been converted using the year-end euro/sterling exchange rate and for the years prior to 1999 the year-end euro/sterling exchange rate calculated by Thomson Financial Data. [2] Does not include the Marché Libre. [3] Does not include the Freiverkehr segment. [4] Does not include the AIM segment.

Table I.2

Offerings of shares and convertible bonds by Italian listed companies [1]
(amounts in millions of euros)

	Subscription of new securities		Sales of existing shares		*Total*	
		of which IPOs		of which IPOs		*of which IPOs*
1995	4,377	274	3,396	3,396	*7,773*	*3,670*
1996	2,306	721	5,611	945	*7,917*	*1,666*
1997	5,624	227	18,427	606	*24,051*	*833*
1998	9,142	614	11,274	1,231	*20,416*	*1,845*
1999	23,172	1,414	25,795	21,606	*48,967*	*23,020*
2000	9,525	4,970	7,615	1,933	*17,140*	*6,903*
2001	10,688	2,199	4,457	1,736	*15,145*	*3,935*
2002	4,783	638	1,857	424	*6,640*	*1,062*
2003	9,872	67	2,656	483	*12,528*	*550*
2004	4,085	351	12,153	2,300	*16,238*	*2,651*

Sources: Consob archive of prospectuses and notices issued by Borsa Italiana s.p.a. See the Methodological Notes. [1] The figures refer to companies listed on the Stock Exchange (MTA); they include offerings made (from 1999 onwards) by companies listed on the Expandi Market and the Nuovo Mercato.

Including sales of existing shares, equity offerings on the Italian market amounted to around €16 billion in 2004, 30 per cent more than in the previous year.

Newly-issued securities made up 25 per cent of the total amount offered, a much smaller proportion than in 2003 (80 per cent). The bulk of the offerings were aimed at institutional investors, who were allotted shares and convertible bonds amounting to almost €9 billion (corresponding to 53 per cent of the total of such offerings; Table aI.1). The second-most important category consisted of existing shareholders, who were allotted €4.7 billion of securities (29 per cent of the total amount offered). The public played a more important role than in 2003, taking up around €2.7 billion of shares and convertible bonds (16 per cent of the total, compared with 8 per cent in 2003).

Worthy of special note among the offerings of existing shares was that of Enel ordinary shares by the Ministry for the Economy and Finance, whose interest in the share capital fell from 50.4 to 31.4 per cent (Table aI.2). The global offering consisted of a public offering (20 per cent of the total) and a placement with Italian and foreign institutional investors. The offering was oversubscribed by a factor of almost three, with acceptances totaling €19 billion; they were satisfied up to the maximum quantity offered, including the greenshoe option, with the allotment of €7.6 billion of securities.

Among other substantial offerings, it is worth mentioning the sale of shares of Terna, a subsidiary of Enel, for €1.7 billion; the sale of 9.1 per cent of Snam Rete Gas by Eni, with proceeds of €651 million; the private placement with institutional investors of Autostrade shares as a result of the disposal of an equity interest by Schemaventotto, for €912 million; and the private placement by e.Biscom (now FastWeb) for €290 million.

With regard to IPOs, a total of 8 were made in 2004: 6 for the purpose of listing on the Stock Exchange (MTA), 2 on the Expandi Market and none at all on the Nuovo Mercato (Table I.3). The funds raised amounted to about €2.6 billion. The contraction in IPO

activity that began in 2000 therefore came to a halt. Plausibly, this also reflected the recovery of the equity markets that had already emerged at the end of 2003.

The fresh funds raised in initial public offerings through the subscription of newly-issued shares was nevertheless modest, amounting to €351 million or 13 per cent of the total value of the offerings. The combined value of the shares offered for subscription or sale was equal to about 40 per cent of the post-offering market value of the newly-listed companies, comparable to the proportion recorded in 2003.

Table I.3

Initial public offerings by Italian companies
(amounts in millions of euros)

	Number of companies	Pre-offering market value [1]	Value of the offering			Share of post-offering market value [2]
			Subscription	Sale	*Total*	
Stock Exchange (MTA) and Expandi Market						
1995	11	22,675	274	3,396	*3,670*	33.1
1996	12	5,550	721	945	*1,666*	26.6
1997	10	2,126	227	606	*833*	35.4
1998	16	3,844	614	1,231	*1,845*	41.7
1999	21	65,069	1,187	21,567	*22,754*	33.6
2000	13	14,296	1,130	1,379	*2,509*	16.3
2001	13	7,820	2,078	1,722	*3,800*	36.1
2002	6	2,504	638	424	*1,062*	33.8
2003	4	1,340	67	483	*550*	39.1
2004	8	5,406	351	2,300	*2,651*	39.7
Nuovo Mercato						
1999	6	719	227	39	*266*	27.9
2000	31	14,012	3,840	554	*4,394*	24.6
2001	5	372	121	14	*135*	27.3
2002	--	—	—	—	—	—
2003	--	—	—	—	—	—
2004	--	—	—	—	—	—

See the Methodological Notes. [1] Market value of the companies admitted to listing, calculated on the basis of the offering price and the pre-offering quantity of shares. [2] As a percentage of the post-offering market value, calculated on the basis of the offering price and weighted by the size of offerings. The figures for the Stock Exchange do not include ENI in 1995, Enel in 1999, Snam Rete Gas in 2001 or Terna in 2004.

The ownership structures of the companies admitted to listing on the Stock Exchange and the Expandi Market in 2004 did not differ significantly from those observed in previous years (Table aI.4). On average, the controlling shareholders held 85.6 per cent of the capital before the offering; if all the shareholders with holdings of more than 2 per cent are considered, the figure rises to just above 99 per cent. After listing, the controlling shareholders held 56 per cent of the capital; if all the shareholders with holdings of more than 2 per cent are considered, the figure rises to about 64 per cent.

The results of IPOs reflected the recovery of the equity markets during 2004. Consolidating a development that had emerged in 2003, the ratio of demand to supply, which had fallen between 2000 and 2002, rose from 1.8 to 2 for public offerings and from 1.6 to 3.1 for institutional placements (Table aI.5).

Compared with 2003, there was an appreciable shift in the distribution of the securities offered to the different types of investor. Specifically, the share reserved to the public fell from 40 to about 21 per cent and that reserved to Italian institutional investors contracted from 45 to just above 26 per cent, while the share reserved to foreign institutional investors almost quadrupled, rising from about 15 to 53 per cent.

Table I.4

Underpricing in IPOs

	Number of offerings [1]	Average underpricing [2]	Median underpricing [2]
Stock Exchange (MTA) and Expandi Market			
1995	10	9.3	8.3
1996	11	8.9	8.7
1997	9	5.3	8.8
1998	15	5.7	2.7
1999	17	13.2	-0.8
2000	9	0.9	4.9
2001	11	-1.3	-1.1
2002	4	2.3	4.8
2003	2	-4.1	-4.1
2004	7	3.0	..
Nuovo Mercato			
1999	6	26.9	14.1
2000	31	15.6	8.8
2001	5	4.5	5.1
2002	—	—	—
2003	—	—	—
2004	—	—	—

Source: Based on Datastream data. See the Methodological Notes. [1] Does not include offerings of privatized companies or those of companies controlled by foundations or public entities. [2] Percentage difference between the market price on the first day of trading and the offering price, adjusted for the movement in the market index (Mib storico, the Expandi Market index and, from 2000, the Nuovo Mercato index).

A comparison between the offering prices and the market prices on the first day of trading shows average underpricing of 3 per cent, in contrast with overpricing in 2003 (the figure for that year is of scant significance, however, in that it refers to a very small number of transactions) and with the tendency of underpricing to decline from 2000 onwards (Table I.4).

Some of the newly-listed companies had credit or equity relationships with the intermediaries involved in the IPOs.

Fifty per cent of the companies had debtor positions with their placers or with other companies belonging to the same group, and the financing granted in these credit relationships amounted on average to 47 per cent of the financial debt of the companies concerned. This is substantially higher than the share recorded in earlier years, although it is in line with the figure for 2002 (Table I.5). In two cases one of the placers held an equity interest in the company before the IPO; the interests in question averaged about 11 per cent.

The market concentration of the Italian IPO segment of investment banking increased with respect to 2003 (Table aI.6).

The market share of the top-ranking intermediary among those that acted as global coordinators rose by around 12 percentage points to 42 per cent, and that of the top three by 5 percentage points to 87 per cent, while the market share of the top five declined by around 5 percentage points. Foreign intermediaries were involved in 3 cases or 40 per cent of the transactions, compared with 25 per cent in 2003.

Institutional investors (closed-end investment funds, venture capital companies, commercial and investment banks) held equity interests in 4 of the 8 companies admitted to listing in 2004 (Table I.6). The average number present was basically unchanged from the previous year (2.3 against 2), while the gap between their pre-offering holdings (about 29 per cent) and their post-offering holdings (about 10 per cent) was 7 percentage points wider than in 2003.

Table I.5

Credit and equity relationships between newly-listed Italian companies and the intermediaries involved in the IPO [1]

	Companies with credit relationships with sponsors and/or placers			Companies with equity relationships with sponsors and/or placers		
	Number of companies	Percentage of newly listed companies [2]	Average share of debt financing provided by sponsors or placers [3]	Number of companies	Percentage of newly listed companies [2]	Average share of equity financing provided by sponsors or placers [4]
2000	23	52.3	27.2	11	25.0	18.1
2001	10	55.6	27.8	2	11.1	19.8
2002	3	50.0	46.1	1	16.7	28.3
2003	4	100.0	13.9	1	25.0	..
2004	4	50.0	47.2	2	25.0	10.8

Sources: Consob and Borsa Italiana s.p.a. data. See the Methodological Notes. [1] Credit and equity relationships at the date of the offering between companies admitted to listing on the Stock Exchange (MTA), the Expandi Market and the Nuovo Mercato and the sponsor, specialist, global coordinator or lead manager of the offering and other intermediaries belonging to the same group as the above. [2] Percentages. [3] As a percentage of total financial debt. [4] As a percentage of the pre-offering share capital.

Table I.6

Institutional investors' equity holdings in newly-listed Italian companies [1]

	Companies		Number of institutional investors [4]	Pre-offering share [5]	Post-offering share [6]
	Number [2]	% of total [3]			
Stock Exchange (MTA) and Expandi Market					
1995	6	54.5	2.3	27.7	8.5
1996	6	50.0	3.7	47.3	23.2
1997	2	20.0	1.5	40.9	7.1
1998	4	25.0	4.3	48.3	18.9
1999	6	28.6	1.7	20.1	5.4
2000	4	30.8	2.0	26.9	15.6
2001	5	38.5	1.6	32.6	15.0
2002	2	33.3	2.5	27.1	15.2
2003	3	75.0	2.0	22.0	10.1
2004	4	50.0	2.3	28.5	9.5
Nuovo Mercato					
1999	3	50.0	2.7	42.3	19.9
2000	14	45.2	2.9	25.6	16.4
2001	1	20.0	1.0	5.0	3.6
2002	—	—	—	—	—
2003	—	—	—	—	—
2004	—	—	—	—	—

See the Methodological Notes. [1] Institutional investors comprise closed-end investment funds, venture capital companies and commercial and investment banks, excluding foundations and savings banks. The data refer only to companies in which such investors were present. [2] Number of companies listed during the year in which institutional investors held an interest at the offering date. [3] Percentage of all the companies listed during the year on the reference market. [4] Average number of institutional investors holding an equity interest at the offering date. [5] Average percentage of the share capital held by institutional investors at the offering date. [6] Average percentage of the share capital held by institutional investors immediately after the offering.

Turning to public offerings by companies that did not have securities listed on Italian regulated markets, 4 offerings of newly-issued shares were made in 2003, raising about €52 million, a modest amount in absolute terms but sharply up with respect to 2003 (Table aI.7).

The offerings were made by banks and involved the issue of ordinary shares. In two cases, the public offering for the subscription of shares was made for the purpose of constituting the bank and the start of banking activity by the companies concerned.

Specifically, NordEst Banca made a public offering for the subscription of €8.4 million of shares and Cassa di Risparmio di San Miniato one for the subscription of about €17 million of shares. Banca Popolare delle Province Molisane, whose offering was made for the start of banking activity, raised about €7 million. Lastly, Banca Attiva made an offering worth €20 million for the creation of the bank.

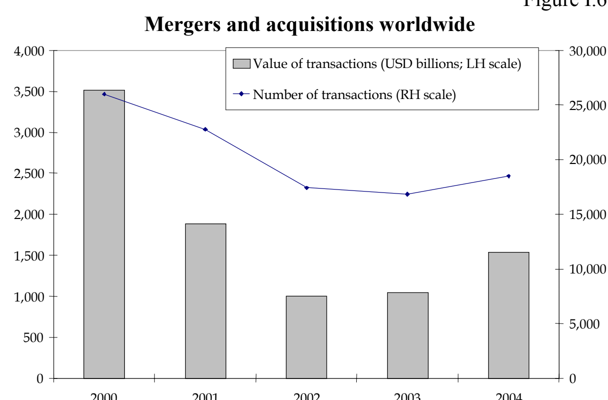
Mergers and acquisitions

M&A activity on the Italian market slowed down perceptibly in 2004.

Worldwide, the value of mergers and acquisitions concluded during the year amounted to more than $1,500 billion, compared with around $1,000 billion in 2003; the number of transactions also rose, from around 16,800 to over 18,000 (Figure I.6). At global level, therefore, the trend towards a contraction of the market since 2000 appears to have been reversed.

Figure I.6

Mergers and acquisitions worldwide

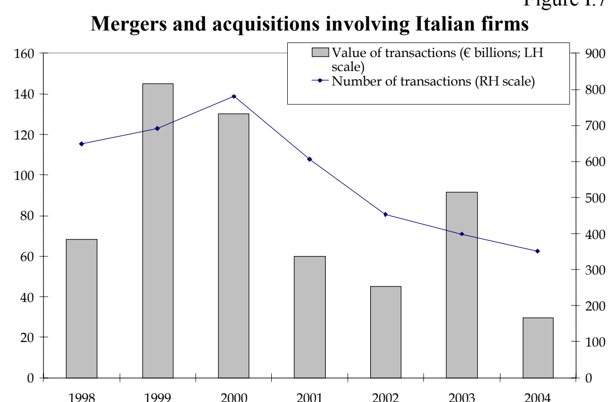


Sources: Dealogic and KPMG *Corporate Finance*

In Italy, mergers and acquisitions fell in value from around €90 billion in 2003 to less than €30 billion last year; the number of transactions fell less sharply, from approximately 400 to about 350 (Figure I.7). The performance of the Italian market was basically due to the absence last year of major transactions of the kind that instead had been a feature of 2003, when reorganizations by large listed groups (specifically, Olivetti-Telecom, Seat and Autostrade) contributed some €40 billion of the total volume of transactions concluded during the year.

Figure I.7

Mergers and acquisitions involving Italian firms



Source: KPMG *Corporate Finance.*

As in 2003, the largest mergers and acquisitions again involved leading groups or listed companies (STMicroelectronics, Sirti, FastWeb, Enel and Edison); there were also important real-estate spin-offs (Enel and Sanpaolo IMI). The number of acquisitions abroad by Italian firms fell from 69 to 38, the lowest level since 1998. By contrast, the number of acquisitions in Italy by foreign firms rose slightly, from 71 in 2003 to 80 last year.

In Italy, as at world level, closed-end funds and private equity are playing an increasingly important role in the M&A activity. In 2004, 40 transactions were completed that involved this type of investor (equal to roughly 10 per cent of the whole Italian market).

In parallel with the slowdown in M&A activity in Italy, tender offers and acquisitions involving listed companies fell off sharply. In 2004 the total value of tender offers for listed companies fell to a twelve-year low of about €500 million, while the number of such offers (18) was the lowest for the last ten years (except 1998, when there were 14; Table aI.8).

In 2004 transfers of control of listed companies were carried out exclusively through agreed sales of controlling holdings, followed by mandatory bids; there were no unsolicited takeover bids or hostile offers. The mandatory bids involved 10 listed companies for a total value of about €290 million (compared with 10 bids and approximately €800 million in 2003).

About 72 per cent of the total value of the mandatory bids in 2004 referred to the €210 million offer by Giro Investimenti for ordinary shares of Saeco International Group; the offer followed the acquisition by Giro Investimenti of about 67 per cent of the issuer's share capital with a view to delisting the company.

In the case of the Sintesi-Bastogi transaction the offer triggered the so-called cascade bid obligation. The acquisition of the entire share capital of Sintesi involved the indirect acquisition of more than 30 per cent of the ordinary shares of Bastogi and Brioschi, making it mandatory to launch a bid for all of Bastogi's shares under Article 106 of the Consolidated Law on Finance and a cascade bid for the shares of Brioschi (a subsidiary of Bastogi, whose assets consist prevalently of its interest in Brioschi).

With further regard to transfers of controlling interests in listed companies (and excluding cascade bids for the sake of simplicity), the average difference between the public-offer price and the market price on the date of transfer of the controlling interest was equal to 6.4 per cent, while the average difference between the price of the controlling interest and the market price at the same date was 10.1 per cent (Table I.7).

The mechanism for calculating the public offer price under the Consolidated Law on Finance can therefore be estimated to have reduced the control premium paid to minority shareholders by about 4 percentage points with respect to that calculated under the legislation previously in force (Law 149/1992), which essentially benchmarked the offer price to the price paid for the controlling interest.

Table I.7

Control premiums in mandatory tender offers
(2000 – 2004)

Target company	Date of offer	Holding of the offeror before exceeding the 30% threshold [1]	Controlling interest acquired by offeror [1]	Difference between the price of the controlling interest and the market price [2]	Difference between the offer price and the market price [2]
Elios Holding Milano	07/02/2000	0.0	70.3	87.3	96.3
Acquedotto Nicolay	26/04/2000	23.9	25.7	21.4	5.2
Aeroporti di Roma	25/09/2000	0.0	51.2	20.5	1.8
Falck	02/10/2000	0.0	30.3	0.0	0.0
Banco di Napoli	08/11/2000	0.0	56.1	17.1	2.9
Bayerische Vita	09/01/2001	0.0	70.0	66.0	30.9
Risanamento Napoli	21/02/2001	27.8	48.9	-2.9	-2.9
Safilo	02/07/2001	10.3	69.9	-5.4	0.2
Banca di Legnano	16/07/2001	0.0	55.0	56.6	1.5
Montedison	26/07/2001	0.0	52.1	-3.9	-5.7
Immobiliare Metanopoli	09/10/2001	0.0	90.2	-7.7	13.6
Cmi	18/04/2002	3.4	78.5	9.2	9.2
Iil	10/06/2002	19.9	30.2	14.9	0.7
Immsi	16/12/2002	0.0	45.3	-5.5	-1.0
Borgosesia	27/12/2002	0.0	71.0	9.7	15.7
Banco di Chiavari	17/03/2003	0.0	69.6	19.7	0.9
Alerion Industries	14/04/2003	0.0	59.6	1.5	0.3
Ipi	05/05/2003	0.0	56.0	9.6	0.6
Air Dolomiti	26/05/2003	20.7	31.2	4.3	-1.5
Seat Pagine Gialle	01/09/2003	0.0	62.5	-28.0	-28.0
Roncadin	13/10/2003	29.1	2.7	-26.1	-23.6
Euphon	24/03/2004	0.0	41.0	1.9	2.4
Saeco International Group	30/03/2004	0.0	66.8	8.3	2.3
Nts	29/04/2004	0.0	80.0	3.6	24.1
Roncadin	15/06/2004	0.0	40.9	-28.7	1.9
Bastoni	16/06/2004	0.0	53.8	-14.2	-0.7
Dmail Group	30/06/2004	0.0	46.1	-4.9	1.0
Saes Getters	28/07/2004	0.0	62.1	-0.6	-10.0
Beni Stabili	06/09/2004	29.5	3.5	-1.3	-3.2
Grandi Navi Veloci	12/10/2004	0.0	70.9	81.3	56.6
Mean				**10.1**	**6.4**
Median				**2.7**	**1.0**

[1] As a percentage of the share capital. [2] Percentages. The market price is that of the day the controlling interest was acquired.

Ownership structures

The evolution of the structure of ownership and control of listed companies in 2004 confirmed some of the trends that had emerged in recent years, but did not appreciably modify the indicators of ownership concentration. The lack of significant changes also reflects the decline in mergers and acquisitions on the Italian market in 2004 and the absence of major privatizations (except for the sale of a portion of the Ministry for the Economy and Finance's holding in Enel).

Table I.8

Concentration of ownership of companies listed on the Stock Exchange and the Nuovo Mercato [1]
(at 31 December 2004)

	Concentration		
	Largest shareholder	Other major shareholders	Market
Stock Exchange			
1996	50.4	10.7	38.9
1997	38.7	8.4	52.9
1998	33.8	9.7	56.5
1999	44.2	8.2	47.6
2000	44.0	9.4	46.6
2001	42.2	9.2	48.6
2002	40.7	8.0	51.2
2003	33.5	11.6	54.9
2004	32.7	13.0	54.3
Nuovo Mercato			
2000	44.8	25.9	29.3
2001	41.8	23.7	34.5
2002	41.0	21.8	38.2
2003	36.2	19.4	44.4
2004	36.3	18.6	45.2

Source: Consob transparency archive. See the Methodological Notes.
[1] As a percentage of the total market value of the ordinary share capital of all the companies listed on the Stock Exchange and the Nuovo Mercato. Rounding may cause discrepancies in the last figure.

More in detail, the average holding of the largest shareholder of companies listed on the Stock Exchange (MTA) fell further, from 33.5 to 32.7 per cent, while that of other major shareholders (persons holding more than 2 per cent of the voting rights) rose again, from 11.6 to 13 per cent. The share held by the market (persons with holdings of less than 2 per cent) declined from 54.9 to 54.3 per cent (Table I.8). The average holdings of the largest shareholder and other major shareholders stand at the lowest levels in the cases of privatizations and sales of shareholdings in companies controlled by the public sector.

The indicators of ownership concentration are also broadly stable for companies listed on the Nuovo Mercato. The interest held by the largest shareholder averaged 36.3 per cent, compared with 36.2 per cent in 2003. The percentage of the share capital held by other major shareholders declined from 19.4 to 18.6 per cent, while that held by the market rose from 44.5 to 45.2 per cent.

The distribution of companies listed on the Stock Exchange by type of control shows a further contraction in the share of total market value of companies under majority control and an increase instead in that of companies subject to working control. However, this was not paralleled by changes in the number of companies subject to each type of control (Table I.9).

Although the percentage of total market value attributable to companies controlled by a single shareholder with more than 50 per cent of the voting rights exercisable in the ordinary shareholders' meeting declined from 40.2 to 32.7 per cent, the number of companies under such control increased from 130 to 134. The share of total market value of companies with working control (i.e. controlled by a single shareholder with less than 50 per cent of the voting rights exercisable in the ordinary shareholders' meeting) rose from 25.5 to 27.2 per cent, although the number of such companies fell from 25 to 22. By

contrast, the share of total market value accounted for by companies controlled by shareholders' agreements remained stable at just over 15 per cent, although the number of these companies decreased by 2. Lastly, the share of total market value of companies not subject to any control rose by around 6 percentage points, from 19 to 25 per cent.

Table I.9

Control of companies listed on the Stock Exchange and the Nuovo Mercato [1]
(at 31 December 2004)

	Majority control		Working control		Shareholders' agreement		No control		*Total*	
	Number of companies	Share [2]	Number of companies	Share [2]	Number of companies	Share [2]	Number of companies	Share [2]	*Number of companies*	*Share [2]*
Stock Exchange										
1996	130	66.8	26	12.2	26	4.8	26	16.2	*208*	*100.0*
1997	122	48.1	28	12.4	27	6.3	28	33.2	*205*	*100.0*
1998	128	32.3	31	21.7	24	7.4	35	38.6	*218*	*100.0*
1999	148	55.0	31	16.7	29	10.8	32	17.5	*240*	*100.0*
2000	141	51.4	34	18.5	24	9.6	38	20.5	*237*	*100.0*
2001	135	49.7	37	22.5	21	11.4	39	16.4	*232*	*100.0*
2002	142	46.0	37	28.4	20	10.2	32	15.4	*231*	*100.0*
2003	130	40.2	25	25.5	28	15.3	36	19.0	*219*	*100.0*
2004	134	32.7	22	27.2	26	15.1	37	25.0	*219*	*100.0*
Nuovo Mercato										
2000	14	51.1	8	32.4	13	14.6	4	1.9	*39*	*100.0*
2001	15	42.0	7	36.3	9	12.7	13	9.0	*44*	*100.0*
2002	12	43.4	9	33.2	10	13.3	12	10.1	*43*	*100.0*
2003	10	18.5	10	33.3	3	2.0	18	46.3	*41*	*100.0*
2004	9	19.1	8	23.4	6	8.5	14	49.0	*37*	*100.0*

Source: Consob transparency archive. See the Methodological Notes. [1] Rounding may cause discrepancies in the last figure. [2] Percentage ratio of the market value of the ordinary share capital attributable to each type of control and the total market value of the ordinary share capital of all the companies listed on the Stock Exchange and the Nuovo Mercato.

On the Nuovo Mercato, both the number of companies and the share of total market value under majority control remained broadly in line with the figures for the previous year. By contrast, the share of market value of companies subject to working control dropped from 33.3 to 23.4 per cent, while their number only decreased by 2. There was also a shift towards control by shareholders' agreement: the share of total market value of companies subject to this type of control increased from 2 to 8.5 per cent and their number doubled from 3 to 6.

At the end of 2004 shareholders' agreements existed in just over one fifth of the companies listed on the Stock Exchange. In 39 cases out of a total of 56, the agreements covered both the exercise of voting rights and the transferability of shares (so-called global agreements; Tables aI.9 and aI.10). In 22 cases, the agreements concerned unlisted companies controlling listed companies Table aI.11).

For companies listed on the Nuovo Mercato, at the end of last year 7 of the 11 shareholders' agreements in existence were global agreements, while the number of voting pacts had fallen to 4.

The basic stability of ownership concentration and control structures is also reflected in the distribution of major shareholdings in listed companies by type of shareholder (Table aI.12).

For companies listed on the Stock Exchange, there was a slight increase in the proportion of total market value held by "other companies" (from 12.3 to 13.7 per cent) and foreign residents (from 6.7 to 7.3 per cent), against a modest decline in that held by public bodies (from 11.2 to 10.7 per cent) and individuals (from 6.2 to 5.7 per cent).

The companies listed on the Nuovo Mercato continue to display some differences with respect to those listed on the Stock Exchange. Individuals remain in the lead among major shareholders, although their proportion slipped from 41.7 to 40 per cent, continuing the trend of the previous years. The proportion held by other companies rose from 4.8 to 8 per cent, narrowing the difference with respect to the corresponding figure for the Stock Exchange.

Some changes are worth noting in the distribution of major holdings in listed companies on a sector-by-sector basis, especially as regards industrial and service companies (Table I.10).

Major holdings of foreign residents rose from 4 to 7.3 per cent of the total in industrial companies and fell from 4 to 1.7 per cent in service companies. The proportion held by the State and local authorities contracted in both sectors, but more sharply in service companies (from 23.5 to 20 per cent) than in industrial companies (from 15.9 to 14.8 per cent). Lastly, the proportion held by individuals fell from 8.7 to 7.6 per cent in industrial companies and from 7.4 to 5.9 per cent in service companies.

Table I.10

Major holdings in companies listed on the Stock Exchange [1]

	2003			2004		
	Sector of the investee companies			Sector of the investee companies		
	Financial	Industrial	Services	Financial	Industrial	Services
Declarants						
Foreign residents	11.1	4.0	4.0	11.3	7.3	1.7
Insurance companies	2.8	0.1	0.2	3.0	0.6	0.2
Banks	9.1	0.2	0.2	8.6	0.1	0.1
Foundations	8.8	--	--	8.1	--	0.1
Institutional investors	--	--	--	0.1	0.1	0.1
Other companies	6.0	11.2	24.8	6.9	12.3	24.9
State and local authorities	0.9	15.9	23.5	0.9	14.8	20.0
Individuals	4.0	8.7	7.4	4.1	7.6	5.9
Total	*42.7*	*40.1*	*60.4*	*43.0*	*42.7*	*52.9*
Number of companies	**78**	**97**	**44**	**76**	**97**	**46**
Share of market capitalization [2]	**42.4**	**30.2**	**27.4**	**39.9**	**32.2**	**27.9**

Source: Consob transparency archive. See the Methodological Notes. [1] Holdings of more than 2 per cent of the voting capital. Percentage ratio of the market value of the ordinary share holdings controlled to the market value of the ordinary capital of all the companies listed on the Stock Exchange. Rounding may cause discrepancies in the last figure. [2] Percentage ratio of the market value of the ordinary share capital of the companies in each sector to the total market value of the ordinary shares listed on the Stock Exchange.

Corporate governance

As in previous years, the level of participation in the annual general meetings (AGMs) of listed companies was closely correlated with company size and ownership structure.

For large and medium-sized companies (those included in the S&P/Mib and Midex indices), the average number of participants in the meetings held in 2004 (to approve the annual accounts for 2003) was 190, comparable to the figure of the previous year (Table I.11). For 21 out of 51 companies (41.2 per cent) the number of participants was less than 50, while for only 4 companies did it exceed 500. For smaller companies (those belonging to the Star segment of the Stock Exchange), the number of participants averaged 21, compared with 16 in 2003.

Table I.11

Distribution of companies listed on the Stock Exchange by number of participants in AGMs
(2002-2004)

Number of participants	Mib30 and Midex		S&P/Mib and Midex	Star	
	2002	2003	2004	2003	2004
< 50	18	19	21	36	39
from 50 to 100	5	6	6	1	1
from 100 to 500	21	20	20	--	1
> 500	5	5	4	--	--
Total	*49*	*50*	*51*	*37*	*41*
Average number of participants [1]	**178**	**184**	**190**	**16**	**21**

Source: Minutes of annual general meetings for the approval of the 2001, 2002 and 2003 annual accounts for listed companies included in the Mib30 (S&P/Mib for 2004) and Midex indexes and minutes of the annual general meetings for the approval of the 2002 and 2003 annual accounts for companies listed in the Star segment. [1] Arithmetic mean.

For the large and medium-sized companies, participation by major shareholders (i.e. those with more than 2 per cent of the voting rights) in AGMs was equal on average to around 52 per cent of the total voting capital and 90 per cent of the voting capital represented at the meetings, comparable to the level of participation in 2003 (Table I.12). The corresponding figures for the companies of the Star segment are slightly higher (around 59 and 93 per cent).

By contrast, non-major institutional investors (i.e. asset management companies, banks, insurance companies and pension funds with holdings of less than 2 per cent) play a marginal role in shareholders meetings. For large and medium-sized companies, the non-major institutional investors that participated in AGMs in 2004 held an aggregate of 2.4 per cent of the total voting capital and 4.5 per cent of the capital represented at the meeting; for the companies of the Star segment, the proportions were even lower (0.5 and 1 per cent respectively).

Among non-major institutional investors, the largest share of the voting rights represented at AGMs was that of foreign funds, which held an average of 2.3 per cent of the share capital represented at the meetings of large and medium-sized companies and 0.6 per cent of the capital represented at those of the companies of the Star segment (Table I.13). The participation of Italian asset management companies was marginal.

Table I.12

Share of voting rights held by major shareholders and institutional investors in AGMs of listed companies
(percentages)

	2002 meeting		2003 meeting		2004 meeting	
	As a percentage of the total voting capital	As a percentage of the share capital represented at the meeting	As a percentage of the total voting capital	As a percentage of the share capital represented at the meeting	As a percentage of the total voting capital	As a percentage of the share capital represented at the meeting
Mib30 and Midex					**S&P/Mib and Midex**	
Major shareholders [1]						
Median	49.7	89.2	52.4	90.7	52.3	89.4
Minimum	7.2	50.6	24.1	58.6	17.1	49.0
Maximum	17.5	100.0	83.7	99.6	81.5	99.9
Institutional investors (other than major [1])						
Median	2.9	5.8	2.2	4.3	2.4	4.5
Minimum	--	--	--	--	--	--
Maximum	9.7	26.7	8.0	16.1	6.3	14.5
Star						
Major shareholders [1]						
Median	—	—	58.9	93.8	59.2	92.6
Minimum	—	—	19.8	7.7	--	—
Maximum	—	—	76.5	100.0	77.4	100.0
Institutional investors (other than major [1])						
Median	—	—	1.1	1.9	0.5	1.0
Minimum	—	—	--	--	--	--
Maximum	—	—	8.6	12.1	4.8	10.6

Source: Minutes of the shareholders' meetings called to approve the 2001, 2002 and 2003 annual accounts for companies included in the Mib30 (S&P/Mib for 2004) and Midex indexes. [1] (Major shareholders means shareholders with a holding of more than 2 per cent of the voting capital (Article 120 of Legislative Decree 58/1998).

Table I.13

Share of voting rights held by non-major institutional investors in AGMs of listed companies in 2003[1]
(arithmetic means; percentages)

	S&P/Mib and Midex		Star	
	As a percentage of the total voting capital	As a percentage of the share capital represented at the meeting	As a percentage of the total voting capital	As a percentage of the share capital represented at the meeting
Italian asset management companies	0.2	0.4	--	0.1
Italian pension funds	0.2	0.4	--	--
Italian banks and insurance companies	0.6	1.0	0.1	0.2
Foreign funds	1.2	2.3	0.3	0.6
Foreign banks and insurance companies	0.2	0.2	0.1	0.1
Total	*2.4*	*4.5*	*0.5*	*1.0*

Source: Minutes of shareholders' meetings called to approve the 2003 annual accounts of companies included in the S&P/Mib and Midex indexes and the Star segment. [1] Non-major shareholders means investors holding less than 2 per cent of the voting capital (Article 120 of Legislative Decree 58/1998).

Table I.14

Average number of directors of companies listed on the Stock Exchange in 2004, by type of control

Type of control	Executive directors	Non-executive directors	*Total* [1]
Majority control	3.0	6.7	*9.7*
Working control	3.1	7.6	*10.7*
No control	4.7	7.7	*12.4*
Shareholders' agreement	4.7	7.9	*12.6*

[1] Rounding may cause discrepancies in the last figure.

Turning to boards of directors, a correlation is found between the number of members, the company's ownership structure and its sector of activity.

Specifically, the average number of directors is appreciably higher in companies that are not subject to control (12.4 directors) and those controlled by shareholders' agreements (12.6 directors; Table I.14); this is due in part to a greater number of executive directors (an average of 4.7 in such companies, compared with an average of around 3 in companies subject to majority or working control).

Boards are also appreciably larger in the banking and insurance sectors. Around 48 per cent of insurance companies and 56 per cent of banks have a board composed of more than 15 members, compared with only 3 per cent of industrial companies and 4 per cent of service companies (Table I.15).

Table I.15

Distribution of companies listed on the Stock Exchange in 2004 by number of directors and sector [1]

(percentages)

Sector	Number of directors [1]				
	< 6	6 - 10	11 – 15	> 15	*Total*
Insurance	--	11.1	33.3	55.6	*100.0*
Banking	--	19.4	32.3	48.4	*100.0*
Financial	11.1	52.8	27.8	8.3	*100.0*
Industrial	15.5	58.8	22.7	3.1	*100.0*
Services	4.4	55.6	35.6	4.4	*100.0*

[1] Rounding may cause discrepancies in the last figure.

Interlocking directorships continue to be a feature of Italian listed companies, although somewhat less so than in the past.

In 2004 interlocking directorships concerned 179 companies listed on the Stock Exchange, or 80 per cent of the number listed at the end of the year (Table I.16). Directors with more than one directorship made up more than half the board of 100 listed companies, compared with 59 in 2003.

Table I.16

Interlocking directorships of companies listed on the Stock Exchange in 2004

Directors with more than one directorship	Number of companies
< 25 per cent	66
from 25 to 50 per cent	13
from 51 to 75 per cent	64
> 75 per cent	36
Total	*179*
as a percentage of all listed companies	***81.7***

II. SECONDARY MARKETS

Equity markets

In 2004 the international economy continued to recover as it did in 2003. The recovery was marked almost everywhere by higher growth rates in the first quarter of the year, followed by a slowdown in the following months that was partly due to the rise in energy prices. The rate of economic growth of the euro area as a whole was modest, but higher than in 2003; Italy was among the countries with the lowest growth rates.

Although not uniform, the prospects of recovery in the various regions helped to sustain share prices in the leading industrial countries and to reduce volatility. The upward trend in share prices was especially clear in the last few months of the year, when they benefited from the decline in the oil price and the improvement in corporate profitability.

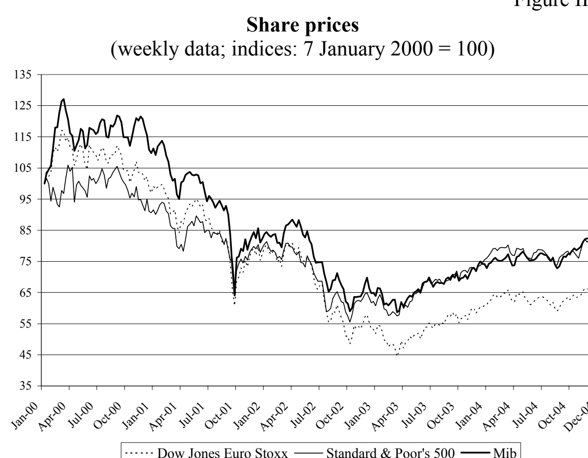
The estimates made by IBES (which gathers and compiles stock analysts' forecasts of the main items of companies' financial statements) confirm, both for the euro area and for the United States, the upward trend of expectations for corporate earnings twelve months ahead that had first emerged in the last quarter of 2003. The improvement also applies to Italy, despite the widening in 2004 of the gap between expectations of higher profits for European companies (notably those included in the MSCI index) and Italian companies (notably those included in the MIB30 index).

The rise in share prices was nonetheless smaller than in 2003. In particular, the Dow Jones Euro Stoxx index for the shares of the leading euro-area companies rose by about 9 per cent, compared with about 12 per cent the previous year. The difference between the two years for the S&P 500 index of leading US companies was even greater, with rises of about 9 and 21 per cent respectively.

Figure II.1

Share prices

(weekly data; indices: 7 January 2000 = 100)



Source: Thomson Financial.

Italian share prices moved in different directions depending on the market considered. In line with international trends, the historical Mib index for the Stock Exchange (MTA) rose by about 18 per cent (15 per cent in 2003), while the index of the Nuovo Mercato fell by about 18 per cent, after breaking the downward trend under way since 2000 and rising by about 27 per cent in 2003.

Especially as regards the number of listed companies, the structure of the Italian equity market did not change significantly in 2004. The number of Italian listed companies remained small at 269, a decrease of 2 compared with the end of 2003 (Table aII.1).

A total of 9 Italian companies were admitted to listing, of which 7 on the Stock Exchange and 2 on the Expandi Market, while 11 companies were delisted, of which 7 from the Stock Exchange and 4 from the Nuovo Mercato.

The market value of Italian listed companies amounted to €581 billion at the end of 2004, an increase of 19 per cent on the end of 2003. The market value of the companies listed on the Stock Exchange rose from about €475 billion to €569 billion and that of the companies listed on the Expandi Market rose from €4.6 billion to €5.3 billion, while that of the companies listed on the Nuovo Mercato fell from €8.3 billion to €6.7 billion. The overall market capitalization was equal to 42 per cent of GDP at the end of the year, an increase of about 5 percentage points compared with the end of 2003.

The total volume of trading in equities rose by about 13 per cent to €660 billion. Trading turnover, defined as the ratio of the value of trades to the average market capitalization over the year, was above 1 for both the Stock Exchange and the Nuovo Mercato.

The data gathered by Consob on trading in listed shares by their issuers or by other companies belonging to the same group highlight not only the importance of buybacks but also some features peculiar to the Italian market and linked in part to the ownership structure of Italian firms (Box 1).

The rate of growth in share issues by companies listed in the euro-area countries was very low in 2004 and virtually unchanged compared with 2003.

In Italy there were 23 cash equity issues by already listed companies and 8 IPOs, for a total of about €3.6 billion, compared with 30 and €9.8 billion respectively in 2003.

Net purchases of Italian listed shares showed a positive balance in 2004, but less than half that of the previous year (Table II.1) reflecting the fall in equity issues referred to above. Although banks made a positive contribution overall, they were net purchasers only in the first five months of the year; mutual funds were net sellers for the year as a whole, in contrast with 2003. On the other hand non-residents reversed the trend of the four previous years and made net purchases for a total of about €13 billion.

Table II.1

Net purchases of Italian listed shares [1]
(millions of euros)

	Subscribers						
	Banca d'Italia UIC	Mutual funds [2]	Banks	Insurance companies	Other investors [3]	Non-residents	*Total*
2000	231	49	4,592	3,328	2,663	-1,714	*9,148*
2001	201	-1,787	-8,270	-594	17,153	-532	*6,171*
2002	346	-1,133	8,947	-4,847	7,735	-7,155	*3,893*
2003	96	229	-8,085	4,200	14,670	-2,400	*8,710*
2004[4]	36	-133	236	....	3,059	13,189	*3,197*

Source: Banca d'Italia. [1] Rounding may cause discrepancies in totals. [2] The figures refer to mutual funds set up under Italian law. [3] Households, firms, central and local government entities, Cassa Depositi e Prestiti, Italian investment firms, and social security institutions. [4] Provisional. The figure for banks is up to 30 September, while that for non-residents is up to October 2004.

Box 1

Trading in listed shares by the issuer or group companies

In 2004 there were 133 shares listed on the regulated markets operated by Borsa Italiana that were traded in by the issuer (buybacks) or companies belonging to the same group for a total value of approximately €2.9 billion (with buybacks accounting for more than €1.5 billion). The transactions in question showed a positive buy balance of approximately €289 million. This was entirely due to buybacks, which recorded a positive balance of just over €290 million, while trades by parent companies and other group companies were virtually in balance. As regards buybacks, it is also worth noting that about one in three transactions was related to the implementation of stock-option plans.

By contrast, contracts concluded off the regulated markets (block and off-market trades) were heavily biased towards sales and their total value of €2.5 billion was less than that for the contracts concluded on the regulated markets. However, the shares of a much smaller number of companies were involved.

Despite the growing importance of buybacks, there is still a large gap between the number of authorizations to buy own shares granted by shareholders' meetings and the actual number of purchases made. In fact more than 45 per cent of such authorizations are not followed by purchases. Even when purchases are made, the quantities acquired come close to the limit established by the shareholders' meeting in less than 25 per cent of the cases. The widespread lack of correspondence between the intentions announced and actual transactions reduces the signalling effect of the adoption of resolutions approving purchases of own shares. Lastly, in cases where trading in own shares regularly accounts for a substantial portion of the total volume of business, there appears to be a prevalence of support for the liquidity of the securities concerned, which needs to be carefully assessed in order to safeguard the integrity of the market and the significance of the prices formed.

Although the aggregate volume of trading by issuers and group companies is a small share of the total turnover on the stock market (about 1 per cent), it is sometimes quite significant. For 35 securities such trading exceeded 25 per cent of the total turnover in at least one month in 2004, while for 8 securities this threshold was exceeded every month.

Distribution by frequency and volume of trading of transactions in the issuer's securities carried out by the issuer or group companies

Number of monthswith transactions by the issuer or group companies in 2004	Percentage of months in which transactions by the issuer or group companies exceeded the threshold of 25% of the total volume of trading on the market				
	0	1 – 25	26 – 99	100	*Total*
1	17	- -	- -	4	*21*
2 – 3	20	- -	2	1	*23*
4 – 11	50	4	15	1	*70*
12	11	3	3	2	*19*
Total	*98*	*7*	*20*	*8*	*133*

Derivatives markets

The market for OTC and exchange-traded derivatives have expanded extremely fast both at world level and in Italy.

The data published by the BIS with reference to the G-10 countries provide an estimate of both the size of the OTC and the exchange-traded derivatives markets and of their rate of growth. At the end of December 2003 the BIS recorded notional amounts outstanding of OTC derivatives equal to about $197 trillion and of exchange-traded derivatives equal to about $37 trillion (Table II.2). Starting from $111 trillion at the end of 2001, OTC derivatives grew at an average annual rate of approximately 33 per cent, while exchange-traded derivatives, starting from about $24 trillion at the end of 2001, grew at an average annual rate of approximately 24 per cent.

At world level OTC derivatives account for the bulk of the total notional amount outstanding (approximately 84 per cent). Among the OTC derivatives, interest rate contracts are the most important component, with a notional value at the end of 2003 of approximately $142 trillion or 72 per cent of the entire OTC market; the share of foreign exchange contracts was 12 per cent, that of equity-linked contracts 2 per cent, and the remaining 14 per cent was accounted for by commodity contracts and other instruments.

Table II.2

Notional value of derivatives in the G-10 countries
(end-of-period data; amounts in US$ billions)

	2001		2003	
	Notional value	Share of total [1]	Notional value	Share of total [1]
OTC derivatives				
Derivatives				
Interest rate	77,568	69.8	141,991	72.0
Foreign exchange	16,748	15.1	24,475	12.4
Equity-linked	1,881	1.7	3,787	1.9
Other	14,981	13.5	26,914	13.7
Total OTC (A)	*111,178*	*100.0*	*197,167*	*100.0*
of which with non-financial counterparties	*10,704*		*23,714*	
Exchange-traded derivatives				
Futures				
Interest rate	9,269	39.0	13,123	35.7
Currency	66	0.3	80	0.2
Equity index	334	1.4	502	1.4
Options				
Interest rate	12,493	52.6	20,793	56.6
Currency	27	0.1	38	0.1
Equity index	1,575	6.6	2,197	6.0
Total exchange-traded (B)	*23,764*	*100.0*	*36,733*	*100.0*
Total derivatives (A + B)	**134,942**		**233,900**	

Source: BIS – *Quarterly Review*, September 2004. [1] Percentages.

Among exchange-traded derivatives, interest rate contracts (options and futures), especially on government securities, were again preponderant, accounting for about 92 per cent of the entire market at the end of 2003.

As for Italy, the operativity on equity derivatives (on the IDEM regulated market managed by Borsa Italiana) continued to grow over 2004; the number of contracts concluded increased by 3 per cent to above 18 million (Table II.3).

Table II.3

Derivatives traded on IDEM in 2004

	Number of contracts concluded [1]	Daily average [1]	Percentage change [2]
Index futures	3,331	12.9	-22
Index options	2,220	8.6	-11
Stock options	9,500	36.9	+20
Index mini futures	1,485	5.7	-42
Stock futures	1,734	6.7	+27

Sources: Based on Borsa Italiana s.p.a. and Cassa di Compensazione e Garanzia s.p.a. data. [1] Thousands of contracts. [2] Compared with 2003.

Index futures and index mini futures both lost ground compared with 2003, with the number of contracts concluded falling by respectively 22 and 42 per cent. By contrast, trading in stock futures continued to expand, with the average number of contracts concluded per day rising from 1,800 in 2003 to 6,700 in 2004. Borsa Italiana has increased the number of eligible underlyings for these contracts, from 12 at the end of 2003 to 22 at the end of 2004.

Following the introduction of the S&P/Mib index on 22 March 2004, S&P/Mib options and futures replaced the Mibo30 and Fib30 contracts on the IDEM derivatives market. The S&P/Mib and Mib30 indices are compared in Box 2.

According to the half-yearly survey conducted by the Bank of Italy on a sample of Italian banks, at the end of 2003 the notional amount outstanding of OTC derivatives was equal to about $4.6 trillion or approximately 2 per cent of the world OTC derivatives market. The Italian OTC market is dominated by interest rate contracts, which account for about 92 per cent of the total notional value. Starting from a total notional value of about $2 trillion at the end of 2001, Italian OTC derivatives grew at an average annual rate of approximately 51 per cent, well above the growth of the world market (approximately 33 per cent per year).

Box 2

Comparison between the Mib30 and S&P/Mib indices

Designed to replace the Mib30 index as the reference index for the financial instruments traded on IDEM, the S&P/Mib index was introduced by Borsa Italiana in June 2003. Both the indices are valued weighted, i.e. based on the market value of the component companies but, unlike the Mib30 index, the S&P/Mib index adjusts the market value in relation to the free float (which increases the weight of widely held securities) and broadly replicates the sectoral composition of the market. The introduction of the S&P/Mib index met the need to bring the Italian derivatives market into line with international standards. The Mib30 index is still calculated as an information index for the 30 most highly capitalized and liquid securities listed on the MTA share market.

The securities composing the new index are selected by the Index Committee, which consists of three representatives of Standard & Poor's and two representatives of Borsa Italiana, and ensures a high degree of uniformity with other international indices (such as the S&P 500 index). While the securities composing the Mib30 index are selected automatically on the basis of objective data (liquidity and market value), there is a discretionary element in the selection of those included in the S&P/Mib index (as regards sectoral composition, for example). However, the Index Committee makes its selection in conformity with the criteria established by Borsa Italiana and the guidelines laid down by Standard & Poor's.

The S&P/Mib index does not have a fixed number of component companies and the Index Committee may change the number to ensure the index reflects the structure of the market adequately. The selection and weighting of the component shares are based on four elements:

- representativeness, i.e. the ability of the share to represent the sector it belongs to. The index is composed of shares representing the 10 sectors of the Global Industry Classification Standard (GICS) developed by Standard & Poor's and Morgan Stanley Capital International (MSCI): consumer staples, consumer discretionary, energy, financials, industrials, information technology, health care, materials, telecommunications services and utilities;
- liquidity, measured in terms of the rate of turnover of the free float, the value traded and the number of trading days;
- market capitalization of the free float, calculated by multiplying the free float (i.e. the shares remaining after deducting holdings that exceed 5 per cent directly or through shareholders' agreements from the total listed on the market) by the market price of the share;
- Investable Weight Factor - IWF, obtained by subtracting the free float from 100 (the minimum IWF for inclusion in the index is 25 per cent; the average IWF of the companies composing the index at 17 September 2004 was 53 per cent).

The table below summarizes the differences between the two indices.

Characteristics of the Mib30 and S&P/Mib indices

	Mib30	S&P/Mib
Base	31.12.1992 = 10.000	31.12.1997 = 24.402
Composition	Only shares listed in the Blue Chip segment of the MTA market;	Shares listed on the MTA market and the Nuovo Mercato;
	fixed number (30)	variable number (currently 40)
Management	Borsa Italiana	Index Committee (Standard & Poor's, 3 members; Borsa Italiana, 2 members
Selection criteria	ILC (Index of quality and capitalization); capitalization refers to the entire issued capital	Liquidity, free float, sectoral representativeness, and IWF (Investable Weight Factor); capitalization refers only to the free float
Frequency of calculation and release	Once a minute	Once every 30 seconds
Revision of the composition	Six-monthly (March and September)	Six-monthly (March and September)
Rebalancing of the index	Six-monthly (March and September)	Quarterly (March, June, September, December), released on the Monday following the expiry date of the derivative contracts
Revision of the number of components	–	Annual (March)

In its report on the survey results the Bank of Italy stressed that, whereas the notional value of the amounts outstanding in Italy was about $4.6 trillion, the market value of the positions in derivatives (i.e. the sum of money that it would be necessary to pay or that would be received to close the positions) was equal to only $54 billion for the positions with a positive market value for the banks and to about $47 billion for those with a negative market value for the banks. Accordingly, at the consolidated level, if the positions in derivatives had been closed at the end of 2003, they would have earned the sample banks a net profit of $7 billion, equal (at the euro/dollar exchange rate at the end of 2003) to about 8 per cent of the gross income of the entire banking system in 2003. It should be remembered, however, that hedging derivatives gave rise to a loss for the entire banking system in 2003 of about €1.7 billion, corresponding to about 2.5 per cent of its gross income.

The banks' counterparties were other financial institutions in 93 per cent of the cases; in the remaining 7 per cent of the cases they were non-financial institutions (mainly industrial companies and public entities).

At the end of 2003 Italian banks had positions in OTC derivatives with firms, public bodies and other non-financial clients for a notional value of $328 billion, of which some 80 per cent were interest rate contracts and the remainder of about 20 per cent were foreign exchange contracts (Box 3).

Box 3

Trading in derivatives with non-financial counterparties

In 2004 Consob conducted a survey on the OTC derivatives business of the top ten Italian banking groups with non-financial counterparties, which, as shown by the data collected by the Bank of Italy, accounts for about 7 per cent of the entire OTC derivatives market.

The survey found that the OTC derivatives business of the 10 banking groups in question involved about 50,000 non financial institutions (non-financial companies, public entities and retail clients) and approximately 78,000 contracts. The total notional value of the positions outstanding at 30 June 2004 was equal to approximately €146 billion.

More than 80 per cent of the clients had a negative mark-to-market valuation and at 30 June 2004 the market value, i.e. the total amount payable to the banks if all their clients' positions were closed immediately, was equal to more than €4 billion. As for the counterparties, about 75 per cent of the positions in derivatives were held by clients that the banks classified as professional investors and these clients accounted for more than 96 per cent of the total notional value.

The average size of the positions held by professional investors was about €3.6 million for interest rate derivatives and €2.6 million for exchange rate derivatives; for non-professional investors the corresponding figures were about €390,000 and €1 million respectively. The average number of transactions was also higher for professional investors than for non-professional investors (more than 1.5, as against about 1).

At 30 June 2004 the market value of the positions held by professional investors was about 98 per cent of the total mark-to-market valuation, with an average negative value per contract of about €98,000 for interest rate derivatives and €120,000 for exchange rate derivatives. For non-professional investors the average negative position was marginal for interest rate derivatives and more than €25,000 for exchange rate derivatives.

The bulk of the clients other than financial institutions consists of non-financial companies (more than 40,000), which account for about 82 per cent of the positions in derivatives in terms of notional value. In turn, interest rate derivatives account for 92 per cent of their positions (see table).

The average size of firms' interest rate contracts is about €2.6 million, with a loss per contract of about €76,000. The total market value of these positions is –€3.2 billion and about 90 per cent of firms have a negative position.

As for the size distribution of firms, the survey showed that some 50 per cent (about 19,000) were small, with a turnover of between €1.5 million and €5 million. However, in terms of notional value these firms account for only just over 20 per cent of the positions in derivatives. Medium-sized and large firms (turnover of respectively up to €40/50 million and more than €50 million) divide the remaining 80 per cent of the market almost equally. Small firms' limited share of the business in terms of notional value is due to the smaller average size of their contracts (about €1 million) compared with those of medium-sized and large firms (respectively about €3 million and €9 million).

Sample estimates showed the average negative mark-to-market valuation for small firms to be just over €30,000, compared with respectively about €100,000 and €260,000 for medium-sized and large firms. The average number of contracts outstanding is also different: just above one for small firms, as against about 2 for medium-sized and large firms.

Italian non-financial companies with positions in derivatives
(situation at 30 June 2004; amounts in billions of euros)

	All firms			Firms with derivatives having a negative market value		
	Number	Total notional value of the derivatives outstanding	Total market value of the derivatives outstanding	Number	Total notional value of the derivatives outstanding	Total market value of the derivatives outstanding
Interest rate derivatives						
Companies classified as professional investors	34,279	106.6	-3.1	31,156	96.9	-3.2
Companies classified as non- professional investors	7,901	4.4	-0.1	7,152	4.0	-0.1
Total	*42,180*	*111.0*	*-3.2*	*38,308*	*100.9*	*-3.3*
Exchange rate derivatives						
Companies classified as professional investors	3,697	9.6	-0.5	2,724	7.1	-0.5
Companies classified as non- professional investors	117	0.3	0.0	57	0.1	0.0
Total	*3,814*	*9.9*	*-0.5*	*2,781*	*7.3*	*-0.5*

Source: Consob.

Consob’s survey also revealed the involvement of about 900 public entities in the OTC derivatives market. They represented about 2 per cent of the total number of non-financial clients that traded in derivatives with the banks in question. Public entities’ business focused exclusively on interest rate derivatives and the notional value of the positions held at 30 June 2004 was about €12 billion. Compared with the corporate sector, the average size of contracts was much larger (€12 million, as against €2.6 million) and the average loss was also larger (about €430,000, as against €76,000). However, as in the corporate sector, most positions (about 78 per cent) were negative.

The market for covered warrants and certificates

In 2004 Borsa Italiana reorganized the electronic covered warrants market which for some time had also been handling certificates. The innovations included a new segmentation of the market and, starting from 26 April, the adoption of a new name: the electronic market for securitized derivatives, SeDeX.

SeDeX is a market for retail investors, who can take positions on assets that would otherwise be difficult for them to access (e.g. foreign indices, exchange rates, metals and other commodities), with the advantage of being able to make small investments.

Literally, the term "securitized derivatives" means securitized derivative instruments, in the sense of derivative instruments incorporated in a tradable security that is issued by a financial intermediary, and includes covered warrants and certificates. Both these instruments can have liquid shares and government securities, interest rates, foreign currencies and commodities as their underlying. Securitized derivatives can be issued by companies and certain categories of entities meeting capital and supervisory requirements, and governments and international organizations; in practice, however, they are issued only by financial intermediaries. To avoid conflicts of interest, the issuer of a securitized derivative may not be the issuer of the underlying share or bond. In 2004 there were 16 intermediaries authorized to issue securities on the SeDeX market and 15 specialists authorized to provide liquidity to the market. In many cases the issuer acts as a specialist.

The great variety of securitized derivatives led Borsa Italiana to divide the instruments listed on SeDeX into segments and categories. The classification, which is purely theoretical because it does not affect the trading methods used, helps investors to navigate among the many different instruments. The new classification has four segments (two for covered warrants and two for certificates), defined on the basis of the features and aims of the various instruments. Within each segment Borsa Italiana has identified different categories of securities (Box 4).

Box 4

Categories and market segments of securitized derivatives

Covered warrants entitle the holder to buy or sell a given quantity of the underlying asset at a given price (the strike). In the simplest form, known as plain vanillas, covered warrants therefore consist of a put or a call option. Exercising the right entitles the holder to payment in cash of the difference between the current price of the underlying and the strike; with American-type covered warrants the right may be exercised before the agreed maturity, while with European-type covered warrants it is exercised automatically at maturity. Owing to the presence of a leverage effect (which allows the gains, but also the losses, to be multiplied with respect to the amount originally invested), these instruments involve a high risk, although the maximum loss investors can incur is limited to the purchase price. Lastly, it should be noted that a major role is played in the formation of the prices of covered warrants by the volatility of the price of the underlying and the time to maturity.

According to Borsa Italiana's classification, the covered warrants listed on SeDeX are divided between the plain vanilla and the structured/exotic segments. The first segment includes the covered warrants that consist only of a call or a put option and that are of the American or the European type. The second includes heterogeneous instruments that generally combine call and/or put options or contain exotic options; in practice this category includes all covered warrants other than plain vanillas. However, at the end of 2004 the only instruments listed in this category were so-called hedge warrants, whose underlying consists of two shares or indices while the strike is given by the ratio of their respective prices. In this case the operating strategy consists in betting that one share will perform better than the other; these covered warrants are of the European type with automatic exercise at expiry.

Certificates differ from covered warrants in that they replicate the performance of the underlying, linearly or with a leverage effect. Moreover, the determination of their price is independent of some of the variables that influence the price of covered warrants (i.e. the volatility of the underlying and the time to maturity).

The risk of a negative performance of a certificate is generally limited by the presence of a stop-loss or a barrier (as in the case of leverage certificates) or various forms of protection of the capital invested (provided by investment certificates). The stop-loss or barrier is triggered only in the event of the underlying performing unfavourably; it limits the loss investors can incur but simultaneously it prevents them from benefiting from a subsequent recovery. In short, when the price of the underlying reaches a given level, the certificate is extinguished, so that further losses are impossible. Certificates are all of the European type with exercise at maturity.

Borsa Italiana divides the certificates listed on SeDeX into two segments: leverage and investment. The leverage certificates segment contains high-risk instruments. In fact these instruments not only replicate the performance of the underlying but amplify it through the leverage effect. They are therefore highly speculative instruments offering a higher potential return than an investment in the underlying itself; at the same time they expose investors to heavy losses that can be equal to the entire capital invested, although they normally provide a stop-loss. The leverage certificates segment contains stop-loss bulls (known to the public as turbos or turbo bulls) and stop-loss bears (better known as shorts or turbo bears).

Turbos allow investors to benefit from a rise in the underlying and shorts from a fall (the latter, together with mini-futures bears or minishorts, are an exception in the field of Italian securitized derivatives because they bet on a negative performance of the underlying). The stop-loss is set just above the strike for turbos and just below for shorts; if it is reached, investors receive only the difference between the strike and the current price of the underlying.

Stop-loss bull and bear R certificates (where R stands for rolling, commonly known as bull/bear minifutures or minilongs/minishorts) can have futures as their underlying (such as those on metals, oil or the euro/dollar exchange rate); the term rolling indicates the automatic replacement of futures that have expired with the next maturity, but minifutures on stocks and indices also exist. The main characteristics that distinguish them from stop-loss bulls and bears is the presence of strikes and stop-losses that vary with the performance of the underlying. Bull minifutures or minilongs bet on a rise in the underlying; bear minifutures or minishorts on a fall.

The investment certificates segment contains instruments that are less risky than leverage certificates, with a zero or limited leverage effect and a long time horizon (up to 6 years, compared with a maximum of 5 years established by the market rules for covered warrants and

from 1 to 4 years for leverage certificates). These certificates are divided into two classes, A and B, with their own sub-categories.

Class A certificates replicate the performance of the underlying without a leverage effect, i.e. benchmarks and quantos. Benchmarks are linked linearly to the performance of the underlying and permit investments in a basket of securities represented by a market index or selected by the issuer (hence their name), in the same way as with an investment fund or an Exchange Traded Fund (ETF), but with a smaller investment. They exist in a wide variety of forms that allow individuals to invest in assets that would otherwise be difficult for them to access (in addition to indices, exchange rates and futures); they have a strike equal to zero and, if the underlying is expressed in a currency other than the euro, expose investors to exchange rate risk. Quantos, which have a structure analogous to that of benchmarks, differ from them in that they neutralize the exchange rate risk (by conventionally valuing the underlying in euros).

Class B certificates replicate the performance of the underlying with a leverage effect that is limited upwards by the presence of caps or put options and in most cases unlimited (up to all the capital invested) downwards. It is a heterogeneous group that contains widely differing products, including discount, capital protected and structured certificates.

Discount certificates allow investors to buy the underlying at a discount with respect to the market price; the discount is paid by the investor through the fictitious sale to the issuer of the certificate of a call or put option with a strike equal to the cap. Discount certificates are high-risk instruments: as for sellers of options, if the underlying rises, the profit cannot exceed a given limit (the cap), which corresponds to the strike, while if the underlying falls, the sell position exposes investors to the risk of losing all the capital invested. Certificates of this type are therefore especially advantageous when moderate rises in the underlying are expected and are divided into discount certificates (the investor sells the issuer a call option) and reverse exchangeable warrants (the investor sells the issuer a put option, as in the case of reverse convertible bonds).

Capital protected certificates follow the performance of the underlying linearly. By contrast with the discount category, they guarantee investors some protection against losses and profits if the underlying rises strongly. This category includes the *scudo* and equity protection types, which have an average maturity of 12-24 months and, in addition to repaying a minimum amount at maturity, regardless of the state of the market, allow investors to share in the positive performance of the underlying to an extent varying between 25 and 100 per cent.

Structured certificates consist of a combination of accessory options. They include bonus products, which contain an exotic down & out put option with a strike equal to a percentage (in excess of 100 per cent) of the initial price of the underlying and provide a barrier. They guarantee a minimum return at maturity only if the barrier is not reached; if instead this occurs, the investor depends entirely on the performance of the underlying with the risk of losing all the capital invested (in other words they do not offer any capital protection). Structured certificates also include so-called double-ups, which combine four call options and are marked by the presence of a double strike. These products are advantageous in the event of moderate trends. In fact they allow investors to participate in the rise of the underlying only up to a cap (outperformance) and do not provide protection against a negative performance of the underlying. They nonetheless guarantee a higher return than the underlying (up to twice the latter) if its price at maturity is in the interval between the two strikes.

Table II.4

Covered warrants and certificates listed on the SeDeX market
(amounts in billions of euros)

	Number of issues			Volume of trading
	Outstanding [1]	New [2]	Expired [3]	
1998	122	122	--	3
1999	1,565	1,660	217	14
2000	3,107	3,343	1,801	31
2001	5,866	8,194	5,435	21
2002	3,571	6,668	8,963	18
2003	2,594	4,749	5,726	11
2004	3,021	4,478	4,051	16

Sources: Consob and Borsa Italiana. [1] Year-end data. [2] Admitted to listing during the year. [3] Includes securities revoked at the request of the issuer before their original maturity.

The number of issues on the securitized derivatives market declined by 6 per cent in 2004, while trading volume rose by 46 per cent (Table II.4). Trading is highly concentrated: 52 per cent is originated by the first three intermediaries and 40 per cent by the first two intermediaries.

Covered warrants continued to be the most common instrument, but certificates recorded substantial growth (approximately 80 per cent in terms of number of issues).

Table II.5

Issues of listed covered warrants and certificates outstanding at 31 December 2004

Segment and category	Number	Percentage of total
Covered warrants		
Plain vanilla	2,284	75.6
Exotic	15	0.5
Certificates		
Leverage	225	7.4
Investment	497	16.5
Total	*3,021*	*100.0*

Sources: Consob and Borsa Italiana.

In particular, plain vanilla covered warrants were again the most popular and accounted for 76 per cent of the listed issues outstanding at the end of the year (Table II.5), followed by investment certificates (17 per cent), leverage certificates (7 per cent) and exotic/structured covered warrants with a marginal share of the market.

Table II.6

Distribution of covered warrants according to their "moneyness" at issue

Moneyness at issue [1]	Share [2]
Calls	
> 8% (deep out of the money)	41.5
from 4% to 8% (out of the money)	14.6
from 0 to 4% (at the money)	16.2
from 0 a -4% (in the money)	12.9
< -4% (deep in the money)	14.7
Total	*100.0*
Puts	
< -8% (deep out of the money)	45.5
from -4% to -8% (out of the money)	17.7
from 0 to -4% (at the money)	17.5
from 0 to 4% (in the money)	9.2
> 4% (deep in the money)	10.0
Total	*100.0*

Sources: Calculations on Consob and Borsa Italiana data on plain vanilla covered warrants on securities and indices outstanding at 28 February 2005. [1] Percentage difference between the exercise price and the market price of the underlying at the time of issue of the covered warrant. [2] As a percentage of the number of issues of covered warrants of the category indicated.

The distribution of covered warrants on the basis of the profit deriving from the

immediate exercise of the option (so called moneyness) shows that 40 per cent of the plain vanilla covered warrants on securities and indices outstanding at 25 February 2005 were deep out of the money at the issue date, in the sense that their exercise would have caused the investor to incur a loss; in particular, about 42 per cent of the calls and approximately 46 per cent of the puts were already deep out of the money at the issue date (Table II.6).

Bond markets

The volume of trading on the regulated bond markets operated by Borsa Italiana (MOT and EuroMOT) grew by just over 3 per cent in 2004, rising from €146 billion to €151 billion, in line with the trend of the past few years (Table aII.2). The growth was entirely attributable to MOT since the turnover on EuroMOT was unchanged. The turnover on the MTS wholesale market for government securities operated by MTS s.p.a. fell by 10 per cent.

Over 2004 Italian companies and foreign companies controlled by Italian groups issued bond (gross issues) for just over €66 billion, compared with €37 billion in 2003 (Table II.7). The bonds matured in 2004 amounted to €47 billion, so that net issues were equal to about €19 billion, compared with about €8 billion in 2003.

The overall positive picture for the bond market hides very different performances by the different categories of issuers.

Table II.7

Bond issues [1]
(billions of euros)

	2003			2004		
	Bonds issued (A)	Bonds matured [2] (B)	Net issues (A-B)	Bonds issued (A)	Bonds matured [2] (B)	Net issues (A-B)
Banks	19.4	21.8	-2.4	38.9	22.3	16.6
Corporate	17.1	6.5	10.6	27.3	24.7	2.5
Total	*36.5*	*28.2*	*8.2*	*66.2*	*47.0*	*19.2*

Source: Calculations on Bondware data. [1] Eurobond issues by Italian companies and foreign companies controlled by Italian groups. [2] Including defaulted bonds.

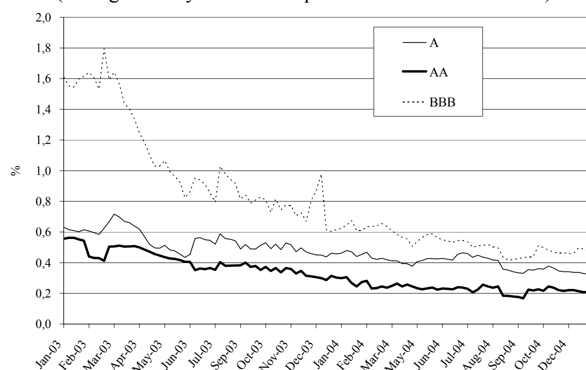
In the case of corporate bonds, there was a sharp fall in the volume of net issues, from €10.6 billion to €2.5 billion. Although the gross issues of €27.3 billion in 2004 far exceeded those of €17.1 billion in 2003, redemptions rose from €6.5 billion to €24.7 billion.

In 2004 the main issuers on the international bond market were almost exclusively large listed groups with a credit rating above investment grade (Telecom, Eni, Enel and Autostrade) and Infrastrutture s.p.a. (wholly owned by Cassa Depositi e Prestiti s.p.a. and with a credit rating of AA- from Standard & Poor's), which together accounted for about 97 per cent of gross issues.

In contrast with the attitude towards large Italian groups in 2004, the corporate bond market did not take a favourable view of small and medium-sized issuers without a credit rating, which made no issues at all.

The situation appears particularly serious in view of the high demand for corporate bonds in Europe. This is revealed by the fact that the spread between the yield on the bonds of European non-financial corporations and that of government securities denominated in euros narrowed steadily from 2003 onwards and remained at a historically low level. For issuers with a BBB rating, the spread was equal to approximately 1.6 percentage points at the beginning of 2003 and to approximately 0.5 points at the end of 2004. Analogously, the spread for issuers with an AA rating narrowed from about 0.5 points to about 0.2 points (Figure II.2).

Figure II.2
Spread between the yield of euro corporate bonds of non-financial corporations and the yield of government bonds
(average weekly data for the period 1/1/2003-31/12/2004)



Source: Based on Merrill Lynch indices. The yield on government bonds refers to German securities denominated in euros.

Some small and medium-sized Italian firms had difficulty in refinancing maturing bonds with new issues.

These difficulties contributed to the default of some firms with bonds maturing in 2004 and 2005 (Cerruti Finance of the Fin.part group, Finmatica, La Veggia, Finmek and Tecno-diffusione). By contrast, in two cases (Italtractor and Fantuzzi) the companies were able to renegotiate their debt and lengthen its maturity by means of agreements with banks and bondholders. In other cases the refinancing of maturing bonds was achieved thanks to the support provided by banks or by selling other assets.

At the European level as well, despite the historically very low level of interest rates and spreads, the net issues of non-financial corporations contracted in 2004, falling by 30 per cent with respect to 2003.

The contraction appears to have been due to firms' very prudent attitude in the face of the still uncertain signals regarding the recovery of economic activity and the persistent weakness of the dollar, which penalizes European exports. This situation also led to a sharp slowdown in M&A activity, which in the past had been an important factor in the raising of funds on the bond market.

Over 2004 there was a large increase in Italian banks' net issues on the Euromarket, with a swing from –€2.4 billion in 2003 to +€16.6 billion in 2004. These issues are estimated to have been equal to approximately 40 per cent of banks' total net fund-raising by means of domestic and foreign bond issues. About 65 per cent of the net issues on the Euromarket is accounted by the top 5 banking groups.

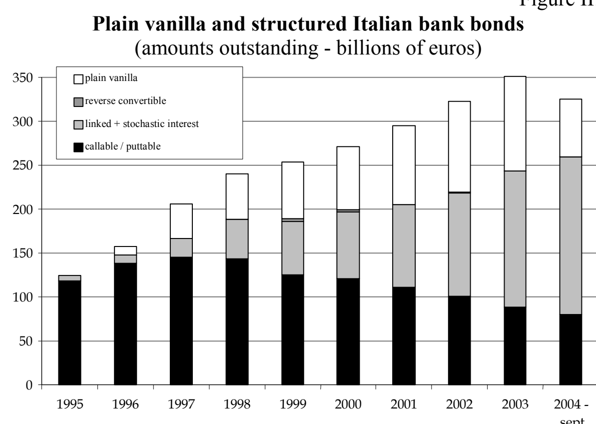
At the end of September 2004 the stock of bank bonds outstanding was equal to €325 billion, implying a small decrease of 3.6 per cent on end-September 2003 (€337 billion). This reversed the upward trend of earlier years, which had led to the stock of bank bonds almost tripling between end-1995 and end-2003 (from €124.2 billion to €351 billion).

By contrast, the stock of structured bank bonds confirmed the rising trend of earlier years, growing by about 6 per cent from €244 billion at end-September 2003 to €259 billion

at end-September 2004. From 1995 to September 2004, the total stock of such securities grew by more than €135 billion. Between end-September 2003 and end-September 2004 the share of structured bonds in the total stock of bank bonds also increased, rising from 72 per cent at end-September 2003 to 80 per cent at end-September 2004 (Figure II.3).

Figure II.3

Plain vanilla and structured Italian bank bonds
(amounts outstanding - billions of euros)



Source: Calculations on Kler’s data.

In line with the trend of earlier years, in 2004 there was a further increase in the share of bonds with a more complex structure, which are marked by greater difficulty in providing investors with a transparent indication of their risk/return profiles.

In particular, at end-September 2004 the stock of callable/puttable bonds amounted to €80 billion and accounted for 25 per cent of the total stock of bonds. This was in line with the share at the end of 2003 and far below the figure for 1995 (96 per cent). However, in relation to the total stock of structured bonds, the share of callable/puttable bonds remained substantial at approximately 31 per cent.

The most complex structures, consisting of linked and stochastic interest bonds (albeit mixed), accounted for 55 per cent of bank bonds at 30 September 2004, compared with 44 per cent in 2003 and 4 per cent in 1995. Among this category of instruments, pure linked bonds accounted for the largest share; at end-September 2004 they amounted to approximately €93 billion and accounted for approximately 36 per cent of all structured bank bonds, up from approximately €80 billion and 33 per cent in 2003, and about 1 per cent in 1995. At end-September pure stochastic interest bonds amounted to €47 billion and accounted for just over 18 per cent of all structured bank bonds, up from just over €41 billion and 17 per cent in 2003, but far above the figure of 1 per cent recorded in 1995.

The role of reverse convertibles remained marginal, having amounted at end-September 2003 to €336 million and accounted for 0.1 per cent of all bank bonds. The share of structured bank bonds accounted for by such bonds has never exceeded 2 per cent.

As regards the secondary market, issuing banks tend to list large issues of structured bonds, presumably so as to “amortize” the cost of a listing. This is confirmed by the fact that the average size of listed issues is much larger than that of unlisted issues (respectively €194 million and €29 million).

Securitizations and the market for asset-backed securities

The Italian securitization market has grown considerably in the last few years, mainly thanks to Law 130/1999, which created a specific legislative framework for transactions of this type. The transactions carried out in 2003 led to Italy having the second largest market in Europe, with a share of 13 per cent, preceded by the United Kingdom with a share of 46 per cent.

From the time Law 130/1999 entered into force up to 31 December 2004, the special purpose vehicles set up under Italian law issued asset-backed securities for a total value of approximately €150 billion (Table II.8).

Table II.8

Number and value of the issues of ABSs made pursuant to Law 130/1999
(amounts in millions of euros)

Year of issue	Number	Value
1999	6	8,521
2000	24	12,006
2001	57	32,961
2002	41	30,608
2003	40	30,141
2004	39	35,038
Total	*207*	*149,275*

Source: Securitisation.it.

After rising strongly, the number of transactions fell by 32 per cent in 2002 and subsequently remained basically unchanged. By contrast, the value of new issues declined in 2002 and 2003, by about 7 and 9 per cent, and then rose by approximately 6 per cent in 2004.

The breakdown of the ABSs issued in the period 1999-2004 by type of underling asset shows the importance, in terms of the number of transactions, of performing loans, followed by leasing instalments and non performing loans; the number of transactions involving credits of public-sector entities was also significant (Table aII.3).

Considering the value of the issues made in the period 1999-2004, the most important types of securitized assets were public-sector credits, which accounted for about one third of the total, followed by performing loans and leasing instalments. Securitizations of non performing loans peaked in 2001 and then followed a sharply downward trend that was partly due to the lapsing of the preferential tax treatment provided for such transactions in the first two years from the date of entry into force of Law 130/1999.

As for the shares of the tranches of ABSs with different levels of subordination, it can be seen that use of junior and mezzanine tranches was marginal both in 2003 and in 2004 for all the types of assets except for bad debts (Table II.9). Accordingly, issues were almost entirely placed with investors other than the originator. It is worth noting that in the case of public-sector credits no junior tranches were issued both in 2003 and 2004, but such securitizations often benefit from ad hoc legislative provisions designed to reduce the related risks.

Table II.9

Composition of issues of ABSs by subordination and type of underlying assets
(percentages)

	2003			2004		
	Junior	Mezzanine	Senior	Junior	Mezzanine	Senior
Non performing loans	51.7	2.5	45.7	--	--	--
Performing loans	3.0	5.3	91.8	1.3	5.9	92.9
Public-sector credits	--	0.9	99.1	--	--	100.0
Leasing instalments	4.1	5.8	90.1	0.7	6.0	93.4
Consumer credit	3.6	4.4	92.1	1.5	4.9	93.6

Source: Securitisation.it. Rounding may cause discrepancies in the last figure.

At the end of March 2004 the total amount of outstanding securities issued under Law 130/1999 (i.e. through special purpose vehicles set up under Italian law) amounted to about €96 billion (Table II.10). Outstanding ABSs backed by public-sector credits accounted for the largest share (26 per cent of the total), followed by those backed by performing loans (24.6 per cent). Those backed by non performing loans amounted to about €12.5 billion (13.1 per cent).

Table II.10

ABSs outstanding at March 2004 by type of underlying claim
(ABSs issued pursuant to Law 130/1999; amounts in millions of euros)

	Value	Share of total [1]
Credits of public entities	24,825	26.0
Performing loans	23,483	24.6
Leasing instalments	14,797	15.5
Non-performing loans	12,548	13.1
Personal loans and consumer credit	7,626	8.0
Other loans and obligations	5,851	6.1
Other	4,137	4.3
Not identifiable	2,383	2.5
Total	*95,650*	*100.0*

Sources: Calculations based on Kler's and Securitisation.it data.
[1] Percentages. Rounding may cause discrepancies in the last figure.

The disaggregation according to the type of originator shows that the bulk of ABSs outstanding at March 2004 was originated by companies belonging to banking groups (about 62 per cent), followed by the public sector (28 per cent), companies belonging to non financial groups (5 per cent) and companies belonging to non-bank financial groups (about 4 per cent; Table II.11).

Table II.11

ABSs outstanding at March 2004 according to the type of group the originator belonged to
(ABSs issued pursuant to Law 130/1999; amounts in millions of euros)

	Value	Share of total [1]
Banks	58,947	61.6
Listed	43,236	
Unlisted	15,711	
State and public-sector entities	26,905	28.1
Non-financial corporations	4,496	4.7
Financial companies	3,542	3.7
Insurance companies	505	0.5
Not identifiable	1,255	1.3
Total	*95,650*	*100.0*

Sources: Calculations based on Kler's and Securitisation.it data.
[1] Percentages. Rounding may cause discrepancies in the last figure.

Alternative trading systems

In May 2003 Consob imposed more stringent reporting requirements on alternative trading systems (ATSs) as regards the products traded, trading volumes and price formation mechanisms (see also Chapter V, "Markets Supervision").

ATSs have come to operate on a major scale: in the first half of 2004 more than 300 systems handled about 20,000 different securities, approximately 2 million contracts were concluded and their value amounted to nearly €44 billion (Table II.12).

About 90 per cent of the securities that are traded on ATSs are bank bonds, in the great majority of cases issued by the some bank that runs the ATS. These securities account for about 40 per cent of total trading, in terms of both number of contracts concluded and turnover.

Table II.12

Securities traded on ATSs in the period January-June 2004
(amounts in millions of euros)

	Number	Volume of trading	Number of con-tracts [1]
Bonds	*19,555*	*25,116*	*1,211*
Bank	18,117	16,908	813
Corporate	1,071	6,147	293
International organizations	367	2,061	105
Government securities	*714*	*18,411*	*543*
Italian	184	16,733	486
Foreign	530	1,678	57
Shares	*200*	*594*	*97*
Bank	64	231	32
Corporate	136	363	65
Total	*20,469*	*44,121*	*1,851*

Source: Consob. [1] Thousands.

The risks for investors in these types of financial instruments lie above all in the presence of "structured" features in the calculation of yields and/or in the redemption clauses. Features of this kind are present in more than 6,000 bank bonds, corresponding to approximately 30 per cent of the total number of such instruments traded on ATSs. In the first half of 2004 some 416,000 contracts involving structured bonds were concluded for a total value of approximately €7 billion, corresponding to about half the total number of bank bonds traded on ATSs and more than one third of their total value.

Trading in securities issued by Italian and foreign public bodies and international organiza-tions was also substantial and accounted for more than 46 per cent of the total volume of business. The issuers of most of these securities were the Italian government and other industrial countries and international organizations, but there was a substantial volume of trading in securities issued by non-OECD and in some cases high-risk countries. In particular, trading in securities issued by countries with a credit rating of less than investment grade exceeded €600 million.

In the first six months of 2004 more than 1,000 bonds of non-financial companies were traded on ATSs. About one fifth of these securities were issued by Italian companies or by foreign companies belonging to Italian groups and accounted for nearly 90,000 contracts with a value of approximately €2 billion. According to Consob estimates, about 60 per cent of the bonds issued by Italian groups outstanding at the end of June 2004 had been traded on ATSs in the six preceding months. Only a very small proportion of these bonds are listed on an Italian regulated market, while more than half are listed on the Luxembourg market.

Most of the securities (some 85 per cent) are traded on only one ATS, but some are traded on more than one, so that, at least in theory, investors can compare prices on several competing systems. In fact more than 2,000 securities are traded on between 2 and 5 ATSs and nearly 900 on more than five (Table II.13).

Table II.13

Distribution of securities according to the number of ATSs they are traded on
(amounts in millions of euros)

No. of ATSs	Bonds	Government securities	Shares	*Total*
1	17,027	204	181	*17,412*
2 – 5	1,870	285	19	*2,174*
> 5	658	225	--	*883*
Total	*19,555*	*714*	*200*	*20,469*

Source: Consob.

ATSs are far from homogeneous and are marked by widely differing structural features, such as the frequency of trading and the composition, range and liquidity of the securities traded.

One especially important aspect, in view of the growing importance of ATSs in the

trading of financial instruments, is the continuity of trading, since satisfactory liquidity conditions can only be achieved in the presence of regular trading.

Observations made in the first two quarters of 2004 show that no more than 50 per cent of the securities were traded in both quarters. In addition, trading was found to be more regular for bank bonds and somewhat episodic for corporate bonds.

Only half of the ATSs in operation had a fairly stable list, i.e. with more than 50 per cent of their securities traded in both quarters, and this stability index exceeded 75 per cent for only about one ATS in ten. The value of the indicator was found to rise with the liquidity of the ATS, i.e. with the average number of trades per day. The stability indicator was above 50 per cent for approximately 80 per cent of the ATSs with more than 100 trades per day, for 60 per cent of the ATSs with between 10 and 100 trades per day, and for only 40 per cent of those with less than 10 trades per day (Table II.14).

Table II.14

Distribution of ATS volumes according to the stability of the list and the liquidity of trades

Stability of the list [1]	Liquidity [2]			
	< 10	11 - 100	> 100	*Total* [3]
0 – 25	30	7	--	*37*
26 – 50	81	29	7	*117*
51 – 75	64	45	15	*124*
> 75	10	12	11	*33*
Total	*185*	*93*	*33*	*311*

Source: Consob. [1] Percentage of securities traded in both the first and the second quarter of 2004. [2] Average number of contracts executed. [3] For 19 ATSs it was not possible to calculated the stability indicator because there were no transactions in both quarters.

In practice trading on about 60 per cent of the ATSs in operation is highly irregular, with less than 10 trades per day on average. For another 30 per cent the number of trades per day is between 10 and 100 and only 10 per cent exceed 100.

III. FINANCIAL SERVICES

Asset management and investment services

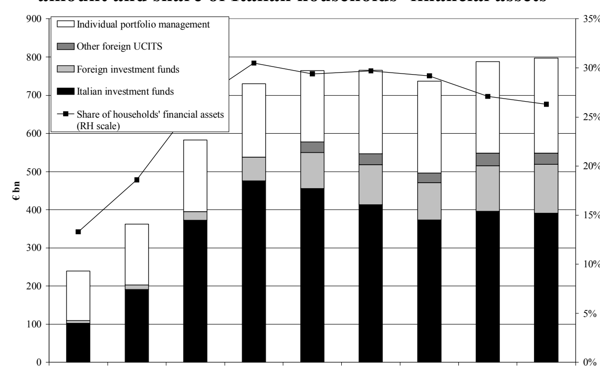
During the first half of 2004 the assets of individually and collectively managed portfolios grew from €788 billion to €797 billion, just over 1 per cent with respect to the end of 2003, while the ratio of assets under management to households' financial assets declined slightly, from 27.1 to 26.3 per cent (Figure III.1).

The composition of the assets of individually and collectively managed portfolios by type and nationality of product remained broadly unchanged compared with the end of 2003 (Table III.1).

In particular, between the end of 2003 and the end of June 2004 the share of assets managed by Italian mutual funds contracted slightly, from 50.2 to 49 per cent, and that managed by foreign collective investment undertakings not controlled by Italian groups declined from 4.1 to 3.7 per cent, while the share attributable to foreign funds controlled by Italian groups rose from 15.2 to 16.1 per cent, and that of individually managed portfolios increased from 30.5 to 31.2 per cent.

Figure III.1

Assets of individual and collective asset management products: amount and share of Italian households' financial assets



LH scale: Assets under management – RH scale: As a percentage of households' financial assets.
Source: Calculations based on Assogestioni and Banca d'Italia data.

Table III.1

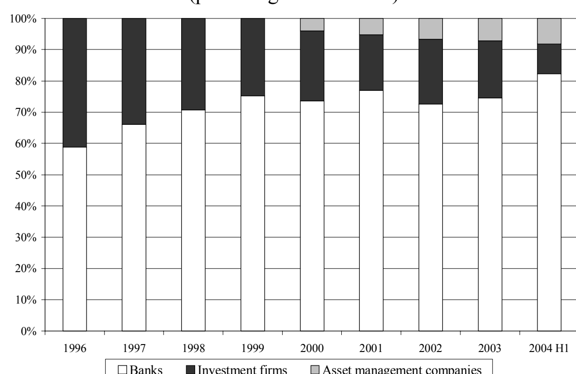
Composition of the assets of individual and collective asset management products by type of product [1]
(percentages)

	Italian funds	Foreign funds [2]	Other foreign collective investment undertakings	Individually managed portfolios [3]	*Total*
1996	42.7	2.9	....	54.4	*100.0*
1997	52.6	3.5	....	43.9	*100.0*
1998	63.9	3.9	....	32.2	*100.0*
1999	65.1	8.5	....	26.4	*100.0*
2000	59.6	12.4	3.6	24.4	*100.0*
2001	54.0	13.7	3.7	28.6	*100.0*
2002	50.6	13.3	3.4	32.7	*100.0*
2003	50.2	15.2	4.1	30.5	*100.0*
2004[4]	49.0	16.1	3.7	31.2	*100.0*

Sources: Calculations based on Assogestioni and Banca d'Italia data. See the Methodological Notes. [1] Rounding may cause discrepancies in the last figure. [2] Funds controlled by Italian groups. [3] Net of investments in mutual funds. [4] The figure refers to the end of June.

Figure III.2

Fee income from investment services:
banks, investment firms and asset management companies
(percentage distribution)



Source: Calculations based on Banca d'Italia data. The data for the first half of 2004 are provisional. The data for asset management companies refer only to fees from individual portfolio management.

The revenues of banks, investment firms and asset management companies from investment services totaled about €4.2 billion in the first half of 2004, an increase of more than 6 per cent compared with the same period of the previous year (Table III.7). This interrupted the decline that began in 2001. There was also a partial reversal in the trend of revenues by type of intermediary. Between the first half of 2003 and the first half of 2004 banks' revenues from investment services rose by around 8 per cent and asset management companies' revenues from managing individual investment portfolios grew by 12 per cent, which was less, however, than the gains recorded in previous years; by contrast, investment firms' fee income fell further, by around 7 per cent.

The breakdown of total revenues from investment services among banks, investment firms and asset management companies remained broadly unchanged in the first half of 2004 with respect to the first half of 2003 (Figure III.2). Banks' share rose from 81 to 82 per cent, that of investment firms fell by a little more than 1 percentage point, to 10 per cent, while that of asset management companies remained virtually the same at around 8 per cent.

Collective asset management

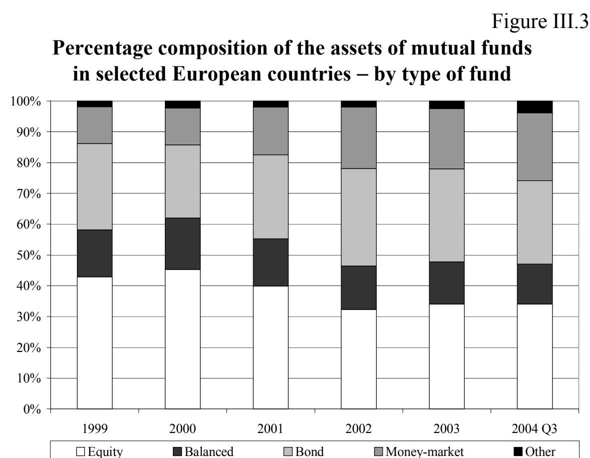
In the first nine months of 2004 mutual fund assets in the European Union and the United States recorded comparable growth of approximately 8 and 6 per cent respectively (Table aIII.1). The result for the EU funds was due in almost equal measure to net subscriptions and to the rise is equity prices.

The market shares of the EU countries considered remained basically stable. France and Luxembourg were again the leading countries, each with 25 per cent of the European market. Italy ranked third, as in the previous year, although its market share declined from 10.6 to 9.5 per cent, followed by the United Kingdom with just over 9 per cent. The fall in Italy's share was the consequence not only of the contraction in Italian funds' assets (see below), but also of the expansion of the market in countries with more favourable tax regimes.

The data on the composition of mutual funds' assets by type of fund at 30 September 2004 confirm the situation of the previous year for both the European and the US markets. In Europe, the share of assets of equity funds and balanced funds held steady at 34 and 13 per cent respectively, while the increase from around 20 to 22 per cent in the share of money-market funds was offset by the reduction from 30 to 27 per cent in that of bond funds (Figure III.3).

Figure III.3

Percentage composition of the assets of mutual funds in selected European countries – by type of fund



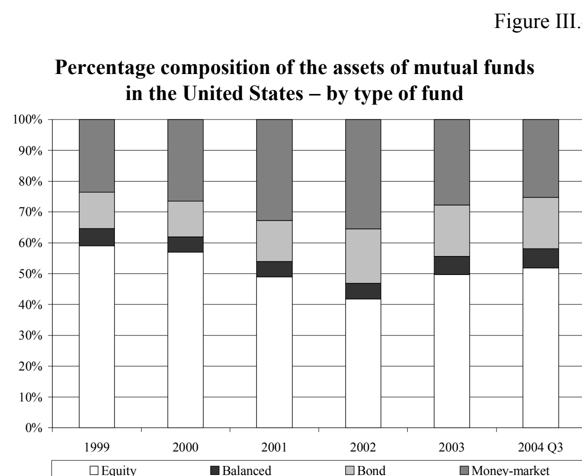
Source: Fefsi. In addition to the countries covered in Table aIII.1, the countries considered include the Czech Republic, Hungary, Norway, Poland and Switzerland.

The breakdown of assets by type of fund in the United States confirms and accentuates the differences with respect to the European market (Figure III.4). The most notable difference is in equity funds' share of total assets, which amounted to around 52 per cent in the United States; there is also a considerable difference in the share of bond funds, which was equal to around 17 per cent in the United States.

As for the Italian market, in 2004 the number of asset management companies remained unchanged at 55, while the number of funds in operation declined further, from 1,030 to 988 (Table aIII.2). After the net inflow recorded in 2003, fund-raising reverted to the negative trend that emerged in 2000. Redemptions exceeded subscriptions by a record high of around €30 billion. Net redemptions were greatest for bond funds, followed by liquidity funds, equity funds and balanced funds; flexible funds alone recorded net subscriptions. In parallel, assets under management fell from €383 billion at the end of 2003 to €363 billion at the end of last year.

Figure III.4

Percentage composition of the assets of mutual funds in the United States – by type of fund



Source: Fefsi.

The number of foreign intermediaries operating in Italy fell during the year from 201 to 188, of which 82 per cent have their registered office in Luxembourg (Table aIII.3). The number of funds and sub-funds they marketed in Italy rose slightly, by 1 per cent.

The composition of the portfolio of Italian mutual funds at the end of 2004 was basically stable with respect to the end of 2003 (Table III.2). The share of Italian government securities rose from 37 to 38 per cent, while that invested in foreign securities was stable at around 45 per cent (27 per cent in bonds, including government securities, and 18 per cent in equities). Despite a slight increase, the share of Italian equities and bonds remained limited (8 per cent, compared with 7.3 per cent at the end of 2003).

Table III.2

Asset allocation of Italian mutual funds
(amounts in billions of euros; end-of-period data)

	Assets	Percentage composition						
		Italian government securities	Italian bonds	Italian shares	Foreign bonds [1]	Foreign shares	Total foreign assets	Other assets
1990	25	49.3	7.9	22.8	3.3	8.2	11.5	8.5
1995	66	50.2	3.2	14.9	8.9	14.1	23.0	8.7
1996	102	62.2	2.4	10.4	7.4	8.0	15.4	9.6
1997	190	52.0	2.1	10.6	13.6	10.7	24.3	11.0
1998	372	51.9	1.4	10.6	17.2	11.7	28.9	7.2
1999	475	34.2	2.6	10.0	21.8	25.6	47.4	5.8
2000	453	28.0	2.3	10.6	22.8	29.0	51.8	7.3
2001	407	30.3	3.4	7.0	26.1	24.6	50.7	8.6
2002	364	35.9	3.8	5.3	25.2	17.3	42.6	12.4
2003	383	36.9	2.9	4.4	26.3	18.3	44.6	11.1
2004	363	37.8	2.8	5.2	26.8	18.1	44.9	9.4

Source: Assogestioni. See the Methodological Notes. [1] Includes foreign government securities.

The ownership structure of asset management companies was broadly unchanged with respect to previous years (Table III.3). The companies controlled by banking groups accounted for about 92 per cent of total assets under management. The market share of insurance groups rose slightly to 5.3 per cent, while those of non-bank financial intermediaries and individuals remained marginal.

Table III.3

Ownership structure of mutual fund management companies [1]
(percentages of total assets)

	Type of controller					
	Banking group	Insurance group	Joint venture	Non-bank financial intermediary	Individual	*Total*
1997	83.9	7.9	6.0	1.2	1.0	*100.0*
1998	93.9	5.1	0.1	0.2	0.7	*100.0*
1999	94.0	4.9	0.2	0.2	0.7	*100.0*
2000	91.6	3.9	--	4.3	0.2	*100.0*
2001	93.9	4.3	--	1.1	0.7	*100.0*
2002	92.0	5.5	--	1.7	0.8	*100.0*
2003	92.6	4.4	--	2.7	0.2	*100.0*
2004	91.9	5.3	--	2.1	0.7	*100.0*

Sources: Consob. See the Methodological Notes. [1] End of period data. Rounding may cause discrepancies in the last figure.

Over the three years 2001-2003 the costs borne by Italian harmonized mutual funds rose from 1.01 to 1.18 per cent of assets under management (Table III.4). The breakdown by category of fund shows that in both of the years considered equity funds were the most expensive, with average fees of 1.53 per cent in 2001 and 2.32 per cent in 2003, followed by flexible funds, with average fees of 1.39 and 2.16 per cent respectively. Over the period 2001-2003 the sharpest increase in average fees was experienced by liquidity funds (about 64 per cent), followed by flexible funds (55 per cent) and equity funds (51 per cent). For balanced funds the increase was 35 per cent and for bond funds 25 per cent.

Management fees account for the bulk of the costs borne by mutual funds, although their share of the total fell from 89.3 per cent in 2001 to 84.4 per cent in 2003. The reduction was greatest for equity funds and flexible funds (around 9 and 8 percentage points respectively); liquidity funds alone recorded an increase (about 2 percentage points).

The share of expenses consisting of incentive fees was largest for equity funds and flexible funds both in 2001 and in 2003; over the years 2001-2003 it increased by 11 percentage points in both cases.

An analysis of the structure and evolution of some indicators derived from the 2003 financial statements of Italian asset management companies reveals some correlations between fund managers' size, costs and fees (Box 5).

Table III.4

Costs borne by Italian harmonized mutual funds
(percentages)

	2001						2003					
	Liquidity	Equity	Bond	Balanced	Flexible	*Total*	Liquidity	Equity	Bond	Balanced	Flexible	*Total*
Percentage of assets												
Depositary bank fees	0.05	0.09	0.06	0.06	0.09	*0.07*	0.07	0.13	0.08	0.09	0.13	*0.09*
Management fees	0.32	1.37	0.67	0.93	1.06	*0.90*	0.53	1.87	0.82	1.19	1.48	*1.00*
Operating fees and other expenses	..	..	..	..	0.09	*..*	..	0.04	..	0.03	0.26	*0.02*
Incentive fees	..	0.05	0.01	0.01	0.15	*0.03*	..	0.26	0.02	0.07	0.23	*0.07*
Fees paid to other intermediaries	..	0.03	..	0.02	0.01	*0.01*	..	0.03	..	0.01	0.06	*0.01*
Total	*0.37*	*1.53*	*0.74*	*1.02*	*1.39*	*1.01*	*0.60*	*2.32*	*0.93*	*1.39*	*2.16*	*1.18*
Percentage composition [1]												
Depositary bank fees	13.2	5.6	8.0	6.0	6.3	*6.7*	11.4	5.5	9.1	6.5	6.1	*7.7*
Management fees	86.4	89.2	89.8	91.0	75.9	*89.3*	88.4	80.7	88.1	85.6	68.6	*84.4*
Operating fees and other expenses	..	0.1	..	..	6.2	*0.2*	..	1.7	0.2	1.8	12.2	*1.3*
Incentive fees	0.4	3.1	1.8	1.5	10.7	*2.5*	..	11.0	2.3	5.2	10.5	*5.9*
Fees paid to other intermediaries	0.1	2.1	0.4	1.6	0.9	*1.3*	0.1	1.1	0.3	0.8	2.7	*0.7*
Total	*100.0*	*100.0*	*100.0*	*100.0*	*100.0*	*100.0*	*100.0*	*100.0*	*100.0*	*100.0*	*100.0*	*100.0*

Source: Calculations on financial statements. [1] Rounding may cause discrepancies in the last figure.

Box 5

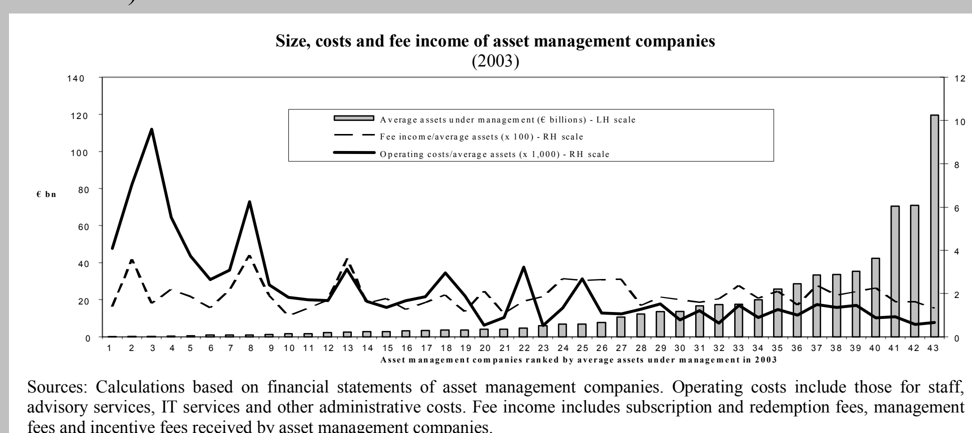
The operating costs and fee structure of Italian mutual funds

The fee structure of Italian mutual funds is generally composed of a one-off subscription fee, a management fee paid annually by the fund and, in some cases, an incentive fee.

These fees, taken together, are intended to remunerate both management activity and, through partial rebates, the distribution/advisory services provided by the distributors of mutual funds.

An analysis based on the 2003 financial statements for a sample of 43 asset management companies shows that management fees made up around 89 of the total fees borne by the investors, incentive fees 7 per cent and subscription fees 4 per cent; the share of redemption fees was marginal.

The remuneration of fund distributors constitutes on average more than 70 per cent of the cost borne directly and indirectly by mutual fund investors. In particular, subscription and redemption fees are paid over in full to the distributor, while the portion of management and incentive fees going to the distributor averages 73 and 50 per cent respectively. These fee rebates are largely to the distribution networks of the asset management company's group (mainly bank branch networks).



Size, costs and fee income of asset management companies
(2003)

Sources: Calculations based on financial statements of asset management companies. Operating costs include those for staff, advisory services, IT services and other administrative costs. Fee income includes subscription and redemption fees, management fees and incentive fees received by asset management companies.

Using the accounting data for 2003 of the sample asset management companies, three indicators were examined: the ratio of each asset management company's total operating costs (staff, advisory, data-processing and other administrative costs) to its average assets under management, the ratio of the management companies' total fee income (subscription, redemption, management and incentive fees) to average assets, and the ratio of their total fee expense (distribution and maintenance fees paid to distributors) to total fee income.

Some qualitative findings can be drawn from the analysis of these indicators.

First, the ratio of operating costs to assets under management decreases more than proportionately as assets under management increase; this appears to confirm the existence of economies of scale.

Second, the ratio of the costs borne by mutual fund investors to assets under management (fee income/average assets) is by and large independent of the size of the portfolio managed by the individual asset management company, averaging somewhat less than 2 per cent.

Lastly, there is no clear correlation between the share of fee income rebated to sales networks and the amount of assets under management (it ranges from a minimum of 20 to a maximum of 100 per cent); hence, the portion of remuneration going to the sales network is independent of the size of the portfolio.

Table III.5

Closed-end investment funds
(amounts in millions of euros)

	Number of management companies	Number of funds in operation	Assets	Asset allocation [1]			
				Buildings and property rights	Financial instruments [2]	Securities and liquidity	Other
2001	9	11	2,686	54.5	1.4	31.8	12.4
2002	10	14	3,394	69.9	3.9	14.2	12.0
2003	10	18	4,414	77.8	4.1	11.7	6.4
2004[3]	11	22	5,525	75.2	3.2	12.8	8.8

Source: Assogestioni. [1] Percentages. Rounding may cause discrepancies in the last figure.. [2] Equity investments and instruments issued in connection with securitizations. [3] The figures refer to the end of June.

Over 2004 closed-end investment funds grew further, especially real-estate funds, which invest prevalently in buildings, property rights and real-estate companies (Table III.5).

From 2001 through the first half of 2004, the assets of closed-end funds more than doubled, rising to over €5.5 billion. In June 2004 buildings and property rights accounted for just over 75 per cent of the total portfolio of assets, equity interests in real-estate companies about 3 per cent, securities and liquidity 13.4 per cent and other assets the remaining 8.8 per cent. In the first half of 2004 the total purchases of buildings on behalf of funds amounted to €1.6 billion. The above asset allocation does not differ significantly from that observed for real-estate funds offered to the public (Box 6).

Box 6

Real-estate funds offered to the public

At 31 December 2004, 30 real-estate funds had been established by 15 different Italian asset management companies (10 specialized exclusively in managing real-estate funds); 22 of the 30 funds had been offered to the public, while the others were reserved or offered exclusively to qualified investors.

During 2004 real-estate funds were admitted to listing on the electronic funds market operated by Borsa Italiana S.p.A., bringing the number of listed funds to 15. At 30 June 2004 the median market discount (the difference between market value and NAV) was equal to 31.5 per cent, substantially unchanged from a year earlier (when there were 8 listed funds).

At 30 June 2004 the financial leverage (ratio of total liabilities to total net value) of real-estate funds offered to the public was equal to 1.26, compared with 1.13 a year earlier.

For private-contribution real-estate funds offered to the public, the leverage was 1.85, compared with 1.25 at 30 June 2003.

Assets and liabilities of real-estate funds offered to the public
(millions of euros)

	2003[1]	2004[1]
Assets		
Financial instruments	551	646
Property and real property rights	2,644	3,907
Liquidity [2]	165	200
Other assets [3]	265	343
Total	*3,625*	*5,097*
Liabilities		
Total sources of debt:	424	1,046
- financing received	325	818
- derivative financial instruments	2	4
- amounts due to shareholders	,,	4
- other liabilities	98	220
Overall net value of the fund	3,201	4,050
Total	*3,625*	*5,097*

Source: Statements of operations. [1] The data refer to the first half of the year. [2] Sum of liquidity and repo credits. [3] Sum of credits, bank deposits, other goods and other assets.

Investment services

In 2004 the number of intermediaries authorized to provide investment services diminished, confirming the trend of recent years (Table III.6). However, the reduction only concerned investment firms and trust companies, whose number dropped by 12 per cent as a result of 21 deletions and only 5 new registrations (Table aIII.5). This development is attributable on the one hand to voluntary exit from the market by marginal operators (8 cases), on the other to the merging of investment firms and trust companies into other securities market intermediaries of a multifunctional nature (banks).

In fact, reversing the trend of the previous years, the number of banks authorized to provide investment services rose by around 1 per cent, from 710 to 716.

Table III.6

Financial intermediaries by authorized investment services

	1998	1999	2000	2001	2002	2003	2004
Investment firms							
Number of authorized intermediaries	*191*	*183*	*171*	*162*	*158*	*131*	*115*
Dealing for own account	69	60	55	51	45	38	30
Dealing for customer account	72	65	60	62	60	49	41
Placement with firm underwriting commitment [1]	38	37	36	34	32	23	17
Placement without firm underwriting commitment [1]	106	111	109	109	112	87	78
Individual portfolio management	102	99	91	85	80	70	60
Reception/transmission of orders	80	75	79	93	89	74	63
Average number of services per intermediary	2.4	2.3	2.5	2.7	2.6	2.6	2.5
Banks							
Number of authorized intermediaries	*806*	*813*	*781*	*753*	*725*	*710*	*716*
Dealing for own account	569	607	587	576	558	544	552
Dealing for customer account	547	544	532	519	492	434	440
Placement with firm underwriting commitment [1]	240	276	276	276	266	264	273
Placement without firm underwriting commitment [1]	585	737	726	712	691	679	684
Individual portfolio management	220	256	253	250	240	241	248
Reception/transmission of orders	805	798	766	738	710	692	699
Average number of services per intermediary	3.7	4.0	4.0	4.1	4.1	4.0	4.0

Sources: Consob and Banca d'Italia. [1] Includes placement, with or without firm commitment underwriting or stand-by commitments to issuers.

In the first half of 2004 there were contrasting changes in the fee income investment firms and banks earned from the provision of investment services with respect to the same period of 2003 (Table III.7). For investment firms there was a further contraction, as mentioned earlier, while banks recorded an increase. There was also an increase in asset management companies' fee income from individual portfolio management.

For investment firms, the sharpest declines in revenues were in those from placement services (56 per cent) and portfolio management (35 per cent), followed by those from trading (23 per cent) and reception of orders (15 per cent). By contrast, revenues from door-to-door selling more than tripled.

For banks, the greatest increases were in revenues from trading (25 per cent) and reception of orders (15 per cent), followed by door-to-door selling (13 per cent), individual portfolio management (6 per cent) and placement services (about 4 per cent).

Table III.7

Fee income from investment services [1]
(millions of euros)

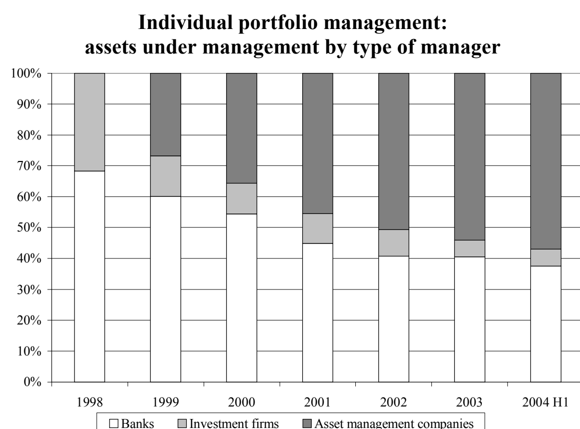
	1996	1997	1998	1999	2000	2001	2002	2003	2003 H1[2]	2004 H1[2]
Banks										
Trading	201	363	915	807	1,068	736	517	469	205	256
Placement	646	1,389	2,682	4,157	5,344	4,123	3,965	3,888	1,854	1,919
Portfolio management	358	559	851	1,236	1,189	1,093	1,041	972	443	469
Reception of orders	314	510	967	948	1,563	809	766	853	329	378
Door-to-door selling	178	273	463	529	755	809	853	807	414	469
Total	*1,697*	*3,094*	*5,878*	*7,677*	*9,919*	*7,570*	*7,143*	*6,988*	*3,245*	*3,490*
Investment firms										
Trading	283	407	654	581	925	551	640	469	137	105
Placement	107	86	149	229	409	258	372	340	93	41
Portfolio management	189	253	451	328	301	275	494	264	103	67
Reception of orders	29	40	67	395	253	196	216	199	47	40
Door-to-door selling	582	804	1,113	980	1,133	460	310	444	53	152
Total	*1,190*	*1,590*	*2,434*	*2,513*	*3,021*	*1,740*	*2,033*	*1,715*	*433*	*405*
Asset management companies										
Portfolio management [3]	—	—	….	….	536	519	662	679	312	350
Banks, investment firms and asset management companies										
Trading	484	770	1,569	1,388	1,993	1,287	1,158	938	342	361
Placement	753	1,475	2,831	4,386	5,753	4,380	4,338	4,228	1,947	1,960
Portfolio management	547	812	1,302	1,564	2,026	1,887	2,198	1,915	858	886
Reception of orders	343	550	1,034	1,343	1,816	1,005	982	1,051	376	418
Door-to-door selling	760	1,077	1,576	1,509	1,888	1,269	1,163	1,251	467	621
Total	*2,887*	*4,684*	*8,312*	*10,190*	*13,476*	*9,828*	*9,839*	*9,383*	*3,990*	*4,245*

Source: Based on Banca d'Italia data. [1] Rounding may cause discrepancies in the last figure. [2] Provisional data. [3] The figures refer only to fees from individual portfolio management.

The growth in banks' income from individual portfolio management does not reflect the change during the first half of 2004 in the breakdown of assets under management by type of manager. As in previous years, the share of individually managed portfolios managed by banks continued to fall, declining from about 41 per cent at the end of 2003 to about 38 per cent at 30 June 2004, while that of asset management companies rose from 54 to 57 per cent and the share attributable to investment firms remained stable at around 5 per cent (Figure III.5). The total assets of individually managed portfolios amounted to €420 billion, an increase of 3 per cent with respect to the end of 2003.

Figure III.5

Individual portfolio management: assets under management by type of manager



Source: Based on Banca d'Italia data. See the Methodological Notes.

The asset allocation of the individual portfolio management operations of banks, asset management companies and investment firms did not show significant changes by comparison with the end of 2003 (Table III.8). The portion invested in Italian government securities remained stable at around 31 per cent (although this was about 5 percentage points lower than at the end of 2002). The portions invested in Italian bonds and shares likewise remained stable at around 12 and 3 per cent respectively, as did that invested in collective investment undertakings (approximately 41 per cent).

The differences observed in previous years between the investment choices of banks and investment firms persisted in the first half of 2004. Banks invest a greater portion of the portfolios they manage in Italian government securities and units of collective investment undertakings (around 27 and 48 per cent respectively at the end of the first half of 2004, compared with about 17 and 33 per cent for investment firms). On the other hand, there was a narrowing of the differences in asset allocation between banks and asset management companies. For the latter, at 30 June 2004 the share invested in Italian government securities was about 35 per cent, in line with the figure for the end of 2003 (about 37 per cent), but down from around 46 per cent at the end of 2002. A similar development regarded the share invested in units of collective investment undertakings, which was about 35 per cent at 30 June 2004, compared with 37 per cent at the end of 2003 and 27 per cent at the end of 2002.

Table III.8

Asset allocation of the individual portfolio management of banks, asset management companies and investment firms [1]
(percentages)

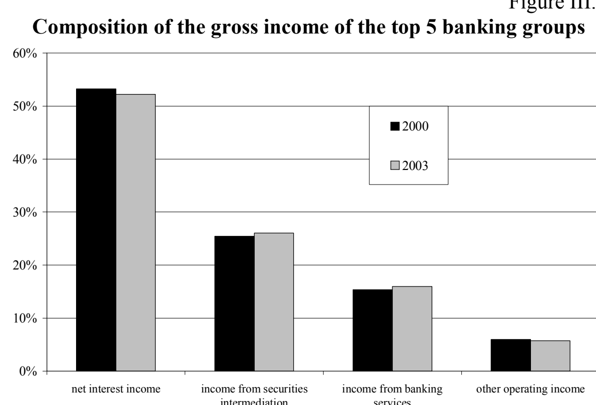
	Government securities	Italian bonds	Foreign bonds	Italian shares	Foreign shares	Investment fund units/shares	Liquidity and other securities	*Total*
1997	55.1	5.9	7.2	5.5	1.6	17.9	6.8	*100.0*
1998	42.5	3.6	6.8	4.9	1.6	35.3	5.3	*100.0*
1999	30.2	3.9	5.9	5.7	2.7	46.8	4.8	*100.0*
2000	25.0	5.4	4.8	5.6	2.5	52.4	4.3	*100.0*
2001	30.2	8.2	4.4	5.1	1.9	46.6	3.7	*100.0*
2002	35.9	9.7	5.8	3.2	1.5	40.2	3.7	*100.0*
2003	31.4	11.7	7.0	3.2	1.5	41.0	4.1	*100.0*
2004[2]	30.8	12.1	7.5	3.5	1.5	40.9	3.6	*100.0*

Source: Based on Bank of Italy data. See the Methodological Notes. [1] Rounding may cause discrepancies in the last figure. [2] The figures refer to the end of June.

Securities intermediation of the leading Italian banking groups

An analysis of the financial statements of the top five Italian banking groups between 2000 and 2003 confirms the important role securities intermediation now plays both in generating income and in fund-raising.

Figure III.6
Composition of the gross income of the top 5 banking groups



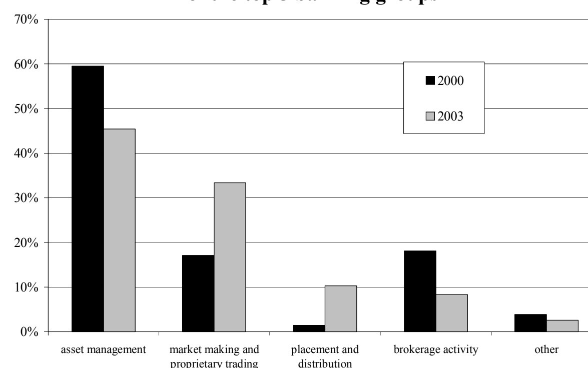
Source: Based on consolidated financial statements. Net interest income includes dividends and profits/losses on equity holdings valued on the basis of shareholders' equity. Income from securities intermediation includes profits/losses on financial transactions and net fee income from investment services and collective portfolio management (including foreign exchange trading, advisory services, safekeeping and administration of securities, depositary bank services and the placement of insurance products). Income from banking services includes net commissions for guarantees issued, collection and payment services, tax collection services, net commissions on current accounts, Bancomat, etc.

With regard to income generation, Figure III.6 shows the percentage composition of the five banking groups' gross income (i.e. total net revenues) by line of business. Net interest income, basically the difference between interest income and expense, contributed just over half of gross income in both 2000 and 2003. The share of income generated by securities intermediation also held steady, at around 26 per cent. Income from banking services (net commissions for collection and payment services, guarantees issued, tax collection services, etc.) contributed around 15 per cent of gross income and other operating income around 6 per cent.

Although the contribution of securities intermediation to gross income was roughly 26 per cent in both years, its composition changed considerably between 2000 and 2003.

The portion of net income from asset management (individual and collective portfolio management and depositary bank services) fell from 60 per cent to about 45 per cent, while that of net profits on financial transactions (capital gains on trading for own account in financial instruments and products and foreign exchange) rose from 17 to about 33 per cent (Figure III.7). The share attributable to net income from the placement and distribution of securities and financial products also grew strongly, from 1 per cent to about 10 per cent. In contrast with the share deriving from trading for own account, that of trading for customer account (including reception of orders and foreign exchange trading) fell sharply, from 18 per cent to about 8 per cent.

Figure III.7
Composition of the income from securities intermediation of the top 5 banking groups



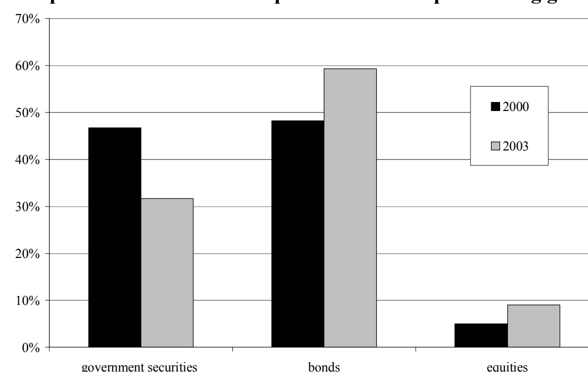
Source: Based on consolidated financial statements. Income from asset management comprises the fees from individual and collective portfolio management and depositary bank services. Income prom placement services comprises the net fees from the placement of securities and other financial products (including door-to-door selling). Income from trading for customer account comprises the net fees from trading in securities and foreign exchange and from the reception of orders. Other income consists basically of net fees from safekeeping and administration of securities and advisory services.

The important contribution of net profits on financial transactions for own account was accompanied by a contraction in the securities portfolio (counting both trading and investment securities) as a proportion of total assets. The overall securities portfolio of the top 5 banking groups declined from 17 to 12 per cent of total assets; in particular, the share of trading securities fell from 6 to 3 per cent and that of investment securities from 11 to 9 per cent. The overall portfolio also shrank in absolute terms by 27.5 per cent, from €160 billion to €116 billion. The portfolio's composition by type of financial instrument changed markedly. The share consisting of government securities fell from 47 per cent to about 32 per cent, while that of bonds rose from 48 per cent to about 59 per cent and the portion invested in equities increased from 5 per cent to around 9 per cent (Figure III.8).

Turning to bank fund-raising, securities accounted for an important share of the total funds raised from customers in 2000 and again in 2003. While the share of current accounts and customer deposits remained broadly unchanged at around 53 per cent, that of bonds (including subordinated liabilities) increased from 28.6 to 30.4 per cent (Figure III.9). By contrast, the contribution of certificates of deposit to total funds raised from customers declined from 9.7 per cent to about 8 per cent and that of repos from 9.1 to 8.3 per cent.

Figure III.8

Composition of the securities portfolio of the top 5 banking groups

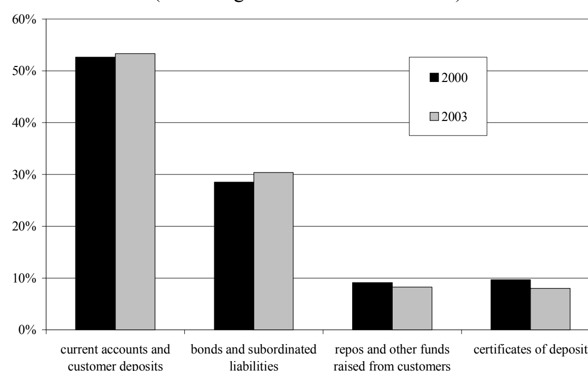


Source: Based on consolidated financial statements.

Figure III.9

Composition of the fund-raising of the top 5 banks

(excluding funds raised from banks)



Source: Based on consolidated financial statements.

Consob Activity

IV. SUPERVISION OF LISTED COMPANIES

Corporate disclosures

The supervision of corporate disclosures continued at a high level in 2004, although the number of requests for data and information was much smaller than that of the previous year. The Commission sent some 120 requests for additional informations, compared with nearly 500 in 2003 (Table IV.1 and Table aIV.1); the requests were related, moreover, to just a few cases (above all Cirio, Parmalat and Giacomelli).

Table IV.1

Supervision of corporate disclosures, ownership structures and research reports

	2002	2003	2004
Requests for information under Articles 115.1 and 115.2 of Legislative Decree 58/1998			
Information acquired from directors, members of the board of auditors, external auditors, general managers, parent and subsidiary companies	36	82	51
Requests for data and information	100	317	43
Requests for confirmation of major shareholdings	23	49	21
Requests for information to identify the person responsible for fulfilling disclosure requirements in the event of charges of non-compliance	52	31	12
Total	*211*	*489*	*127*
Requests for information made to shareholders under Article 115.3 of Legislative Decree 58/1998	31	33	39
Inspections	2	4	2
Requests to publish data and information made under Article 114.3 of Legislative Decree 58/1998			
Supplements to information to be provided in shareholders' meetings	69	18	15
Supplements to periodic financial reports	1	--	14
Information to be provided to the market (press releases)	25	46	82
Monthly periodic disclosures	9	6	8
Supplements to merger documents	2	1	1
Supplements to tender offer documents	3	4	4
Total	*109*	*75*	*124*
Waivers of disclosure requirements under Article 114.4 of Legislative Decree 58/1998	5	10	11
Requests to publish research reports immediately in connection with rumours	3	10	3
Reports to the courts under Article 2409 of the Civil Code	1	--	--
Written reprimands	3	3	--
Annual accounts challenged	--	4	4

There was a significant increase in the number of cases in which the Commission formally requested companies to disclose data and information (from about 70 in 2003 to more than 120 in 2004). Considering the importance of the measure, the number of cases in which the Commission challenged annual financial statements remained relatively large at 4, as in 2003 (see also the section below on "Financial reporting").

As regards requests to disclose data and information, the most important arose from the need to supplement the financial reports and the information on the performance of individual companies, including by means of the issue of monthly press releases. In other cases the

Commission requested the board of directors to supplement the information made available to shareholders on the occasion of ordinary and/or extraordinary meetings with additional information on specific transactions.

In 2004 numerous informal requests for information were made to issuers listed on regulated markets and their controllers. In particular, companies were requested to verify the need for comments on news published in the press, especially in the presence of anomalous share price movements, and to issue press releases to supplement those already published but deemed incomplete.

A high level of supervisory attention was also paid to research reports on listed issuers. In 3 cases the Commission had to call for the immediate release of reports because rumours concerning their content were accompanied by sizable movements in the prices of the securities covered.

Analysis of the research reports on Italian listed issuers shows the preponderance of buy recommendations, 53 per cent of the total, with respect to sell recommendations, only 6.2 per cent (Table aIV.2). In 2004, as in the preceding year, the number of companies covered by reports increased, but about one third of the companies were covered by fewer than five reports, while about 9 per cent were covered by more than 50 (Table aIV.3).

Since 2002 the Commission has required listed issuers whose half-yearly reports and/or annual financial statements were not cleared by the auditors or that were in financial or economic difficulties to issue a monthly press release with an update of their sales revenues and net financial position, information on company-specific matters, and the progress in implementing reorganization and/or financial restructuring plans, etc.

At the end of 2003 there were 15 issuers subject to this regime, of which five listed on the Nuovo Mercato. During 2004 five of these companies were delisted, including two from the Nuovo Mercato, and consequently no longer required to issue a monthly press release. Another company, listed on the MTA share market, was released from the monthly press release obligation because its financial position, operating performance and cash flows returned to normal and the auditor expressed favourable opinions on its periodic financial statements. On the other hand, the monthly press release obligation was imposed on 12 new companies, of which 3 listed on the Expandi Market (formerly the second market) and 1 on the Nuovo Mercato. Accordingly, at the end of 2004 a total of 21 companies were subject to the requirement: 14 listed on the MTA market, 3 on the Expandi Market and 4 on the Nuovo Mercato.

Consob also performed supervision on disclosure to the public and the Commission of related-party transactions by listed issuers or companies belonging to the same group. In fact, such transactions have been subject to specific disclosure requirements since the entry into force of Article 71-*bis* of Consob Regulation 11971/1999 on issuers at the beginning of 2003.

In 2004 a total of 9 information documents and 9 press releases were issued in relation to transactions with related parties (Table IV.2). Most of the information documents referred to intragroup transactions involving the transfer of buildings, divisions and production sites.

Table IV.2

Transactions with related parties disclosed to the market by listed companies in 2004

Company	Transaction	Counterparties
Information documents		
Acqua Marcia	Loans (2 cases)	Companies belonging to the same group
Aedes	Sales of buildings	Listed company and an investee company
Banca Profilo	Sales of buildings	Subsidiary and a related company (controlled by the chairman of the board of directors)
Cairo Communication	Transformation into s.p.a. and capital increase	Listed company and a subsidiary
Gruppo Coin	Contribution of a division	Listed company and a subsidiary
It Holding	Sale of an equity interest	Listed company and a subsidiary
Sadi	Sale of a production site	Listed company and a related company
Indesit Company (ex Merloni)	Guarantee of a bond loan	Listed company and a subsidiary
Press releases		
Banca Popolare Verona e Novara	Centralization of divisions	Various group companies
Inferentia Fullsix	Sale of an equity interest	Listed company and a reference shareholder
Innotech	Contribution of an equity interest in connection with a capital increase	Listed company and a company controlled by its managing director
Ipi	Sale of an equity interest	Listed company and a company controlled by its controller
Sicc	Sale of buildings	Listed company and a company owned by its controlling shareholder
Snia	Sale of buildings	Listed company and a subsidiary
Unicredit	Purchase of buildings	Companies belonging to the same group
Unipol	Mergers (2 cases)	Various group companies

Several of the transactions announced in press releases also referred to the transfer of real estate and in some cases the transactions involved companies belonging to the reference shareholder or the controller of the listed company. Examples of the latter include the sale of an equity interest, in one case by a listed company to a company that was a reference shareholder and in another by a company owned by the controlling shareholder to a company belonging to the same group as the listed company.

In enforcing the rules on the disclosure of major holdings, in 2004 Consob made 21 requests for confirmation of notifications, compared with 49 in 2003.

In 2004 a total of 1,100 declarations of major holdings in listed companies were made (Table aIV.4), of which about 80 per cent referred to companies listed on the MTA market and about 20 per cent to companies listed on the Nuovo Mercato or the Expandi Market. This figure was in line with that for 2003 and slightly above the average of the five preceding years.

The breakdown of the declarations was as follows: 29 per cent referred to holdings that rose above the 2 per cent threshold, 25 per cent to holdings that fell below the same threshold and 46 per cent to changes in previously existing major holdings. Of the latter 16 per cent referred to changes in the chain of control or the way holdings were held.

The declarations made by institutional investors in 2004 showed little change, since their share of the total number grew only from 17 to 18 per cent. Most of this category's declarations were made by foreign institutional investors (about 75 per cent). The most active category was that of

"other companies", which accounted for about 40 per cent of the transactions declared, followed by individuals (25 per cent) and banks (17 per cent).

Last year also saw 5 declarations regarding the acquisition or disposal of potential holdings in 4 listed companies.

In its supervision of the information disclosed by companies Consob also cleared the amendments to the Instructions accompanying the Rules of the markets organized and managed by Borsa Italiana concerning the minimum content of press releases announcing material events. In fact the specification and standardization of the minimum content of such press releases not only helps to ensure that the information provided to the public is clearer but also makes Consob's supervision of price-sensitive information more effective.

The amendments, adopted by Borsa Italiana pursuant to Article 67 of Consob Regulation 11971/1999 on issuers and Article 2.6.5 of the Rules of the markets organized and managed by Borsa Italiana and Article 2.6.6 of the Rules of the Nuovo Mercato, are contained in 12 articles: the first two, of a general nature covering all types of price-sensitive information, are entitled "General criteria" and "Manner of presenting information in press releases" and refer in particular to the component parts of press releases (title, summary, text, company contact persons); the remaining ten articles cover the content of press releases in connection with the most common types of disclosure of corporate information.

Issuers' adoption of new electronic systems, such as the Network Information System (NIS), for the dissemination of financial data has led to a significant increase in the number of items of information published by press agencies. Furthermore, it was found that, thanks to the latter's access to the NIS, the information they disseminated basically replicated issuers' press releases, so that it was necessary to introduce rules to ensure they were prepared in a more uniform manner.

As provided for by the Consolidated Law on Finance, Consob's supervision extends to issuers of securities that, although not listed on a regulated market, are widely distributed among the public.

There have been major changes in the last few years in the rules governing issuers of widely distributed securities, including the criteria for identifying such issuers. In December 2003 Consob modified these in the light of the reform of company law by introducing new qualitative criteria for identifying issuers of widely distributed shares and by modifying the existing quantitative criteria. The criteria for identifying issuers of widely distributed bonds were left unchanged.

When it introduced the new criteria, Consob required issuers already on the list and those not on the list but satisfying the earlier criteria in December 2003 to notify the Commission by the end of June 2004 as to whether they satisfied the new criteria. Consob examined the resulting notifications and in July 2004 carried out the usual update of the list of issuers of widely distributed securities.

The greater selectivity of the new criteria led to a large reduction in the number of issuers subject to Consob's supervision, from about 160 to 90 (Table IV.3). Most of these issuers are banks (68 out of 90), the bulk of which are cooperative and savings banks.

Inclusion in the list of issuers of widely distributed securities results in companies being subject to disclosure requirements vis-à-vis the market and Consob similar to those applicable to listed issuers, as provided by Article 116 of the

Consolidated Law on Finance. This ensures that trading of the securities in question, including on alternative trading systems, is conducted in informational conditions permitting investors to make an informed assessment.

Table IV.3
Issuers with widely distributed financial instruments
(at 31 July 2004)

Financial instruments	Number of issuers
Ordinary shares	71
Ordinary shares and convertible bonds	10
Cooperative shares	3
Ordinary and preference shares	2
Ordinary and savings shares	1
Preference shares	1
Convertible bonds	1
Non-convertible bonds	1
Total	*90*

Source: Consob.

Disclosure in public offerings and extra-ordinary corporate actions

In 2004 the Commission cleared some 430 offering prospectuses, of which about 370 for collective investment undertakings and open pension funds (Table IV.4). Consob also examined more than 500 reports on bylaw amendments, increases in capital, mergers, spin-offs and other extraordinary corporate actions by listed issuers.

During the year Consob cleared prospectuses for 7 IPOs on the MTA share market operated by Borsa Italiana.

In one case (TeamSystem), however, the IPO was abandoned following the failure to conclude the underwriting agreement for the institutional offering.

The company, in accordance with terms and conditions laid down in the prospectus, stated in the notice announcing the abandonment of the IPO that the decision had been taken because the valuation of the company on the basis of the demand and indicative price of the offering, was not in line with the expected price obtainable for the company in a private sale.

The examination that led to the clearance of the Terna prospectus had to face a series of problems in connection with the special legal framework for the company's operations.

Terna is the main owner in Italy of the infrastructure making up the national power grid and was set up by Enel pursuant to Legislative Decree 79/1999 through the contribution of the business consisting in the exercise of the rights of ownership of the entire power grid that Enel possessed at the time.

The legal framework for Terna's operations was first established by the 1999 decree and subsequently amended by Decree Law 239/2003, ratified with amendments by Law 290/2003. The creation of the future set-up was delegated to a subsequent measure to be adopted, in conformity with the general principles laid down in the above-mentioned decree law, by the Prime Minister. The measure was adopted while Consob's examination was under way. The new regime envisages the unification of Terna and the grid operator with the related transfer of property, relationships and activities and the gradual bringing together in Terna of the remaining parts of the national power grid. The measure also provided for the changes to Terna's bylaws and corporate governance needed to allow the new entity to perform all the tasks entrusted to it by law. Accordingly the examination had to take account of the changes under way in the regulation of the sector, so as to ensure they were adequately described in the prospectus.

Table IV.4

Consob's enforcement activity in connection with offerings, admissions to listing and extraordinary corporate actions

	2002	2003	2004
Number of prospectuses for:			
Admission to listing of shares [1]	14	14	7
of which: IPOs	6	4	7
Bonds	21[2]	28	4
of which: only admission to listing [3]	16[3]	24	1
Issues of covered warrants [4]	102	26	17
Admission to listing of warrants	6	8	--
Other offerings of listed securities [5]	1	1	1
Offerings of unlisted securities by Italian issuers [6]	3	2	5
Offerings reserved to employees [7]	39	35	28
Rights offerings [8]	23	10	2
Offerings by foreign issuers	13	3	--
of which: recognition of foreign prospectuses	13	3	--
of which: pan-European public offerings	--	--	--
Collective investment undertakings and pension funds [9]	520	268	374
Total	*742*	*422*	*438*
Number of reports on extraordinary corporate actions:			
Mergers	43	44	34
Spin-offs	6	10	5
Increases in share capital [10]	58	66	68
Purchases/sales of treasury shares	78	93	90
Changes to bylaws	81	85	302
Share conversions	1	3	4
Bond issues	5	9	7
Reductions in share capital	8	13	14
Total [11]	*254*	*323*	*524*

[1] The figures refer to transactions for which Consob cleared the listing prospectus during the year. [2] In one case the public offering was contemporaneous with admission to listing. [3] In addition to this figure one public offering was contemporaneous with admission to listing of a bond loan. [4] The number of prospectuses cleared during the year, each of which normally referred to the issue of more than one series of covered warrants. [5] Public and private offerings other than for listing purposes. [6] Excludes offerings reserved to employees. [7] Includes stock option plans reserved to employees but excludes offerings that involved the recognition of foreign prospectuses. [8] Refers to companies that are listed. [9] Includes public offerings of units of mutual funds and shares of Sicavs, admissions to listing of units of Italian closed-end funds and financial instruments issued by foreign management companies and offerings of pension funds. [10] Includes increases in capital approved but not yet implemented (or implemented subsequently). [11] The total number of reports does not coincide with the sum of the different kinds since some reports had more than one subject.

In 2004 a prospectus was submitted to the Commission for clearance concerning the listing of a bond loan convertible into shares of AEM, controlled by the Milan municipality.

A factor that came to take on considerable importance in this examination was the dispute between the Milan municipality and some associations of consumers and shareholders of AEM that challenged two resolutions adopted by the Milan city council. The resolutions concerned the approval by the city council of the above-mentioned bond loan and the approval of some amendments to AEM's bylaws, including the direct appointment by the Milan municipality pursuant to Article 2449 of the Civil Code of a number of AEM directors not exceeding a quarter of the total number of directors to be elected and the election of the remaining directors by means of a slate system. These bylaw amendments would result in the Milan municipality maintaining the right to appoint the absolute majority of AEM's board of directors even after losing control of the municipal company. At the end of complex legal proceedings

the Lombardy Regional Administrative Tribunal suspended the case pending the decision of the European Court of Justice on the compatibility of Article 2449 of the Civil Code with Article 56 of the EU Treaty.

The aim of the examination was thus primarily to ensure that the prospectus contained adequate information on the various possible scenarios: (i) assuming that the European Court of Justice ruled that Article 2449 of the Civil Code was incompatible with Community law and consequently (ii) that the Lombardy Regional Administrative Tribunal would annul the part of the resolution concerning the convertible bond loan that approved the issue of the loan and all the consequent actions relating to the issue.

It should be noted in this respect that clauses were added to the terms and conditions of the bond loan and the prospectus that specifically governed the effects of the decision on the relationships between the Milan municipality and the holders of the convertible bonds. Lastly, during the examination Consob requested the issuer to ensure that the part of the prospectus on the structure of the offering contained adequate information on the proposed preferential treatment of Milanese citizens with respect to the general public embodied in the allotment mechanism. The Milan municipality had applied to Consob earlier in 2004 for an opinion on this mechanism. In confirming the approach it had already indicated in Communication DEM/67661/2000, Consob ruled that there were no objections in the case in question to the use of a preferential criterion whereby the applications of Milanese citizens would be satisfied first and then those of the general public if there remained securities to be allotted, provided there was equal treatment of applicants within each category and the procedure was described in detail in the prospectus.

Among the other significant transactions of listed issuers, it is worth noting the clearance of a prospectus for a rights offering of ordinary shares by Telecom Italia Media.

Although the prospectus did not require clearance pursuant to Article 33.2a) of Consob Regulation 11971/1999 on issuers, the company requested that it be examined in order to activate the procedure for its recognition abroad pursuant to Article 94.4 of the Consolidated Law on Finance.

As regards the supervision of tender offers, in 2004 Consob cleared the offer documents for 28 transactions, of which seven involved bonds and two unlisted shares (Table IV.5).

Table IV.5

Financial instruments that were the subject of cash and/or exchange tender offers cleared by Consob in 2004

	Listed shares			Bonds	Unlisted shares	*Total*
	Ordinary	Savings	Preference			
Voluntary offers	4	1	--	7	2	*14*
Takeover bids	--	--	--	--	--	--
Mandatory offers	10	—	—	—	—	*10*
Residual offers	3	—	—	—	—	*3*
Offers for treasury shares	1	--	--	—	--	*1*
Total	*18*	*1*	--	*7*	*2*	*28*

Source: Consob archive of offer documents.

With reference to the tender offers with bonds as their subject, two transactions concerned the restructuring of bond loans involving, among other things, changes in their terms and conditions (interest payments and maturity).

The subject bonds were issued by foreign subsidiaries of Italian companies, Italtractor ITM S.A. and Fantuzzi Finance S.A. The changes to the terms and conditions of the bonds were submitted to bondholder meetings with a qualified quorum and majority for the approval of resolutions. In the event of approval of the changes, the issuers were to pay a consent fee in cash to bondholders who had voted in favour of the changes.

The transactions in question were deemed to constitute tender offers in that the calling of the meetings of (more than 200) bondholders and the proposed changes to the coupons and maturities amounted to an exchange tender offer as defined in Article 1.1v) of the Consolidated Law on Finance. The invitation to alter the terms and conditions of each loan amounted in fact to a new investment proposal in place of the earlier one. This implied a new investment decision by bondholders and an offer falling within the scope of Article 102 et seq. of the Consolidated Law on Finance.

Again with reference to tender offers having bonds as their subject, in December 2004 the Commission cleared the offer document for the exchange tender offer for the replacement of defaulted Republic of Argentina bonds with newly-issued bonds.

The tender offer, which took place in the early months of 2005, was part of a broader global exchange offer under which tender offers would be made in other countries (Argentina, the United States, Germany, Luxembourg, the Netherlands and Spain) in order to implement the debt restructuring plan announced by the Argentine government on 1 June 2004. The Argentine government offered to replace the existing bonds with new bonds called Par, Quasi-Par and Discount, with maturities ranging from 2033 to 2035, and with GDP securities which entitle their holders to a sum of cash in relation to the performance of Argentina's GDP. The subject bonds belonged to more than 170 different series and the amount involved was equal to $81.8 billion, comprising $79.7 billion of principal and $2.1 billion of accrued interest.

Lastly, in 2004 Consob responded to a query concerning the applicability of the exemption from the tender offer obligation referred to in Article 49.1b) of Consob Regulation 11971/1999 on issuers to an increase in capital of a company in distress. In the case in question Consob ruled that all the requirements for application of the exemption were met.

Disclosure to shareholders' meetings

The Commission intervened on several occasions in 2004 to require listed companies to supplement the information disclosed to shareholders' meetings. Such requests are normally made in connection with the annual meeting, both to provide shareholders with additional information before approving the annual financial statements and to permit the market to make an informed assessment on the basis of the press release issued following the meeting.

In one case the request concerned the disclosure of information on a bond loan issued by the company and some derivative transactions whose nature and number, and the consequent

potential losses, could have caused significant problems for the company's financial situation.

In another case a company that already had to issue monthly press releases was asked to supplement the information to be provided to the annual meeting by reporting on the business plan being prepared by the new board of directors to overcome the serious difficulties the company faced. In particular, information was requested on the objectives the plan was intended to achieve and the time needed for its implementation, with an indication of the threat to the company's continued operation if the plan was not approved. The directors were also asked to disclose information immediately on the steps taken to cope with the company's pressing financial problems, with special reference to the impending maturity of bonds issued by the company and its subsidiaries.

In four other cases the information requested for the shareholders' meeting was also required for the monthly reports the companies had to produce as of the following month.

A more complicated case was that of another listed issuer, Enertad, which was initially asked to supplement the information contained in its fourth quarterly report concerning transactions with related parties, with special reference to the nature, composition and duration of its exposure to its parent company and other related parties. Subsequently, on the occasion of the distribution of the prospectus for a rights issue of shares (which does not have to be cleared by Consob under the regulation on issuers), the company was asked to make some of the information in the prospectus available to the annual shareholders' meeting, in particular with reference to: the nature and duration of the loans granted to the parent company and the use to be made of the proceeds; when and how the loans were to be repaid; the group's centralized treasury system used by the company; the use to be made of the funds raised through the rights offering and the reasons that had led the company to increase its capital when it had a large credit vis-à-vis the parent company in the centralized treasury system.

The Commission also intervened under the powers granted by Article 114.3 of the Consolidated Law on Finance to require a listed issuer, Aedes, to provide additional information to the shareholders' meeting.

In this case the Commission asked the listed company to supplement the information prepared for the annual meeting with the comments of the directors on a letter sent by the external auditor, PricewaterhouseCoopers s.p.a., to Consob and the board of auditors in accordance with Article 155.2 of the Consolidated Law on Finance, with a copy sent to the board of directors, concerning a transaction between the company and one of its subsidiaries. The Commission also invited the board of auditors to comment on the matter in its report to the shareholders' meeting.

In its letter the external auditor expressed a positive overall opinion on the company and consolidated annual financial statements but drew attention, on the basis of the checks it had carried out, to the accounting treatment of the transaction and questioned the desirability for the company of the transaction itself.

On other occasions the request for additional information was made in connection with extraordinary shareholders' meetings.

In one case (Finarte-Semenzato) the Commission intervened on the occasion of the meeting called by the board of directors at the end of January 2004 under Article 2446 of the Civil Code to examine the company's balance sheet at 30 September 2003 and approve a reduction in the company's capital as a result of losses and a contemporaneous issue of new shares.

Specifically, the company was asked: to inform shareholders on the work carried out by and the comments of the external auditor with reference to the accounts at 30 September 2003; to clarify the valuations made and the actions taken or to be taken by the directors to recover claims on some clients; to report on a loan granted to the company by a shareholder falling due in February 2004; and to indicate the foreseeable development of operations and the key aspects of the plans the company intended to prepare to ensure its staying in business.

In view of the negative outcome of the meeting referred to above, the Commission asked the company to keep the market informed on a monthly basis of its operating, cash flow and financial data. In particular, as of February 2004 the company was required to provide detailed figures on its short-, medium- and long-term net financial position, receivables from clients and how a loan from a related party was to be repaid.

Another intervention concerned a meeting of the shareholders of the A.S. Roma football club called to approve the manner of covering the company's losses and a contemporaneous rights issue of new shares, with the possibility of payment by means of the conversion of claims on the company.

In this case the directors were asked to supplement their report to the meeting with information on the size and nature of the company's debts, an estimate of the total financing needs of the group deriving from operations, and an indication of the financial resources identified to meet those needs.

The aim of the request was to clarify the terms and conditions and state of implementation of the agreement, concluded before the meeting and announced in a press release, between Banca di Roma and the Sensi family for the restructuring of the group headed by that family. Among its short-term objectives the agreement included the channeling of the proceeds of the planned disposals to the listed company in order to permit settlement of its entire claim on Roma 2000 and payment by the latter of the remaining debts of the football club transferred to the parent company. The Commission also requested the confirmation in the shareholders' meeting of the undertaking contained in the press release to the effect that the increase in capital would be implemented only after the football club had acquired the above-mentioned financial resources.

Financial reporting

As part of its normal supervision of the correctness of the financial reports of listed companies, the Commission challenged the annual financial statements of four companies under Article 157.2 of the Consolidated Law on Finance.

One of the four cases concerned A.S. Roma s.p.a., which had included a large claim on its parent company at face value in the company and consolidated financial statements for the year ended 30 June 2003; after the start of the proceedings a series of transactions resulted in payments of cash to the listed company that made it possible to extinguish the entire claim whose valuation in the balance sheet had been questioned.

In the light of these facts and following a petition by the listed company, Consob deemed that the post-balance-sheet events made the restatement of the company's 2003 financial statements unnecessary (if the action had been continued and been successful, it would have had the effect of requiring asset writedowns in the

financial statements that would have been offset in the following year) and therefore decided to drop the case, although it remained convinced that application of the prudence principle should have led to an appropriate writedown of the claim in question.

A later supervisory intervention that led Consob to consider the technical conditions to exist for the activation of the powers referred to in Article 157 of the Consolidated Law on Finance concerned the company and consolidated financial statements of Necchi s.p.a. for the year ended 31 December 2002.

The Commission acted on the grounds that Necchi's annual financial statements did not provide a true and fair view of the assets and liabilities, profits and losses or financial position of the company or the group.

In particular, the Commission deemed that the company had violated the rules governing the preparation of company and consolidated financial statements contained in: Article 2426, points 1), 2) and 3), of the Civil Code on the valuation of equity investments; Article 2426, point 8), of the Civil Code on the valuation of receivables; Article 2426, second paragraph, of the Civil Code concerning the provision for liabilities and charges; and Article 2426, point 10), of the Civil Code on the valuation of stocks. Under Articles 19 and 35 of Legislative Decree 127/1991, the above-mentioned provisions also apply to the preparation of the consolidated financial statements.

The group accounts were also found to have violated Article 33.3 of Legislative Decree 127/1991 on the methods of consolidating equity investments. The violations of the above-mentioned provisions, together with the inadequate disclosure of information in the 2002 financial reports, which failed to reveal the company's true situation, led the Commission to activate the above-mentioned powers under Article 157 of the Consolidated Law on Finance.

Another challenge concerned the 2002 company and consolidated financial statements of Stayer s.p.a., which, according to Consob, had not been prepared in conformity with the rules, so that, as submitted to the shareholders' meeting, they did not provide a true and fair view of the assets and liabilities, profits and losses or financial position of the company or the group.

*Specifically, the Commission was of the opinion that the following provisions had been violated: Article 2423, second paragraph, of the Civil Code (True and fair view), Article 2421-*bis*, first paragraph, point 1, of the Civil Code (Prudence principle) and Article 2426, points 3 and 8, concerning the valuation of equity investments and receivables. Under Articles 29 and 35 of Legislative Decree 127/1991, the above-mentioned provisions also apply to the preparation of the consolidated financial statements.*

The violation of the above-mentioned rules, which was reflected in the determination of the company and group result for the year and of shareholders' equity and caused serious short-comings in the information disclosed in the notes to the financial statements and the report on operations contained in the financial reports in question, led Consob to use the powers under Article 157 of the Consolidated Law on Finance.

Another challenge concerned the 2002 company and consolidated financial statements of Arquati s.p.a., which, as submitted to the shareholders' meeting, the Commission deemed not to have provided a true and fair view of the assets and liabilities, profits and losses or financial position of the company or the group.

In particular, the Commission was of the opinion that the following provisions had been violated: Article 2426, point 8, of the Civil Code in the preparation of the company and consolidated financial statements and Article 2426, point 10, of the Civil Code with reference to the valuation of stocks in the preparation of the consolidated financial statements.

As part of its supervision on listed issuers' disclosure of information, Consob also intervened on several occasions to obtain information and data from companies' boards of directors and control bodies. In practice, such action took the form of requests to the directors, the external auditor and the members of the board of auditors for clarifications regarding the valuation of certain items in the financial statements.

In 2004 Consob applied the powers referred to in Articles 114 and 115 of the Consolidated Law on Finance to some large listed groups whose operating performance and financial conditions required particularly thorough analysis of corporate disclosures, especially where substantial funds were raised through bond issues.

The aim of these interventions was to obtain additional details from the companies' boards of directors, boards of auditors and external auditors in order to throw light on the problems in their financial positions, operating performances and cash flows revealed by analysis of the information they had disclosed to the market. Subsequently, the companies were asked to provide the market with supplementary information and clarifications in the financial reports they were preparing (in fact the requests were made before the company and consolidated financial statements had been approved by the companies' respective boards of directors) with reference either to specific items in the accounts, aspects of operations or the economic and financial situation of the company or, more generally to the level of indebtedness and the structure of the net financial position. If the companies had issued bonds, they were also asked to indicate their mean features, how they were to be redeemed and the effect of the related interest payments on the implementation of the companies' business plans. The companies in question were also asked to publish the terms and conditions of such bonds on their websites, together with other relevant documents (e.g. the offering circulars produced at the time they were issued).

In 2004 the Commission also made use of the powers conferred by Article 114 of the Consolidated Law on Finance to supplement the information contained in companies' annual and interim financial reports (quarterly and half-yearly reports and the draft annual report) by requiring companies to update their operating, cash flow and financial data in the light of events or situations that involved particular risks. In some cases these requests preceded the order to issue monthly press releases, in others the aim was to provide a summary of the information already made available to the market in such press releases in documents with a broader scope containing a more recent update and additional analysis.

In 2004 Consob continued its activity aimed at requiring companies whose external auditors issued an adverse opinion or a disclaimer of opinion on their annual or half-yearly accounts or that fell within the scope of Articles 2446 and 2447 of the Civil Code (i.e. in the presence of losses that led to a reduction in capital of more than one third or to below the legal minimum) to release monthly updates

on the key variables established on a case-by-case basis. Including those first required to make such releases in earlier years, at the end of 2004 there were 21 listed companies subject to this requirement (see also the Section on "Corporate Disclosures").

Alitalia was subjected to close control as regards the disclosure of information. The Commission took note of the postponement of the deadline for the publication of the half-yearly report for the six months ending on 30 June 2004 in view of the company's serious operating and financial problems and on the occasion of the meeting called to approve the financial statements for the year ended 31 December 2003 Consob required the production of monthly updates of the main company and group financial data.

The disclosure requirements referred to: (i) the company and group net financial position, with an indication of the main assets and liabilities and a comparison with the latest published data, accompanied by an explanation of the most significant changes; (ii) any debts that had fallen due; (iii) the business plan for the years 2005-2008, with an indication of the restructuring costs to be borne and of the progress in carrying out the plan; and (iv) the sustainability of the group's financial needs, with special reference, as regards the sources of financing, to the bridging loan approved by the board of directors on 13 May 2004 and the implementation of the increase in capital the board deemed necessary in order to carry out the plan.

On the same occasion Consob called upon Alitalia to supplement the information it had prepared for the annual meeting with the directors' comments on: (i) the issues raised by the board of auditors in its report regarding the need to know with certainty by the time of the meeting whether it would be possible to obtain the bridging loan, since otherwise − according to the board of auditors − it would have been necessary to call an extraordinary shareholders' meeting "to approve the consequent resolutions"; and (ii) the disclaimers of opinion with respect to the company and consolidated financial statements for the year ended 31 December 2003 contained in the reports issued by the external auditor in accordance with Article 156 of the Consolidated Law on Finance.

Subsequently, without prejudice to the obligation to produce a complete half-yearly report, the board of directors issued company and group operating, cash flow and financial data as of 30 June 2004 in accordance with and for the purposes of Article 2446 of the Civil Code (Submittal of an updated balance sheet to the extraordinary shareholders' meeting, so that the meeting can adopt suitable resolutions following the reduction of more than one third in the share capital), stressing that the data provided an accurate picture of the first half of the year.

According to the company, a precondition for the preparation of the half-yearly report was the approval of a comprehensive business plan, whose drafting depended, however, on the completion of a series of steps, some of which involved third parties (the trade unions, for an agreement on the handling of redundancies; the Government, for a series of statutory and administrative measures needed to arrive at a non-traumatic solution to the problem of overstaffing and to guarantee the bridging loan that was essential to allow the company to remain in business operating; and Fintecna, for acceptance of the plan for the reorganization of the group).

Since it had to wait for the above-mentioned events and deemed it necessary to make a thorough analysis of their impact on the company's operating performance, cash flow and financial position, the board of directors considered it reasonable and prudent to postpone the deadline

for the publication of the half-yearly with respect to the calendar of corporate events previously released to the market.

Lastly, the Commission intervened again on the occasion of the final approval, on 13 October 2004, of the business plan for 2005-08 to ask for the publication of a notice, in addition to the press release already issued by the company, serving to announce the adoption of the plan, clarify the approach followed for the development of the core air transport business, set out the timetable and expected effects of the planned reorganization of the group, and specify the calendar for the use of the bridging loan. This information was put into the press release that the company issued on 16 October 2004.

Last year also saw the first case in which a monthly disclosure requirement was lifted; the company involved was Snai.

This company had been in extremely serious operating and financial difficulties, to the point that the external auditor had issued a disclaimer of opinion on the company and consolidated financial statements for the year ended 31 December 2001. The company subsequently adopted a series of measures aimed at rationalizing the structure of the group, returning it to profitability and restoring its financial equilibrium. To allow the market to assess the operating performance, cash flow and financial position and the progress in implementing the reorganization plan, Consob required the company to issue monthly press releases as of 30 November 2002.

The external auditor issued a favourable opinion on the company and consolidated financial statements for the years ended 31 December 2002 and 31 December 2003 and on the half-yearly report for the period ended 30 June 2003 in the light of the improving trend in the company and group operating performance, cash flow and financial position. Accordingly, Consob took the view that it could revoke the monthly disclosure requirement it had imposed under Article 114.3 of the Consolidated Law on Finance following a re-evaluation of the factors that had led it to adopt the measure in the first place.

The company was asked, however, to provide the public, on the occasion of the board of directors' approval of the third quarterly report, with some clarifications concerning important financial information that, although not explicitly required by the rules on financial reports, would throw light on some major aspects of the company's operations and of the risks to which investors in its shares would be exposed.

The Commission paid special attention to the form and content of the information to be disclosed to the market by Parmalat Finanziaria s.p.a., a company under special administration.

The company's securities were suspended on 29 December 2003, but it nonetheless remained a listed issuer and therefore subject to the disclosure requirements established by the Consolidated Law on Finance and its implementing regulations. These requirements have to be coordinated with those of the so-called Marzano Law on special administration, which, for example, by referring to a provision of bankruptcy law, extends the exemption from the obligation to prepare annual financial statements to companies under special administration. The same applies to the half-yearly and quarterly reports of such companies, both in view of their qualitatively similar content and because the special administrator has powers and obligations that differ from and replace those of the board of directors of listed companies with regard to normal disclosure requirements.

It should be noted, however, that Parmalat Finanziaria posted on its website, directly or via

the link to the site of the Parma court, all the documentation concerning the special administration procedure, including the press releases issued whenever important events occurred or new facts emerged.

Consob's intervention in this case consisted in a request to publish: (i) a monthly document containing the information referred to in Article 82 of Consob Regulation 11971/1999 on issuers, supplemented by a comment on the general performance of the group and the progress in implementing the bankruptcy procedure; and (ii) a financial report for the year ended 31 December 2003 comprising a report on operations, a summary balance sheet and income statement prepared using the methods referred to in Legislative Decree 127/1991, insofar as they were compatible, notes to the main items of the above-mentioned financial statements, and a list of the equity investments included in the consolidation.

After Consob had requested the publication of a monthly report comprising a comment on operations, the progress in implementing the bankruptcy procedure and the net financial position at least up to the end of the previous month, Parmalat Finanziaria declared its intention to introduce a periodic information disclosure system on a fortnightly basis with regard to the situation and assets of the companies covered by the procedure. The company also published a half-yearly report for the period ended 30 June 2004 for the group under special administration.

In this way, albeit with the adaptations imposed by the bankruptcy procedure, it was possible to ensure a continuous flow of information on the operating performance, cash flow and financial position of the Parmalat group, also in relation to the outcome of the restructuring plan approved by the Ministry for Productive Activities in July 2004. This provided for the listing of a new entity and, following the favourable vote on a proposed settlement, the transfer to it of the appropriately adjusted assets and liabilities of 16 Parmalat group companies covered by the bankruptcy procedure.

In 2004 Consob also continued to monitor the information disclosed by the football clubs listed on the Stock Exchange.

During the year the Commission made 5 requests to S.S. Lazio s.p.a. to disclose information under Article 114.3 of the Consolidated Law on Finance.

On the occasion of the extraordinary shareholders' meeting called on 17 January 2004 to adopt the resolutions required by Article 2446 of the Civil Code and approve a capital increase of €120 million, plus a possible share premium, the Commission required the company to provide information highlighting: (i) the company's repeated recourse to the market (three capital increases in the last three years) to raise funds to be used to cover losses already incurred; (ii) the company's large current and future financing needs in relation to the funds generated by operations; (iii) the measures the company deemed it could take, including further capital increases; the steps taken to ensure the success of the capital increase, taking into account the absence of a reference shareholder; and (v) the future prospects of the company in the event that the increase in capital failed to raise sufficient funds to ensure the continuation of operations.

The Commission also asked S.S. Lazio to include the above information in the prospectus for the already approved rights offering of shares, which, under Article 33.2 of Consob Regulation 11971/1999 on issuers, did not have to be cleared by Consob, and to describe the risks to which investors would be exposed in the Cautions section of the prospectus.

The half-yearly report for the period ended 31 December 2003, approved after the above-mentioned shareholders' meeting, showed a capital deficit falling within the scope of Article 2447 of the Civil Code. The Commission accordingly intervened on that occasion by requiring the company to disclose information on its main cost items and the measures it intended to adopt pursuant to that article of the Civil Code, with reference also to the possibility of the funds raised by means of the capital increase approved being insufficient.

The €188.6 million increase in capital was carried out in June and July 2004. As shown by the draft financial statements for the year ended 30 June 2004, the actual amount raised, only €44.2 million, resulted in shareholders' equity becoming positive again but did not prevent the company from being subject to Article 2446 of the Civil Code governing the case in which the capital is reduced by more than one third owing to losses.

Accordingly, pursuant to that article, the company's board of directors called an extra-ordinary meeting on 3 November 2004 and proposed that the shareholders should defer every decision until after the approval of the half-yearly report for the period ending on 31 December 2004, in the belief that "some of the possibilities set out in the new 2004/2007 Business Plan guidelines could materialize" in the meantime.

In preparation for this extraordinary share-holders' meeting (which was postponed several times and actually held on 30 November 2004), the Commission asked S.S. Lazio to provide share-holders and the market with an update of the balance sheet at 30 June 2004, taken as the basis for the resolution to be adopted, and the grounds on which the board of directors based their view that the company did not have a capital deficit falling within the scope of Article 2447 of the Civil Code. Following the publication on 13 November of the first quarterly report for the 2004-05 fiscal year and considering the postponement to 30 November of the extraordinary shareholders' meeting, the Commission required S.S. Lazio to provide shareholders and the market with information and clarifications regarding the reasons for the accounting treatment of some items having an impact on the income statement.

Turning now to A.S. Roma,. the company and consolidated financial statements for the year ended 30 June 2003 revealed a significant transfer of cash, on various grounds, to the parent company, Roma 2000 s.r.l., despite a deterioration in the funding needs of the listed subsidiary.

The Commission accordingly paid special attention to these financial relationships and on the occasion of the approval of the half-yearly report for the period ended 31 December 2003 asked A.S. Roma to provide information on its financial dealings with the parent company, including an indication of the treasury functions performed by the latter (with a debtor position), the use made of the loans granted to it and the economic benefits for A.S. Roma, the deadlines for their repayment, and the uncertainty regarding the timing of the transactions that would provide the parent company with the necessary resources.

Subsequently, in a press release issued on 31 March 2004, A.S. Roma and Compagnia Italpetroli announced that the Sensi family − which controlled Roma 2000 s.r.l. − had reached a preliminary agreement with the main provider of finance − Banca di Roma − for the restructuring of the bank debt of the Italpetroli group, which, following a corporate reorganization, had become the reference shareholder of A.S. Roma. Upon conclusion of this agreement, the external auditor reissued its opinion on the A.S. Roma company and consolidated financial statements for the year ended 30 June 2003.

Taking into account the press release referred to above and with a view to the A.S. Roma extraordinary shareholders' meeting convened on 16, 22 and 29 April 2004 to approve decisions serving to cover the losses incurred and shown by the financial statements for the period ending on 29 February 2004 and to approve a capital increase of up to a maximum of €150 million, the Commission required the company to disclose information on the net financial position updated to 29 February 2004, the estimated financial needs and the plan for the disposal of assets that, according to the agreement referred to above, were to allow the recovery of A.S. Roma's entire claim on Roma 2000. The Commission also asked for the inclusion of additional information in the prospectus for the above-mentioned capital increase.

Auditing firms

In 2004 the auditing firms entered in the special register kept by Consob examined 265 company annual reports and 241 consolidated annual reports of issuers listed on Italian regulated markets in the course of verifying that the accounts were kept regularly and that the financial statements corresponded with the accounting records and conformed with the applicable legislation.

The figures for the opinions issued by the external auditors for the 2003 fiscal year show the same number of qualified opinions and a small increase in the number of disclaimers owing to uncertainty with respect to the opinions issued for the 2002 fiscal year.

There were 15 qualified opinions, while the number of disclaimers rose from 10 to 11 (Table aIV.5). In six cases, in addition to issuing disclaimers, the external auditors' opinions included qualifications (CTO s.p.a., Finpart s.p.a., Finmatica s.p.a., Necchi s.p.a., Pagnossin s.p.a., and Tecnodiffusione s.p.a.). For CTO s.p.a. and Finmatica s.p.a., in addition to being unable to issue an opinion in view of uncertainty as to whether the company would remain in business, the external auditors disagreed with some of the accounting standards applied by the directors and reported limitations on the audit; for CTO s.p.a., the external auditor also qualified its opinion owing to uncertainty with regard to the valuation of some specific items of the financial statements.

The external auditors qualified their opinions with regard to the accounting standards applied in seven cases.

In the case of CTO S.p.A., the qualifications concerned the failure of the accounts to record the loss incurred on foreign exchange derivative contracts that did not serve to hedge specific risks. The auditor deemed this omission not to be correct since, although the directors had contested the legitimacy of the contracts, the court case that might have led to the annulment of their effects had not begun. In addition, the auditor took the view that the provision for loan losses was not sufficient to cover all the foreseeable writedowns.

In the case of Digital Bros. s.p.a. the auditor considered that the contributions made by the company to cover the losses of a subsidiary did not increase the value of the equity investment but merely restored its original value. Accordingly, in its opinion they should have been accounted for as operating costs for the year.

In the case of Finmatica s.p.a. the auditor's qualifications concerned the failure to write down equity investments and mistakes found in the

calculation of the amortization of the consolidation differences for the year.

In the case of S.S. Lazio s.p.a. the auditor's qualifications concerned the company's failure in the current year and in prior years to set amounts aside under "Provisions for liabilities and charges" for fines in respect of unpaid taxes.

In the case of Pagnossin s.p.a. the auditor's qualifications concerned the inclusion of deferred tax assets in the financial statements, in view of the company's operating and financial difficulties and the consequent uncertainty regarding the real possibility of realizing the related tax benefits.

In the case of Richard Ginori s.p.a. the auditor considered, on the basis of the checks carried out on the company's stocks and the related turnover rates, that the amount set aside for writedowns was insufficient. In addition, the auditor disagreed with the inclusion of deferred tax assets in the financial statements in view of the company's and the group's operating and financial difficulties and the consequent uncertainty as to the possibility of realizing the related tax benefits; it also disagreed with the inclusion at book value of certain intangible fixed assets in view of the uncertainty regarding the possibility of recovering such amount. Lastly, the auditor qualified its opinion owing to the inadequacy of the information on a claim on a customer, with special reference to its operating, cash flow and financial data, and the lack of appropriate guarantees. The latter qualification also applied to the estimate of the recoverability of a claim on an affiliate.

Lastly, in the case of Tecnodiffusione the points with which the auditor did not agree concerned the failure to write down a claim on a third party in view of the lack of information on the financial soundness of the debtor and a claim on an affiliate in view of its operating and financial difficulties.

There were also seven cases of qualifications owing to limitations on the audit but in some cases they involved companies with respect to which the auditors also disagreed with the accounting treatment of some items (CTO and Finmatica).

In the case of CTO the qualifications concerned the lack of appropriate documentation on withdrawals from the company's accounts, which prevented the auditor from assessing their relevance to the accounts that were the subject of the audit.

In the case of Finmatica, instead, the auditor reported limitations on the audit owing to: a) the inadequacy of the documentary evidence and accounting data in respect of the R&D costs included in the accounts; b) the impossibility of doing audit work in respect of two subsidiaries; c) the failure of some banks to respond to requests for information on positions involving the company and the rest of the group; and d) the impossibility of examining the documentation of the previous auditor regarding the company's financial statements for the previous year since they had been sequestered by the judicial authorities.

In the case of Finpart the auditor reported a lack of documentation supporting the estimates made by the directors of the recoverability of a claim and of the liabilities deriving from the issue of a guarantee to a subsidiary.

In the case of Inferentia DNM the auditor reported that it had been impossible to assess the potential liabilities remaining with reference to a former subsidiary that had been placed in liquidation because it had been unable to examine the interim liquidation accounts; it also reported other limitations encountered in its examination of the company's own half-yearly report.

In the case of Innotech the limitation on the audit was due to the insufficiency, on grounds of

confidentiality, of the information the company made available to the auditor for the purpose of evaluating the fairness of the purchase price of a software product.

In the case of Necchi the auditor qualified its opinion owing to insufficient information for the valuation of an equity investment because of the unavailability of updated financial statements of the investee company and the lack of confirmation by its auditor and management.

In the case of Spoleto Crediti e Servizi the limitation on the audit concerned some adjustments to the value of securities and equity investments for which the auditor was unable to determine the part to be allocated to the fiscal year since in the previous year it had not been able to determine the value of the securities in question.

Lastly, in the case of Richard Ginori the auditor noted the uncertainty of the recovery of a claim on a customer in view of the latter's operating and financial difficulties.

There were 11 cases in which the auditor issued a disclaimer, mostly as a consequence of uncertainty as to the company remaining in business. As for the 2002 financial statements, the number appears large in relation to the total number of listed companies subject to audit (about 4 per cent).

In the case of Alitalia the uncertainty concerned the lack of a plan for the company's rehabilitation permitting financial resources to be raised in the short term that would allow the continuation of operations and doubts as to the recoverability of the amounts included for tangible fixed assets, since the application of indicators commonly used for the air transport sector gave lower realizable values than those adopted in the preparation of the financial statements.

In the cases of A.S. Roma and Finmatica the auditors disagreed with the highly uncertain and questionable basis of the plans for rehabilitating the companies' operations and finances; in that of A.S. Roma, the uncertainty also concerned the deferment to future fiscal years of the writedown of the multi-year rights in respect of players' services, since the possibility of capitalizing such costs depended on the company actually achieving its income and financial forecasts for future years.

For CTO, NGP, Pagnossin and Tecno-diffusione the auditors reported that the creditor banks had not approved either the capital increase or the debt restructuring provided for in the companies' business plans. Moreover, in the cases of CTO and Tecnodiffusione the auditors drew attention to the uncertainty as to the possibility of realizing the value of equity investments because this depended largely on the outcome of plans for the reorganization of the subsidiaries in question and on the parent company's ability to provide them with financial support.

In the case of Finpart the auditor stressed the failure to conclude agreements permitting the implementation of extraordinary corporate actions and measures of a financial nature. In the case of Montefibre the auditor found substantial claims on a company set up following a partial spin-off, whose continuation in business was in serious doubt, while for Necchi the disclaimer was due to the company's failure to find new industrial or financial partners for the revival of the group.

In the case of Olcese the auditor stressed the failure of the shareholders and/or third parties to fulfil, at the time the financial statements were prepared, the commitment to provide the company with financial support to cover losses and the financial difficulties of the company and the group. In the case of Pagnossin the auditor also drew attention to the uncertainty of the recovery of a loan to a third party, since the value of the shares

provided as collateral was exposed to risks in connection with the issuer's operating and financial difficulties, and of a loan to an affiliate, since this depended largely on the outcome of the borrower's restructuring plan.

In 2004 Consob carried out intense supervision on the auditing firms entered in its special register. At 31 December 2004 there were 20 registered firms, one less than at the end of 2003.

The Commission carried out inspections at 5 auditing firms and imposed a number of sanctions and interdictions, including four suspensions of a partner and one deletion of an auditing firm from the special register (Table aIV.6; see also Chapter VII, "Sanctions and preventive measures").

During the year the Commission received the documentation on audit engagements conferred under the Consolidated Law on Finance. This showed a further rise in the number of companies subject to statutory audit, from 1,790 for the audit of the 2002 financial statements to 2,038 for the audit of the 2003 financial statements, while the distribution of engagements among registered auditing firms remained basically unchanged. Ranked on the basis of turnover, the top four auditing firms (Deloitte & Touche, KPMG, PwC and Reconta Ernst & Young) accounted for 94 per cent of the statutory audit market in Italy.

V. MARKETS SUPERVISION

Market abuses

In 2004 Consob transmitted reports to the judicial authorities on 19 investigations of anomalies it had detected during its supervision of markets (Table V.1). In 11 cases (compared with 16 in 2003) the reports concluded that a crime might have been committed, 4 involving insider trading and 7 market manipulation. The remaining 8 reports, 2 concerning insider trading and 6 market manipulation, ruled out that a crime had been committed.

The decline in the number of reports to the judicial authorities on suspected cases of insider trading reflected both a more stringent selection of the market anomalies in light of which to open investigations and Consob's determination to draw the attention of the judicial authorities only to cases where there was incontrovertible evidence of connections between the final customers who had ordered anomalous trades and the possible sources of inside information.

In 2004 Consob sent a total of 195 requests for data and information to intermediaries, listed companies, government departments and foreign supervisory authorities (Table aV.1). The majority of these requests (101 out of 195) were made in lending assistance to foreign supervisory authorities that were investigating suspected cases of market abuse.

In two of the four reports to the judicial authorities on suspected insider trading the inside information concerned the launch of tender offers, in one case the operational and financial distress of a listed company and in the fourth case a listed company's unforeseen difficulties in selling a product in an important market (Table V.2).

Table V.1

Outcome of investigations of suspected cases of insider trading and market manipulation

	Reports submitted indicating a suspected crime [1]		Reports submitted at the end of an investigation without indicating a suspected crime[2]	*Total*
		of which for suspected cases of insider trading		
1997	19	16	33	*52*
1998	21	17	15[3]	*36*
1999	30	22	8	*38*
2000	21	17	5	*26*
2001	18	14	10	*28*
2002	16	7	9	*25*
2003	16	13	10	*26*
2004	11	4	8	*19*

[1] In 1997 and in 10 cases in 1998 the reports were transmitted under Article 8.3 of Law 157/1991, which was repealed by the Consolidated Law on Finance. [2] The figures for 1997, 1998 and 1999 include the outcomes of respectively 18 investigations, 3 investigations and 1 investigation that were concluded without the transmission of a report to the public prosecutor. Following the entry into force of the Consolidated Law, under Article 186 Consob is required to transmit a report to the public prosecutor on every investigation it carries out. [3] Of which 9 cases in which the investigation was closed before the entry into force of the Consolidated Law.

Table V.2

Types of inside information in the reports transmitted to the judicial authorities on suspected cases of insider trading

	Change of control - Tender offer	Profits and losses, assets and liabilities or financial position	Extraordinary corporate actions	Other		*Total*
					of which suspected cases of front running	
1997	7	4	2	3	--	*16*
1998	13	1	3	--	--	*17*
1999	13	4	3	2	--	*22*
2000	6	1	3	7	1	*17*
2001	9	--	2	3	2	*14*
2002	1	1	2	3	1	*7*
2003	5	2	1	5	2	*13*
2004	2	1	--	1	--	*4*

Three of the four cases of suspected market manipulation reported to the judicial authorities concerned operational manipulation and the fourth the spreading of false information.

The cases of operational manipulation involved: a high volume of purchases made over a span of about 10 days with the aim of driving the price of a listed share to a given level; the purchase of substantial quantities of a listed share in the closing auction of the last days of four different months, so that the security's closing price and reference price were higher than its last price in continuous trading in each of the four days; and virtually daily purchases of a listed share carried out over a period of more than four months in continuous trading and in the closing auction, in order to cause its price to rise.

Two of the cases of informational manipulation concerned the dissemination of information on the operational and financial situation of listed companies, including by means of mandatory accounting documents and official press releases. One of the two remaining cases involved the persistent spreading of reports about the ostensible interest of unnamed investors in acquiring an equity interest in a listed company, the other the spreading of reports about a failing corporate group having massive amounts of financial resources deposited with foreign financial institutions.

In all, 19 persons were reported to the judicial authorities on suspicion of insider trading and 7 on suspicion of market manipulation, for a total of 32 (Table aV.2).

As in 2003, market data were analyzed to detect potential anomalies using the Integrated Automatic System of Market Supervision..

The system operates on the basis of four financial variables: daily returns; daily volumes; static concentration (entropy), which examines the market's structure, checking, among other things, for the presence of dominant positions; and dynamic concentration (dissimilarity), which examines the evolution over time of individual intermediaries' transactions, highlighting their significant variations. Analysis of the performance of these variables (so-called alerters) makes it possible to detect possible anomalies (alerts) whose joint interpretation may provide a signal of potential cases of market abuse (warning).

With regard to static concentration, possible anomalies are indicated by signals generated by three pre-alerters keyed to intermediaries'

purchases, sales and gross transactions. For dynamic concentration, the signals of anomaly are triggered by three pre-alerters keyed to intermediaries' purchases, sales and net transactions.

By means of a series of stochastic differential equations, the system calculates, in every session and for each security, a range within which the individual alerters should move. If an alerter takes on a value outside the expected range, a possible anomaly is signaled. For static concentration and dynamic concentration, the alert is triggered if an anomaly is shown by at least one of the three pre-alerters. By contrast, a warning is triggered when at least three of the four alerters signal an alert.

The functions added to the Integrated Automatic System of Market Supervision in 2004 include the identification of intermediaries and their relative importance in generating anomalies for each of the pre-alerters of static and dynamic concentration. These data are then used as indicators of the behaviour of intermediaries during the examination of the warnings on securities generated by the system on a daily basis.

Concerning the investigations conducted by the judicial authorities acting on reports from Consob, in 2004 Consob was notified of 3 dismissals (in one case partial) at the conclusion of the preliminary investigations of suspected cases of insider trading and market manipulation (Table V.3).

Table V.3

Outcome of reports submitted to the judicial authorities on suspected cases of insider trading and market manipulation

	Dismissal	Partial dismissal	Indictment	Plea bargain	Conviction	Acquittal	Ruling of no grounds	Ruling of limitation of actions	*Total*
1991-1997	7	--	5	2	2	--	--	--	*16*
1998	4	--	1	1	--	--	--	--	*6*
1999	10	1	2	1	--	1	1	--	*16*
2000	6	4	2	3	--	--	--	1	*16*
2001	12	1	3[1]	2	1[1]	--	--	--	*19*
2002	10	--	2	--	2[2]	--	--	2	*16*
2003	16	--	--	--	--	--	--	1	*17*
2004	2	1	3	--	1	--	--	--	*7*

[1] The decision of the first-level court was appealed. [2] Some of the accused were acquitted. One of the decisions was appealed but upheld by the Supreme Court.

On 16 February 2004 the Brescia Court handed down a conviction for the crime of insider trading against a person who, possessing inside information concerning a decision to make a tender offer for all the shares of a listed company by means of a special-purpose vehicle whose board of directors the defendant was to chair, purchased a substantial quantity of those shares in the period immediately preceding the publication of the press release on the launch of the tender offer. The defendant subsequently sold the securities, realizing a capital gain of about €160,000.

The Court found that the crime in question had been committed insofar as the accused had bought the listed shares " ... exploiting the news – that he himself had originated – of the forthcoming launch of the tender offer by the company…. In the light of the documentation acquired and the

testimony given during the investigation, it is evident that at the time he made the purchases ... the financial transaction for the acquisition of the (listed company), although not yet official or even rumoured to be official, had already basically gone through in its essential terms even if it had not been completely formalized ...".

In handing down this judgment, the Court sentenced the defendant to imprisonment for a term of six months and a fine of €100,000, with the accessory penalties of prohibition from holding public office or executive office in legal entities or firms, ineligibility to contract with governmental bodies for one year and payment of the costs of the trial. The ruling was appealed.

Insider trading was also the subject of an important ruling by the Constitutional Court, which – in Decision 382/2004, filed on 14 December – declared some questions regarding the constitutionality of Article 180 of the Consolidated Law on Finance to be inadmissible.

In virtually identical ordinances, the Court of Rome and the Court of Siracusa had raised the question of the legitimacy of Article 180 of the Consolidated Law on Finance in the light of Articles 3 and 25 of the Constitution, insofar as Article 180 "does not provide sufficiently precise parameters to establish when the influence of the implicated behaviour on the price of the securities is to be considered 'significant'". According to the judges who referred the matter, the legislative formula contained in Article 180.3 of the Consolidated Law - which implies that "inside information is specific information, having a precise content and not available to the public, concerning financial instruments or issuers of financial instruments which, if it were made public, would be likely to have a significant influence on their price" - " ... does not identify the abstract case of the crime precisely and thereby permit the interpreter to express a judgment as to the correspondence between the abstract case and a particular case on the basis of verifiable evidence especially as regards the requirement that the information, once rendered public, be likely to have a 'significant' effect on the price".

In its ruling, the Constitutional Court rejected the question as inadmissible. In particular, the Court observed that "in denouncing the lack of a precise definition of the crime referred to in Article 180 of the Consolidated Law owing to the generic nature of the requirement that the inside information be likely to have a significant influence on the price of financial instruments, [the judges who referred the question] did not specify the sufficiently precise parameters that ought to be introduced, thereby postulating a 'filling in' of the content of the provision, an operation which by virtue of its openly creative nature plainly is not within the powers of this Court and can only be entrusted to Parliament".

The Constitutional Court added that "the matter whose constitutionality is under review will in fact be re-examined by Parliament ... in the context of the implementation of two Community directives: Directive 2003/6/EC ..., the 'Market Abuse Directive', and Directive 2003/124/EC, implementing the Market Abuse Directive".

In particular, as the Court emphasized, Article 1 of the latter directive contains "additional indications intended to clarify the definition [of inside information, contained in the Market Abuse Directive] with regard to the 'precise nature' of the information and the requirement of the significance of its potential impact on the prices of the financial instruments or financial derivatives involved".

Under Article 187 of the Consolidated Law on Finance, in penal proceedings for the

offences of insider trading and market manipulation involving financial instruments Consob exercises the rights and powers that the Code of Penal Procedure attributes to the entities and associations representing the interests injured by the offence. In 2004 Consob acted in such capacity in a penal proceeding for insider trading (Table V.4).

In two other proceedings, in which the defendants were charged with the crime of market manipulation referred to in Article 2637 of the Civil Code, Consob applied to recover damages as an injured party (Article 185 of the Penal Code).

For some time now court decisions have upheld the right and interest of representative entities to apply to recover damages as an injured party where "the injured interest coincides with a subjective right of the entity, enshrined in its bylaws as the reason for its existence and activity, so that between the criminal offence and the injury of that right of the entity there is an immediate and direct causal relationship " (Milan Court, 6 July 1998). This right and interest has been recognized in general and in all the cases in which the injured interest coincides with a subjective right of the association and, therefore, "even if the injury is to the interest pursued ... by the association, enshrined it its bylaws as the reason for its existence and activity and as such an object of an absolute and essential right of the entity; this both because of the identification between the entity and the interest pursued, and because of the incorporation between the members and the association, so that the latter, in view of the affectio societatis *towards the chosen interest and the prejudice thereto, suffers an injury and hence non-pecuniary harm as a result of the crime" (Supreme Court, Penal Proceedings, VI Section, 1 June 1989 - 10 January 1990, No. 59).*

Table V.4

Consob interventions in criminal trials concerning insider trading and market manipulation

	Number of cases	Crime [1]	Outcome at 31 December 2004
1996	1	Insider trading	Plea bargain
1997	1	Insider trading	Dismissal for limitation of actions [2]
	1	Insider trading	Acquittal
	1	Insider trading	Plea bargain
1998	1	Insider trading and market manipulation	Dismissal for limitation of actions
1999	1	Insider trading and market manipulation	Plea bargain for 4 defendants; conviction for two defendants
2000	1	Insider trading and market manipulation	Dismissal for limitation of actions [3]
	1	Market manipulation	Pending [4]
2001	3	Market manipulation	1 conviction; plea bargains in the other 2 cases
	2	Insider trading	1 conviction; 1 dismissal for limitation of actions
2002	2	Insider trading	1 pending; 1 dismissal for limitation of actions
2003	1	Insider trading	Pending
2004	1	Insider trading	Pending
	2	Market manipulation	Pending [4, 5]

[1] Insider trading: Article 2 of Law 157/1991, now Article 180 of Legislative Decree 58/1998; market manipulation: Article 5 of Law 157/1991, now Article 2637 of the Civil Code. [2] Proceedings are still pending for other suspected offences. [3] The proceedings had already begun in 1998, but following the re-opening of the preliminary investigation phase it was necessary to initiate them again in 2000. [4] In these proceedings Consob applied to recover damages as an injured party. [5] One of these proceedings was also initiated for false corporate disclosures and obstructing the public authorities in the performance of their supervisory functions (Article 2638 of the Civil Code).

According to the Supreme Court, where the crime results in "an injury to a subjective right inherent in the specific purpose pursued", there are also grounds for assuming "an injury to the entity's personality and the consequent right ... to act for compensation for the moral and material injury resulting from the direct and immediate offence to the association's 'corporate purpose'" (Supreme Court, Penal Proceedings, III Section, 9 July 1996, No. 8699).

Since Consob's legal purposes include the protection of the efficient functioning of the market, which constitutes the legal asset injured by the crime of market manipulation involving financial instruments, Consob is fully legitimated to apply to recover damages for the pecuniary or non-pecuniary harm suffered.

It should be added that in one of the two proceedings in which Consob applied to recover damages as an injured party, the defendants were charged not only with market manipulation but also with the crime provided for in Article 2638 of the Civil Code ("obstructing the public authorities in the performance of their supervisory authorities").

The provision in question punishes false corporate disclosure (i.e. reporting untrue information or concealing true information) concerning the profits and losses, assets and liabilities or financial position of persons subject to the supervision of public authorities (Consob, the Bank of Italy, the Antitrust Authority, etc.) and conduct of whatever kind, including failure to transmit notifications required by law, that obstructs the functions of those authorities.

The provision (whose direct precedents are the repealed Articles 171 and 174 of the Consolidated Law on Finance and Article 1/3, last paragraph, of Law 216/1974) safeguards the correct performance of the tasks assigned by law to the supervisory authorities, whose functions are seriously compromised when persons required to disclose information to them communicate false data or information or otherwise hinder or obstruct the performance of those functions.

It is necessary to consider that if an authority lacks reliable and complete information on the persons subject to its supervision it is unable, in the exercise of its technical discretion, to make a prompt assessment of the most suitable forms of action and measures to protect investors and the market. By diverting the protective and supervisory functions for which Consob is responsible, the above-mentioned types of obstructive behaviour result in an injury to Consob by preventing it from exercising the powers assigned to it by law for the protection of investors and the market and adding to the costs of administrative controls, which are made extremely laborious by the obstructionistic behaviour of the persons subject to supervision.

Accordingly, the Commission, the party offended by the crime provided for by Article 2638 of the Civil Code, applied to recover damages as an injured party for the pecuniary and non-pecuniary harm suffered as a consequence of the unjust injury arising from the behaviour punished by Article 2638 of the Civil Code to the correct performance of the supervisory functions assigned by law primarily or exclusively to Consob.

The operation of regulated markets and alternative trading systems

In 2004, pursuant to Articles 63.2 and 63.3 of the Consolidated Law on Finance, the Commission approved amendments to the rules of the markets organized and operated by Borsa Italiana and the rules of the Nuovo Mercato.

In May Consob approved the amendments to the rules of conduct for market intermediaries. The changes concerned Borsa Italiana's interventions on trading, particularly the possibility for market intermediaries to trade securities or arrange to have them traded when the securities have been suspended from trading.

The rules of the markets organized and operated by Borsa Italiana and the rules of the Nuovo Mercato established that if a security was suspended from trading in a market operated by Borsa Italiana market intermediaries were not permitted to trade that security or arrange to have it traded without the prior authorization of Borsa Italiana. The instructions to the rules established that in case of a suspension lasting longer than one day Borsa Italiana could authorize transactions where they served to close options contracts previously concluded in the markets, informing the market of such transactions. The rule changes in this regard concern the distinction between "suspensions for a fixed period" and "suspensions for an indeterminate period". The former are applied when there are informational asymmetries that could abet insider trading and are usually of short duration. The latter are intended to exclude trading in securities issued by a company in operational and financial distress; ordinarily they are imposed because of lack of information on the developments of the situation and on the issuer's future business plans, and are therefore usually of long duration. Consequently, as things now stand intermediaries may not trade, or arrange to have traded, financial instruments that Borsa Italia has suspended from trading with what are explicitly fixed-term measures. In such circumstances Borsa Italiana can authorize trading on the basis of objective criteria established in the instructions. In particular, for fixed-term suspensions lasting more than one day, Borsa Italiana, at the reasoned request of the intermediary, will authorize every transaction designed to ensure the performance of an enforceable obligation to purchase or sell financial instruments, where the obligation is shown by a contract concluded before the adoption of the suspension measure.

Amendments were also approved to the market rules and accompanying instructions of the MOT electronic bond market, for the creation of a microstructure similar to that of the MTA share market and the migration of MOT trading to the share market's technological platform.

Accordingly, the MOT market will have the following microstructural features: a) adoption of a single auction phase at the start of the session (opening auction) and elimination of the preliminary and definitive auction phases; b) possibility of introducing a closing auction phase; c) possibility of trading the financial instruments listed on MOT with a single trading procedure (auction or *continuous trading) or more than one procedure (auction* and *continuous trading); d) adoption of rules for orders similar to those of the MTA market; e) introduction for iceberg orders of a minimum value for the order displayed; f) possibility of entering cross-orders during continuous trading, provided they reflect third parties' orders and that the price is between the best bid price and the best ask price; g) introduction of rules for automatic trading controls similar to those on the MTA market (limits*

on the variation in the prices of orders and contracts); h) adoption of a notion of control price similar to that of the share market (i.e. reference price in the opening auction and opening price in the subsequent phases of trading); i) introduction of the notion of reference price as the price of the last 10 per cent of trades concluded in the session; l) adoption of the notion of official price used by the share market; m) introduction on MOT of the central counterparty system to guarantee the final settlement of transactions concluded from the date established in a specific Stock Exchange notice; and n) presence of specialists for trading bonds belonging to certain market segments (liquidity support can be performed by the issuer and an intermediary designated by the issuer and can involve both newly admitted and previously listed securities).

In May Consob also approved the amendments to the market rules and the accompanying instructions concerning the timetable of the buy-in procedure on MOT and the buy-in and sell-out procedures on EuroMot.

The change is intended to harmonize the timetable for the activation and execution of the buy-in procedure with that established on other bond markets and on the basis of the new ISMA rules (for OTC contracts) that set: a) 10.00 a.m. of the third day following the original settlement date as the time limit after which the performing counterparty may activate the buy-in; b) from the fifth to the third day following the transmission of the buy-in notice as the time limit for executing the buy-in. The time limits for activating and executing the buy-in procedure were therefore reduced. The rules on the time limits for the sell-out procedure remain unchanged. A reduction in the time limits for activating and executing the buy-in procedure is also implemented for contracts concluded on the EuroMOT market that are not settled within the time limits prescribed by the rules; the time limit after which the performing counterparty may activate the buy-in procedure is moved up from the sixth day to 10.00 a.m. of the third day following the original settlement date, while the execution of the buy-in is moved up to the third day following the transmission of the buy-in notice.

Lastly, some changes were made to the stock exchange market rules and the accompanying instructions and to the rules of the Nuovo Market, with a view to describing in greater detail the adjustments following extraordinary corporate actions to transactions not settled owing to lack of securities or cash.

In September Consob approved some amendments to the rules of the markets organized and operated by Borsa Italiana and the accompanying Instructions concerning the introduction of specialists on the MTA electronic share market.

The new provisions allow issuers to appoint a specialist to support the liquidity of listed financial instruments belonging to the blue-chip segment (provided the companies are not included in the S&P/Mib or Mib30 indices) and the liquidity of shares belonging to the ordinary segment. In the latter case, the securities served by a specialist are automatically included in class 1 of the ordinary segment even if they do not satisfy the requirements established by the instructions. Specialists on MTA are required to display bids and offers continuously on the trading book from 15 minutes before the end of the opening pre-auction phase. Until the specialist has reached the daily quantity (established in the Instructions in relation to the average daily turnover in the instrument during the previous six months), it is required to re-enter bids and offers within 10 minutes of the conclusion of a contract as a result of their execution in the electronic system. In

addition, MTA specialists: a) may not belong to the group headed by the issuer or to which the issuer belongs; b) will be subject to supervision by Borsa Italiana with regard to market conduct and compliance with the obligations of specialists, and subject to the same sanctions as other intermediaries for violations of the rules or the instructions and to the specific sanctions established for specialists already operating on the various markets or market segments (suspension, reduction or revocation of the decreases in fees for trading services); and c) must display bid and ask prices continuously in the trading book that do not diverge by more than a percentage established by Borsa Italiana in the instructions (in particular, the spreads, calculated as the ratio between the bid and ask prices to half their sum, diminish significantly as turnover increases, falling from a maximum of 5 per cent for average daily turnover of up to €10,000 to a minimum of 0.5 per cent for average daily turnover of more than €10 million), thereby ensuring a continual presence in the trading book.

As regards the IDEM derivatives market, the most important amendments to the rules and the instructions concern the introduction of the new S&P/Mib index futures contract, the introduction of specialists and the change in the minimum spread between bid and ask prices displayed in the trading book.

In February Consob approved the changes regarding the introduction of futures (including "mini-futures") and options on the S&P/Mib index, to replace those on the the Mib30 index. The provisions governing S&P/Mib index futures are similar to those for Mib30 index futures and options as regards the rules for handling orders on the contract's expiry day, block trades, the presence of automatic trading controls, trading hours, operational strategies for standard combination orders and the obligations of market makers. In advance of the introduction of the derivative contracts on the S&P/Mib index in March, Borsa Italiana had stopped introducing maturities on Mib30 index futures and options subsequent to September 2004. Between March and September 2004 it was therefore possible to trade futures, mini-futures and options on the Mib30 index and on the S&P/Mib index; the transitional phase ended on 17 September, with the maturity of the last series of Mib30 index derivatives. Currently, trading is limited to derivatives on the S&P/Mib index. However, Borsa Italiana continues to calculate the value of the Mib30 index for purely informational purposes. The composition of the S&P/Mib index is based on the free float and liquidity of its component securities and the representation of the main market sectors. The S&P/Mib index covers about 70 per cent of the shares in the Italian market (counting both those listed on the Stock Exchange and those listed on the Nuovo Mercato) and, unlike the Mib30 index, does not have a fixed number of components (see chapter II, "Markets")

In October the amendment concerning the introduction of specialists on the IDEM market was approved. The liquidity of IDEM is ensured by the presence of market makers who make bids and offers and whose activity Borsa Italiana defines as being for own account. The introduction of specialists increases the number of intermediaries supplying liquidity, allowing specialists to act as market makers, not for own account but through other companies belonging to their group provided such companies are authorized to engage in trading in their home country.

In May 2005 Consob approved the changes made by Borsa Italiana to the minimum ticks for the prices of orders for stock futures with the aim of reducing the minimum spread between the bid and ask prices in the trading book.

As regards the covered warrants market, in April Consob approved the market's change of name and in October the conditions for admission to listing of covered warrants with a maturity over more than five years.

Borsa Italiana renamed the electronic covered warrant market the "electronic securitized derivatives market (SeDeX). The change was intended to avoid a strict association between the name of the market and the definition of a single financial instrument, covered warrants, traded on the market.

The rules of the markets organized and operated by Borsa Italiana were amended to allow the admission to listing of covered warrants with a maturity of more than five years. Borsa Italiana established that a reasoned request by the issuer and the existence of sufficient information to determine the price of the instrument were conditions for the admission to listing of such instruments.

In May, having received the Bank of Italy's agreement, Consob approved some changes to the rules of the wholesale market for private-sector bonds and securities issued by international organizations with national memberships operated by MTS S.p.A. In addition, Consob provided its opinion to the Ministry for the Economy and Finance regarding amendments to the rules of the wholesale market in government securities and the BondVision market in government securities operated by MTS S.p.A.

In May the Commission also approved some amendments to the rules and accompanying instructions of the market organized and operated by Tlx S.p.A. The principal change allowed instruments issued by supranational organizations in which at least one European Union country is a member to be admitted to trading without a new listing prospectus.

During the year the Commission recognized three non-EU markets pursuant to Article 67.2 of the Consolidated Law on Finance: three electronic derivatives markets, with registered office in the United States: Eurex US, e-cbot and Globex, operated respectively by the US Futures Exchange, L.L.C., the Board of Trade of the City of Chicago, Inc., and the Chicago Mercantile Exchange, Inc.

Recognition was granted at the conclusion of examination procedures in which Consob checked that the information on the financial instruments and issuers, the price formation mechanisms, the contract settlement procedures and the rules for the supervision of markets and intermediaries were equivalent to those provided for by the legislation in force in Italy and able to ensure adequate investor protection.

As a consequence of recognition, Italian intermediaries and banks can obtain remote access to the above-mentioned markets. Some intermediaries availed themselves of this possibility, notifying Consob pursuant to Article 18-*bis* of Consob Regulation 11768/1998 on markets of the creation of electronic links by means of which to enter trading orders directly.

During 2004 Consob took note of the inactivity of the foreign market named Cantor Financial Futures Exchange, which it had recognized in 2000.

With regard to alternative trading systems, as in 2003 new organizers launched alternative systems and there was a further increase in the types of financial instruments offered to customers for trading.

The flow of reports due under the trading transparency requirements was appropriate, showing that system organizers had successfully installed the applications software needed to satisfy the quarterly reporting obligations introduced in 2003.

In December Consob took supervisory action with regard to alternative trading systems, prohibiting trading in unlisted financial instruments not widely distributed among the public on a trading system organized and operated by an entity other than an authorized intermediary. In particular, the Commission had found that the system, as regards unlisted securities not widely distributed among the public, did not satisfy the essential requirements of transparency and regularity of trading that must characterize an alternative trading system.

Clearing, settlement and central depository services

In July Consob transmitted its opinion to the Bank of Italy concerning amendments to the operating rules of the settlement and accessory services run by Monte Titoli S.p.A.

Most of the amendments were made necessary following the completion of the start-up phase of the Express II settlement service. The most significant change regards the introduction of a system of penalties imposed by Monte Titoli for transactions not settled at the end of the gross settlement procedure on the settlement day owing to lack of securities or cash. The change, studied by the Express Users Group, which continued the work of the former Express II Task Force concerning the phases immediately preceding and following the entry into operation of the new settlement platform, was made necessary by the lapsing of the six-month limitation period established by the settlement services operating rules during which Monte Titoli S.p.A. was entitled not to apply penalties following the start-up of the net settlement service.

In July Consob transmitted its opinion to the Bank of Italy concerning amendments to the rules of the guarantee systems operated by Cassa di Compensazione e Garanzia S.p.A. for transactions in financial instruments.

Among these amendments, it is worth noting the provision establishing a default fund to which direct participants alone will contribute and dedicated only to the MTS bond segment, similar to the fund that already exists for the share and derivatives segments. In addition, in light of the presence of another central counterparty in MTS (LCH Clearnet S.A.), the principle of the non-transferability between central counterparties of the costs of a default has been adopted. Under this rule, under no circumstances can a central counterparty be called on to incur outlays in the case of a default by a participant of another central counterparty.

VI. SUPERVISION OF INTERMEDIARIES

Banks, investment firms and stockbrokers

In 2004 Consob carried out intense supervision of financial intermediaries, which often led to enforcement activity in relation to practices and procedures that did not conform with the rules on the provision of investment services.

The large increase in activity is also related to the substantial rise in the number of complaints lodged by investors concerning investment services. In 2004 Consob received some 5,300 such complaints, compared with about 3,000 in 2003 (Table VI.1). The sharp upturn is evidence of an increase in client dissatisfaction and disputes with intermediaries; these frequently involved a limited number of cases that Consob subsequently investigated in depth.

Table VI.1

Complaints lodged by investors concerning investment services

	Subject of complaint														
	Trading and reception of orders					Portfolio management				Placement and door-to-door selling					*Total*
	Failure to provide prior information on financial instruments	Fees	Unsuitable transactions without customers' prior consent	Execution of orders	Other	Failure to provide prior information on the service	Failure to comply with the contract/management rules	Unsatisfactory rates of return	Other	Allotment of quantity ordered	Description of products/services	Execution of instructions	Suspected unauthorized activity	Other	
2000	46	5	26	93	68	17	57	11	27	7	22	4	1	13	*397*
2001	38	1	65	109	29	27	152	19	238	1	47	38	25	28	*817*
2002	322	5	53	194	72	27	99	40	114	17	40	39	1	7	*1,030*
2003	2,195	3	66	434	111	44	110	30	22	2	145	9	2	4	*3,177*
2004	3,475	18	476	83	524	182	49	20	285	--	247	18	--	6	*5,383*

Last year Consob paid considerable attention to evaluating intermediaries' conduct in selling corporate bonds to their customers.

These evaluations were based on the results of demanding and particularly complex inspections.

In 2003 the Commission had launched 6 inspections at leading Italian banking groups and in another 4 cases had asked the Bank of Italy to investigate matters within Consob's sphere of competence. In 2004 it launched inspections at 2 banks and 1 asset management company (Table aVI.1).

The complexity of the cases and the nature of the conduct under investigation influenced not only the types of analyses to be carried out and the techniques to be used but also the checks to be made in the subsequent phase of the inspections and the handling of the findings.

The difficulty of carrying out the inspections made it necessary to use particularly complicated and diversified analytical methods, according to the nature of the phenomena to be investigated and the aims to be achieved; additional supervisory action was often necessary after the inspections had been completed.

Overall, in 2003 and 2004 inspections regarding the sale of corporate bonds were carried out at virtually all the leading Italian banking groups; taken together, these groups accounted for approximately 67 per cent of the securities held for safekeeping and individual portfolios under management by the banking system.

As regards the Cirio affair, Consob launched and, where this fell within the scope of its authority, completed sanction procedures against corporate officers of the ten banks inspected (see also Chapter VII “Sanctions and Precautionary Measures”).

The banks were selected by identifying those that were the largest “net sellers” of the bonds in question to retail investors (accounting for approximately 70 per cent of total trading) and considering the “qualitative” aspect consisting basically in the placement of the bonds directly or through other companies belonging to the same group.

The wide-ranging investigation brought to light numerous problems in relation to trading, notably on the grey market, with non-professional investors, involving securities (such as the bonds in question) without a rating and for which the law currently in force does not require the preparation of a prospectus. In fact, where other operators or the market do not provide information on (or valuations of) financial instruments, the role of the intermediary required to give clients adequate information becomes all the more important and delicate.

Although the investigations were undertaken in response to the Cirio affair, they revealed problem areas going beyond that case and typical of the way intermediaries provided investment services. In particular, they brought to light procedural shortcomings and weaknesses that were capable of producing their effects regardless of the specific type of instrument traded.

Consob’s supervision of intermediaries is based on a transversal approach involving an analysis of the ability of their procedures and organizational structures to ensure compliance with the rules of conduct. When anomalies of a procedural or organizational nature are found, they are potentially capable of undermining an intermediary’s transactions with clients no matter what the financial instrument.

This model of supervision, which also determined the form of the above-mentioned inspections, is therefore not based on individual “cases” or “products” but intended to evaluate the procedures and organizational arrangements of entities subject to supervision in a transversal and general manner.

Other problem cases involving large numbers of savers (notably the sale of bonds issued by the Republic of Argentina) were therefore tackled with a view to determining

the existence of procedural shortcomings at the intermediaries concerned.

In the case of the Republic of Argentina bonds, the checks focused primarily on some large intermediaries that, on the basis of quantitative indicators and the number of complaints Consob had received from investors, could be considered as having played a particularly important role. The investigations proved difficult owing to the size of the intermediaries and their branch networks and because of the company reorganizations and corporate restructurings carried out in the period in which the Republic of Argentina bonds were sold.

In light of the findings of the investigations letters were sent to corporate officers (directors, members of the board of auditors, general managers, heads of operational departments, and persons responsible for the internal control function) charging them with shortcomings in internal procedures (in violation of Article 56 of Consob Regulation 11522/1998 on intermediaries), insufficient knowledge of the financial instrument traded (in violation of Article 26.1e) of the regulation), insufficient information provided to clients on the nature and risks of the transactions (in violation of Article 28.2 of the regulation), inadequate evaluation of the suitability of orders given by clients (in violation of Article 29 of the regulation), and insufficient disclosure of conflicts of interest as a result of the participation of the intermediary or another company belonging to the same group in underwriting syndicates for the securities in question or as a result of the bank financing the issuer of the securities sold to clients.

After examining the arguments of fact and law put forward by the defendants, Consob submitted proposals to the Ministry for the Economy and Finance at the close of the proceedings falling within its authority for the imposition of administrative fines for each of the accused (see also Chapter VII "Sanctions and Precautionary Measures").

In 2004 Consob also commenced and terminated an enforcement proceeding with regard to a bank's operations in providing investment services to retail clients.

The supervisory activity was directed at transactions of two main types: a) so-called financial plans, which provided for the bank to grant loans to clients to be used for the purchase of financial instruments; and b) structured products that involved the simultaneous conclusion of transactions involving government securities and derivative contracts, whereby clients simultaneously purchased government securities and sold put options.

The analysis of these transactions showed that they were highly complex and opaque, to the point that clients were likely to have difficulty in understanding the risks and returns involved. It was found that both the financial plans and the structured products were suitable for clients with a high risk propensity because the leverage produced by the loan or the sale of a put meant that redemption of the capital invested was not guaranteed. It was also found that the bank had adopted a highly aggressive marketing policy, allowing it to achieve large volumes of sales.

This conduct violated numerous rules of the legislation governing the financial sector. In particular the violations concerned: a) the principles of diligent and proper conduct and of acting in the interest of the client; b) the inappropriateness of the procedures used in the provision of investment services; c) shortcomings in the internal control function; d) insufficient knowledge of the investment transactions proposed

to clients; e) insufficient information provided to clients on the nature and risks of the transactions; f) inadequate evaluation of the suitability of transactions carried out on clients' behalf; and g) failure to comply with the rules on best execution.

After examining the arguments of fact and law put forward by the defendants, Consob submitted proposals to the Ministry for the Economy and Finance at the close of the proceedings falling within its authority for the imposition of administrative fines for each of the accused, who numbered approximately 40 in total.

In parallel with the enforcement proceedings, Consob took steps to monitor the implementation of the procedural improvements it indicated to be necessary.

During the year the Commission carried on its customary activity of keeping the register of investment firms. The number of registered intermediaries continued to fall, owing in part to the increasing concentration of the sector as a consequence of mergers and in part to the transformation of investment firms into banks. At the end of 2004 there were 115 registered investment firms, as against 131 at the end of 2003 (Table aVI.2).

During 2004 Consob sent the Ministry for the Economy and Finance its opinion for matters falling within its sphere of competence on a draft amendment to the bylaws of the National Investor Compensation Fund. It also expressed an opinion on the annual update of the financing plan for the Compensation Fund's special operations for insolvencies initiated before 1 February 1998.

The Compensation Fund continued its operations under Article 59 of the Consolidated Law on Finance with regard to insolvencies in which the statement of liabilities was filed on or after 1 February 1998 (Table aVI.3). In particular, the Fund intervened in 19 insolvencies (11 investment firms and 8 stockbrokers). The Fund's special operations, financed in part by the Ministry for the Economy and Finance and governed by the rules predating the Consolidated Law, concern 25 insolvencies in which the statement of liabilities was filed before 1 February 1998.

Asset management companies

During the year Consob embarked on the first stage of the implementation of a model of computerized supervision intended to monitor asset management companies on a continuous basis and to signal anomalies in their conduct and procedures in relation to the provision of investment services.

The model provides for the processing of three types of information (concerning portfolio management techniques and style; the structure and evolution of profitability and assets and liabilities; and asset management companies' organization and procedures) and their analysis on an integrated basis in order to identify conduct that does not conform with the general principles of correctness and transparency established by statutory and regulatory provisions.

As regards transparency supervision, in 2004 Consob paid particular attention to the growth of closed-end investment funds and, within this field, to that of real-estate funds.

Investigative activity brought to light some problems in connection with the information to be provided in the prospectuses to be prepared for collective investment undertakings of these types. In particular, problems were found and overcome concerning: the manner of making contributions to funds (e.g. the description of conflicts of interest and identification of the applicable tax regime); the special structural features of "semi-closed" funds (the net asset value – NAV – to be referred to for the subscription of units subsequent to the first issue); and the information to be published on appraisal reports on real-estate assets.

Another aspect of Consob's transparency supervision in 2004 consisted in the analysis of the increasingly frequent phenomenon of the use of different classes of units for mutual funds and different classes of shares for SICAVs, with special reference to the distribution in Italy of foreign harmonized collective investment undertakings.

The differences in question are within collective asset management products and serve to differentiate the ways in which investors participate in their distribution in Italy. The classes are marked by different fee regimes applying to the same fund (or sub-fund) according to: *a)* the type of investor (institutional or retail) to which the investment is reserved; *b)* the availability of additional services (e.g. the hedging of exchange risk, the right of conversion); *c)* the different ways of paying fees in relation to the presumed holding period; and *d)* the existence of incentive schemes for large subscriptions (fees related to the size of the investment).

In the examination of offerings made in Italy under mutual recognition, it sometimes proved difficult to identify the grounds for the application of different fees to different classes of units/shares. Consob therefore carried out detailed prudential supervision to ensure conformity with the principle of equal treatment of investors (Article 95.1c) of the Consolidated Law on Finance and Article 14.1 of Consob Regulation 11971/1999 on issuers). In particular, the companies concerned were asked to indicate the objective criteria used to establish the different fee regimes for the various classes of units/shares issued. In response to the objections raised, the companies also decided to include additional information in their prospectuses, so as to permit an informed assessment of the related costs when deciding on the proposed investment.

Consob also launched a fact-finding inquiry into a sample of harmonized management companies operating in Italy in order to verify the disclosure of the conditions at which units/shares are offered and the objectives to be achieved through the different classes offered.

Last year Consob completed the plan launched in 2003 for the monitoring of small and medium-sized asset management companies to verify their compliance with the rules of proper conduct. To this end Consob selected a sample of 8 companies with assets under management at 31 December 2003 of between 0.3 and 3 per cent of the total market.

The inquiry, which covered 2002 and 2003, revealed some problem areas that can be summarized as follows: a) inadequacy of second and third-level controls, which were focused primarily on administrative aspects rather than actual operational activity; b) failure to formalize or comply with the procedures adopted for investment decision-making in some cases and the recording of orders in others; c) limited front-office computer applications used for both individual and collective portfolio management; and d) variability of the structure of income owing

to the major role played by incentive fees and a tendency, in view of the large number of soft commission contracts, to engage in conduct potentially in conflict with the interest of investors.

In 5 cases Consob convened the board in order to convince the directors of the asset management companies concerned to examine Consob's findings and identify the organizational resources and procedural changes needed to overcome the shortcomings. In 3 cases Consob also decided to carry out an inspection.

As in 2003, last year Consob considered it advisable to focus on asset management companies' investment policies in relation to corporate bonds.

Table VI.2

Corporate bonds in individual and collective portfolios managed by asset management companies [1]
(at 30 June; amounts in millions of euros)

	Individual portfolios		Open-end collective investment undertakings (Asset management companies and SICAVs)		*Total*	
	Amount	As a % assets under management	Amount	As a % assets under management	Amount	As a % assets under management
2003	3,352	1.3	3,315	0.8	*6,667*	*1.1*
2004	4,986	2.2	2,892	0.7	*7,878*	*1.3*

Sources: Based on Consob and Bank of Italy supervisory statistical reports. Excludes bonds issued by securitization vehicles. [1] Rounding may cause discrepancies in the last figure.

The value of the corporate bonds held by asset management companies increased by about 1.2 per cent between 30 June 2003 and 30 June 2004, when the companies' net assets invested in corporate bonds amounted to approximately €7.9 billion (Table VI.2). The increase was recorded by the individual investment portfolios set up by asset management companies, whereas the investments of collective investment undertakings decreased. It should be noted, however, that the bulk of asset management companies' investments consist of bonds issued by the leading listed groups. More specifically, at 30 June 2004 about €5.5 billion consisted of bonds issued by three listed groups(Telecom Italia, Enel and Autostrade; Table VI.3). Asset management companies also showed interest in the bonds issued by Infrastrutture S.p.A. and the Italenergia and Finmeccanica groups.

Table VI.3

Corporate bonds of the main listed Italian groups held by asset management companies in individual and collective portfolios
(at 30 June 2004; amounts in millions of euros)

Main listed Italian groups	Amount held	Total as a % of 2003 consolidated financial debt
Telecom - Olivetti	2,887	7.0
Enel	1,895	8.1
Autostrade	766	8.1
Italenergia – Edison	383	8.2
Ifil – Fiat	305	1.2
Eni	255	1.5
Finmeccanica	99	3.1
Asm Brescia	75	13.5
Cir	61	3.7
Pirelli	43	1.6
Seat	28	4.4
Benetton	23	0.9
Impregilo	11	0.6
Autostrada To-Mi	7	1.3
St Microelectronics	7	0.3

Sources: Based on data derived from Consob and Bank of Italy statistical supervisory reports and *R&S 2003 Mediobanca*. Excludes bonds issued by securitization vehicles.

Turning to the corporate governance of asset management companies, following the launch of an investigation in 2003, Consob continued to analyze the structure of their boards and the presence of directors qualifying as independent, with special reference to bank-controlled asset management companies.

Analyzing the composition of the boards of the 17 largest bank-controlled asset management companies (with assets under management amounting to about €300 billion, or approximately 82 per cent of the total assets of harmonized Italian funds), many of their directors are found also to hold office in the parent bank or other companies of the banking group. Of the 161 directors considered, only 32, or about 20 per cent, were not directors in other companies of the group to which the asset management company belonged; 34 directors, or about 21 per cent, held office in the parent bank (Table VI.4).

In 2004 Consob concluded the investigation it had launched in 2003 into market timing involving units of Italian open-end investment funds. The phenomenon consists in investors buying and selling units in a short interval of time in order to anticipate the trends of financial markets (Figure VI.1). It can lead to gains for these investors, known as market timers, at the expense of long-term investors, and consequently violates the principle of equal treatment of investors.

The investigation was triggered by market timing of mutual funds in the United States, where the practice was so widespread that the Securities and Exchange Commission required management companies to introduce rules to combat it. The International Organization of Securities Commissions (IOSCO) is currently drawing up best-practice standards to combat market timing. Analyses carried out by European regulators at the initiative of the Committee of European Securities Regulators (CESR) show that the practice is less common in Europe.

The monitoring focused in particular on the procedures for receiving and recording buy and sell orders of seven asset management companies (representing approximately 25 per cent of the total Italian collective asset management market) and the transactions concluded in the period from January to June 2003 on behalf of 118 funds chosen from among those managed by the same management companies.

Table VI.4

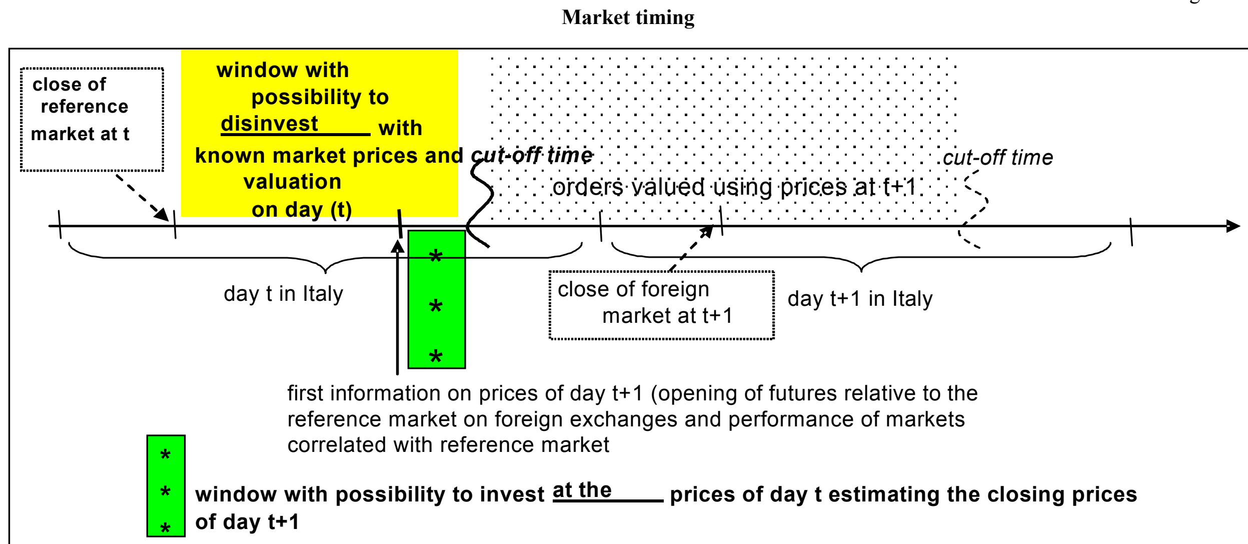
Positions held by directors of asset management companies in other companies belonging to the same group

Position on the board of the asset management company	Positions held in the parent bank					Positions held in other group companies	No position held in other group companies	*Total*
	Chairman	Managing director	Director	General manager	Manager			
Managing director						11	1	*12*
Director	2	1	7	5	15	61	7	*98*
Executive director						9	4	*13*
Independent director						1	17	*18*
Chairman	1		1	1		11	1	*15*
Chairman, executive director						2	2	*4*
Chairman, independent director	1							*1*
Total	*4*	*1*	*8*	*6*	*15*	*95*	*32*	*161*

Source: Prospectuses. Data for the 17 largest bank-controlled asset management companies in terms of assets under management (at January 2005).

Figure VI.1

Market timing



The analysis of the procedures for receiving, recording, checking and valuing orders revealed some shortcomings in the ways companies had formalized the individual phases of the process. The procedures for valuing buy and sell orders were also found not to be entirely suitable in the case of funds specializing in markets where, owing to time-zone differences, the closing time precedes the time limit for accepting orders (the cut-off time). In particular, fixing an excessively late cut-off time for orders to be valued on the same day is likely to encourage market timing, which is based in practice on forecasts of the value fund units will come to have.

To engage in market timing orders must be transmitted immediately by the placer to the asset management company or directly to same.

The examination of the transactions involving the selected funds focused on the purchases and sales concluded for an equal number of units in a short span of time and on those of the most active operators (known as frequent traders), most of which were individual nvestment portfolios. Transactions concluded by employees of the asset management companies were also monitored to identify cases of exploitation of privileged information concerning the composition of the funds' portfolios (insider dealing).

For the most part there was no evidence of transactions based on market-timing strategies or insider dealing.

Financial salesmen

As usual, supervisory action in respect of financial salesmen originated from complaints filed by investors, the outcome of inspections carried out at intermediaries, communications received from the judicial authorities or the police, and reports transmitted by intermediaries themselves.

In 2004 the number of reports of alleged irregularities by financial salesmen remained virtually unchanged (445, compared with 461 in 2003).

At 2,982 the number of new entries in the register of financial salesmen was sharply down on the previous year (4,530), while the

number of deletions was almost the same (4,644 in 2004, compared with 4,735 in 2003). Consequently, the number of financial salesmen on the register dropped from 66,554 at the end of 2003 to 64,894 at the end of 2004 (Table aVI.4).

The supervision of financial salesmen involved a high level of enforcement activity and led to the adoption of numerous sanctions (see Chapter VII "Sanctions and Precautionary Measures").

VII. SANCTIONS AND PREVENTIVE MEASURES

Measures regarding intermediaries and financial salesmen

During 2004 Consob concluded 22 disciplinary proceedings for violations of the law on the provision of investment services (Table VII.1). The Commission proposed sanctions to the Ministry for the Economy and Finance concerning 516 persons (including a stockbroker) for a total of €14.3 million.

The very substantial increase in the sanctions proposed compared with previous years and in the number of persons concerned is mainly attributable to the enforcement action taken in the Cirio case, which involved corporate officers from some of the leading Italian banking groups (see also Chapter VI "Supervision of Intermediaries").

Table VII.1

Proposed fines on intermediaries [1]
(amounts in thousands of euros)

	Number of cases					Number of persons to be fined					Amount of proposed fines				
	Banks	Investment firms	Stockbrokers	Asset management companies	*Total*	Banks	Investment firms	Stockbrokers	Asset management companies	*Total*	Banks	Investment firms	Stockbrokers	Asset management companies	*Total*
1999	23	25	3	--	*51*	71	71	3	--	*145*	647	566	120	--	*1,333*
2000	13	21	14	--	*48*	71	88	14	--	*48*	986	901	100	--	*1,987*
2001	5	10	1	--	*16*	31	52	1	--	*84*	252	860	39	--	*1,151*
2002	5	12	5	5	*27*	90	161	6	61	*318*	557	1,319	136	1,147	*3,159*
2003	7	3	1	6	*17*	114	25	3	73	*215*	1,847	172	54	369	*2,441*
2004	18	3	1	--	*22*	504	11	1	--	*516*	14,087	108	55	--	*14,250*

[1] Rounding may cause discrepancies in the last figure.

As regards banks, most of the violations, which to a large extent were reflected in charges linked to the Cirio case, concerned trading for own account (more than 1,700 infringements) and placement services (261 infringements) (Table VII.2). Again with reference to banks, the most frequent violations found were behavioural (more than 70 percent) and the corporate officers charged with them were not only board members (154 executive directors and 183 non-executive directors) but also members of the board of auditors (76), general managers (32), officers responsible for the internal control function (21) and some employees (38).

The figure for sanctions proposed for investment firms was much smaller than that for banks (little more than €100,000) and the violations in question essentially related to placement services. This can be attributed to the limited role of such firms in the activities referred to above.

Table VII.2

Proposed fines on persons working for intermediaries in 2004 [1]
(amounts in thousands of euros)

	Investment firms		Banks		Stockbrokers		Asset management companies	
	Number	Amount	Number	Amount	Number	Amount	Number	Amount
Corporate officers								
Executive directors	1	17.4	154	5,395.9	1	55.0	--	--
Non-executive directors	3	31.0	183	4,362.4	—	—	--	--
Chairman of the board of auditors	1	14.6	20	660.3	—	—	--	--
Other auditors	2	23.0	56	1,347.8	—	—	--	--
General manager	1	5.5	32	1,028.2	—	—	--	--
Controller	1	7.5	21	469.9	—	—	--	--
Employee	2	9.0	38	823.2	—	—	--	--
Total	*11*	*108.0*	*504*	*14,087.8*	*1*	*55.0*	--	--
Fines proposed and imposed in 2004 [2, 3]								
Proposed	19	108.0	117	448.7	3	55.0	--	--
Imposed	19	108.0	117	448.7	3	55.0	--	--
Type of violation [3]								
Procedural	16	95.0	515	5,216.8	2	30.0	--	--
Behavioural	3	13.0	1,426	13,033.5	1	25.0	--	--
Investment service [4]								
Placement	17	99.0	261	4,033.0	—	—	—	—
Reception of orders	--	--	44	67.1	3	55.0	—	—
Trading for customer account	--	--	229	1,454.6	2	55.0	—	—
Trading for own account	2	9.0	1,712	16,795.8	—	—	—	—
Collective portfolio management	--	--	—	—	—	—	--	--
Individual and collective portfolio management	--	--	—	—	—	—	--	--
Individual portfolio management	--	--	--	--	—	—	--	--

[1] Rounding may cause discrepancies in the last figure. [2] The figures refer only to sanctions that were actually imposed by the Ministry for the Economy and Finance as of the end of 2004. [3] The total differs from those shown earlier owing to the application of legal cumulation and the number refers to the number of violations committed. [4] The figures differ from those shown earlier as the same violation may involve more than one service.

In general about 25 per cent of the sanctions proposed for financial intermediaries (in terms of their total monetary value) concerned failure to comply with the principle that intermediaries must have resources and procedures, including internal control mechanisms, likely to ensure the efficient performance of services (Article 21.1d) of the Consolidated Law on Finance and Article 56 of Consob Regulation 11522/1998 on intermediaries) (Table VII.3). This type of violation was committed solely by banks (Table VII.4).

Turning to financial salesmen, in pursuit of its supervisory functions the Commission adopted 125 disciplinary measures and made 35 precautionary suspensions. In another 59 cases the proceedings were dropped. Consob also sent the judicial authorities 78 reports of suspected criminal offences in connection with financial salesmen’s activity (Table aVII.1).

Table VII.3

Main violations found in the course of supervision of intermediaries in 2004 [1]
(amounts in thousands of euros)

Violation	Relevant provisions	Share [2]	Amount of fines	Number of violations
Non-compliance with the principles requiring intermediaries to have resources and procedures, including internal control mechanisms, likely to ensure the efficient performance of services	Art. 21.1d) of the Consolidated Law on Finance and Art. 56 of Consob Regulation 11522/1998 on intermediaries	25	4,633.3	418
Non-compliance with the principles requiring intermediaries to act in a way that ensures customers are always adequately informed and failure to provide the information on the nature, risks and implications of specific transactions or services needed to make informed investment decisions.	Art. 21.1d) of the Consolidated Law on Finance and Art. 28.2 of Consob Regulation 11522/1998 on intermediaries	18	3,373.4	383
Non-compliance with the principles requiring intermediaries to act diligently, correctly and transparently in the interest of customers and the integrity of the markets.	Art. 21.1a) of the Consolidated Law on Finance and Art. 26.1 of Consob Regulation 11522/1998 on intermediaries	18	3,349.1	382
Non-compliance with the principles requiring intermediaries to act diligently and correctly, in relation to the carrying out of transactions not suited to the investor.	Art. 21.1a) of the Consolidated Law on Finance and Art. 29 of Consob Regulation 11522/1998 on intermediaries	8	1,471.0	216
Non-compliance with the principles requiring intermediaries to organize themselves with the aim of minimizing the risk of conflicts of interest and, where a conflict exists, to act in a way that ensures transparency and equal treatment; such non-compliance was due to the lack of controls aimed at identifying conflicts of interest, to omitted/irregular written notifications to customers of conflicts of interest, and to the incorrect use of forms.	Art. 21.1c) of the Consolidated Law on Finance and Art. 27 of Consob Regulation 11522/1998 on intermediaries	7	1,209.7	174
Total		*76*	*14,036.5*	*1,573*

[1] Rounding may cause discrepancies in the last figure. [2] Percentage of the total amount of sanctions proposed.

Table VII.4

Main violations found in the course of supervision in 2004 by category of intermediary
(amounts in thousands of euros)

Category of intermediary	Violation	Relevant provisions	Share [1]	Amount of fines	Number of violations
Stockbrokers	Non-compliance with the principles requiring intermediaries to have resources and procedures, including internal control mechanisms, likely to ensure the efficient performance of services	Article 17.1d) of Legislative Decree 415/1996 and Article 21.1d) of the Consolidated Law on Finance	45	25.0	1
Investment firms	Non-compliance with the principles requiring intermediaries to have internal control mechanisms likely to ensure the efficient performance of services, in relation to the failure to establish the internal control function or its inadequate structure, to the fact that the controllers were not free from legal relationships vis-à-vis the persons responsible for the sectors subject to control, and/or had performed their duties in a manner that was not autonomous and independent, and/or had reported on the results of their activity in a manner that was not objective and independent	Article 21.1d) of the Consolidated Law on Finance and Article 57 of Consob Regulation 11522/1998 on intermediaries	46	49.6	7
Banks	Non-compliance with the principles and regulatory provisions requiring intermediaries to have resources and procedures, including internal control mechanisms, likely to ensure the efficient performance of services	Article 21.1d) of the Consolidated Law on Finance and Article 56 of Consob Regulation 11522/1998 on intermediaries	25	4,633.3	418

[1] Percentage of the total amount of sanctions proposed for the category of intermediary.

The number of more serious disciplinary measures adopted, especially striking off, witnessed a significant increase (from 56 in 2003 to 69 in 2004), as did other less severe sanctions, including fines (up from 5 in 2003 to 7 in 2004) and letters of reprimand (up from 1 in 2003 to 3 in 2004). By contrast there was virtually no change in disciplinary suspensions (46 in 2004 compared with 47 in 2003).

The increase in precautionary measures (from 26 in 2003 to 35 in 2004) can be attributed above all to a higher number of reports of serious irregularities. In such cases, where necessary and as a matter of urgency, the Commission can suspend the financial salesman from doing business for a period of sixty days pursuant to Article 55.1 of the Consolidated Law on Finance.

As for the type of violations which led to the adoption of disciplinary measures, there was an increase in cases of suspected incorrect accounting and communications to investors claiming higher returns that those actually achieved or disguising losses, with a consequent distortion of the necessary exchange of information on which the relationship between financial salesman and client must rest.

Symptomatic of this tendency is the misappropriation of sums by financial salesmen by debiting and simultaneously crediting accounts and funds of different investors to fake the making good of losses incurred as a result of investments made through the financial salesmen.

As regards the more serious measures adopted by Consob in 2004, the following practices continue: a) obtaining funds belonging to investors through the use of means of payment other than those envisaged by the applicable rules, b) the carrying out of investments that clients had not authorized by financial salesmen unlawfully filling up blank forms signed by the client, and c) forgery of signatures. By contrast, compared with the past there are far fewer violations of the so-called 'sole mandate' rule and the rules on incompatibility between acting as a financial salesman and performing other activities.

Measures regarding issuers and auditing firms

In 2004 the Commission submitted 7 proposals to the Ministry for the Economy and Finance for the imposition of fines for violations of the rules on public offerings and corporate disclosure (Table VII.5). The proposed fines amounted to little more than €1 million, a figure that was considerably less than in the two previous years.

Likewise the figure for the payment of reduced fines for violations of the rules on public offerings and corporate disclosure fell significantly compared with earlier years and amounted to about €400,000 (Table VII.6).

In addition to disciplinary matters Consob also took enforcement action, which led to numerous measures blocking unauthorized public offerings. In 2004 the Commission adopted 19 measures of this kind (9 suspensions, 7 prohibitions and 3 annulments; Table VII.7).

Enforcement against auditing firms was also particularly significant. The Commission struck one auditing firm off the register and in four cases ordered auditing firms not to avail themselves of the services of certain partners.

Table VII.5

Fines proposed by Consob to the Ministry for the Economy and Finance in connection with the soliciting of investors, corporate disclosure and proxies
(amounts in thousands of euros)

	Number of cases						Number of persons to be fined						Amount of the proposed fines					
	Public offerings	Tender offers	Corporate disclosure	Major holdings / share-holders' agreements	Proxies	*Total*	Public offerings	Tender offers	Corporate disclosure	Major holdings / share-holders' agreements	Proxies	*Total*	Public offerings	Tender offers	Corporate disclosure	Major holdings / share-holders' agreements	Proxies	*Total*
2001	27	--	6	3	--	*36*	35	--	5	4	--	*44*	545	--	160	238	--	*943*
2002	14	--	12	11	--	*37*	24	--	18	43	--	*85*	1,404	--	400	300	--	*2,104*
2003	3	1	5	22	--	*31*	7	5	7	13	--	*32*	702	464	216	359	--	*1,741*
2004	4	--	2	1	--	*7*	7	--	2	1	--	*10*	1,023	--	57	10	--	*1,090*

Table VII.6

Reduced payments to settle charges of violations of the rules on the soliciting of investors, corporate disclosure and proxies
(amounts in thousands of euros)

	Number of cases						Number of persons to be fined						Amount of the proposed fines					
	Public offerings	Tender offers	Corporate disclosure	Major holdings / share-holders' agreements	Proxies	*Total*	Public offerings	Tender offers	Corporate disclosure	Major holdings / share-holders' agreements	Proxies	*Total*	Public offerings	Tender offers	Corporate disclosure	Major holdings / share-holders' agreements	Proxies	*Total*
2001	13	2	11	51	--	*77*	19	3	20	53	--	*95*	344	31	258	537	--	*1,170*
2002	6	1	6	78	--	*91*	6	1	6	77	--	*90*	207	103	392	845	--	*1,547*
2003	1	3	6	22	--	*32*	8	4	6	29	--	*47*	83	41	155	300	--	*579*
2004	4	6	7	6	--	*23*	31	6	7	6	--	*50*	203	62	72	83	--	*420*

Table VII.7

Precautionary measures concerning public offerings

	Precautionary suspension	Prohibition	Annulment	*Total*
2001	3	3	--	*6*
2002	2	6	--	*8*
2003	9	2	2	*13*
2004	9	7	3	*19*

The striking off related to Italaudit S.p.A. (formerly Grant Thornton S.p.A.) and was adopted following the finding of particularly serious irregularities in connection with an independent confirmation procedure adopted by the auditing firm in question on a significant sample of auditing work. The confirmation procedure plays a particularly important role in the statutory auditing of accounts since it permits sample testing of the veracity of the information provided by the audited company. Hence failure to observe the relevant procedure is particularly serious.

In this regard the irregularities found in the audit performed by one of the partners of the

financial statements of Bonlat Financing Corporation (Parmalat group) for the year ended 31.12.2002 were exceptionally serious. Specifically the irregularities concerned a request to confirm the assets held by the company with Bank of America. In fact they undermined the reliability of the whole process of obtaining independent confirmation, which in the case in point turned out to be of critical importance since it concerned the balance sheet entries that represented the bulk of the Parmalat group's liquid assets.

Moreover, an investigation into auditing quality controls revealed the absence of an adequate monitoring system within the auditing firm which meant that the latter was unable to guarantee that the work carried out in its name was done in compliance with the applicable auditing standards. Lastly, the measure was also warranted by the fact that Italaudit S.p.A. failed to obtain suitable insurance pursuant to Article 161.4 of the Consolidated Law on Finance within the time limit established by Consob.

In reality, the Commission had already adopted measures in 2004 against the auditing firm in question by instructing it, pursuant to Article 163.1a) of the Consolidated Law on Finance, not to use the services of a partner in its auditing business for two years. This measure had been adopted following controls on the work of the partner in the audit of the half-yearly report to 30 June 2002 of Cirio Finanziaria S.p.A.

In the first place the investigation brought to light a failure to observe the auditing standard on limited audits of half-yearly reports recommended in Resolution 10867/1997 by Consob and auditing standard no. 2 on "Ethical and Professional Rules" issued by the Italian accounting profession and recommended in Resolution 99088450/1999 by Consob.

Furthermore, the auditing procedures used by the auditor during the entire assignment proved to be severely lacking. Specifically, the auditor did not do any of the planning required to understand the audited company and pinpoint the main risks associated with it. Neither did he properly determine the auditing procedures to be carried out or adequately assess whether the evidence gathered was sufficient and appropriate. As a result of those shortcomings the auditor ended up failing to evaluate the most important matters in forming his opinion on the half-yearly report of the Cirio group to 30 June 2002.

In fact the auditor's report failed to disclose and suitably highlight the serious shortcomings in the information given by the directors of Cirio Finanziaria in the half-yearly report regarding, firstly, the uncertainties as to how the company was going to find the money to pay the bonds that were about to mature and, secondly, the notable risks associated with the terms and conditions of the bonds issued by the company. By failing to stress any problems in his report, the auditor sent the market the message that on the basis of the checks made he was not aware of any significant changes and additions that needed to be made to the half-yearly report.

In two cases, pursuant to Article 163.1a) of the Consolidated Law on Finance, Consob ordered Deloitte & Touche S.p.A., not to use the services of specific partners in its auditing business.

The first measure was adopted following inspections carried out at the auditing firm concerning its auditing of the 1998 year-end financial statements of Cofimo SIM S.p.A.. In particular, serious shortcomings were found in the key phases of the auditing process in terms of a failure to plan the audit properly, the inadequate recording and evaluation of the investment firm's

procedures with special reference to dealings in derivatives, the failure to evaluate the internal control system and, lastly, the absence of the necessary work programmes. Shortcomings also came to light in the carrying out of the confirmation procedures regarding own and third-party liquid assets and receivables from clients, which were affected by the significant problems that arose with the investment firm's accounting and administration system owing to weaknesses in the internal control system and the growth in trading volume. Finally, shortcomings were found in recording the work in several cases, especially as regards the documentation on the review prepared by the partner in charge of the audit.

The shortcomings described above made it impossible to assess the coherence of the auditing strategy adopted and thus the decisions on the determination of the breadth, nature and timing of the auditing procedures in light of the investment firm's situation, which was marked by weaknesses in its internal control system and huge growth in its volume of business in the financial year in question. The audit suffered, moreover, from the failure to obtain adequate and sufficient evidence for the confirmation procedures used for own and third-party liquid assets, the opinion rendered on the recoverability of receivables from clients that was inconsistent with the evidence gathered and the failure in various cases to obtain proof of the effective carrying out of the work, so that this could not be assessed.

The second measure was adopted following supervisory checks carried out on the auditing of the company and consolidated financial statements of Cirio Finanziaria S.p.A. for the year ended 31 December 2001.

More specifically, shortcomings were found in the auditing procedures designed to determine the correct value of the Cirio group's claims on related parties, receivables which by reason of their size and the nature of the counterparties should have been treated with prudence and scepticism. In particular, the auditor did not evaluate the sufficiency and adequacy of the evidence gathered, conduct which in turn had an effect on the conclusions reached by the auditor in valuing the shareholding in Bombril Holding SA, whose book value was significantly influenced by the recoverability of the receivables in question .

Furthermore, the auditor's report failed to disclose and suitably highlight the serious lack of information in the Cirio financial statements regarding the terms and conditions of the bonds issued, breach of which would have led to their becoming immediately callable. Again, although in his planning the auditor had identified a risk in connection with the assumption that the business would continue and had adopted special procedures in this regard, he erroneously deemed that the evidence gathered was adequate and sufficient to consider the risk as no longer posing a threat and to render an unqualified opinion without any emphasis of matter paragraphs on the uncertainty surrounding the continuity of the business.

In conclusion, the behaviour of the auditor deprived the market of elements that were vital for a correct assessment of the financial conditions, operating performance and cash flows of Cirio and the Cirio group.

In May 2004, pursuant to article 163.1a) of the Consolidated Law on Finance, Consob ordered Iter Audit S.r.l. (formerly Baker Tilly Sofiresa S.r.l.), not to use the services of one of its partners in its auditing business for a period of two years.

The measure was adopted following supervisory checks carried out on a) the auditing by a partner of the 1999 and 2002 financial statements and the periodic checks made in 1999,

2000, 2001 and the first two quarters of 2002 in connection with the stockbroker Dario Bartolini, and b) the auditing of the 1999 accounts and the periodic checks made in the same year in connection with the stockbroker Franco Giannini Santa Maria.

In particular, the shortcomings discovered in the auditing work, which occurred regularly in both the Bartolini and the Giannini appointments, concerned various important aspects of the periodic checks required in auditing stockbrokers and the auditing process for the purpose of expressing an opinion on the accounts. More specifically, the periodic checks were not adequately performed with regard to: the stock-brokers' procedures; the amount and segregation of assets; the planning, analysis and evaluation phases of the internal controls system; the planning of the audits; and the procedures for confirming some balance sheet entries, with special reference to the accounts containing client funds

The work done by the auditing firm was inadequate not only in terms of compliance with technical auditing standards but also in relation to the obligations to report on 'censurable facts' which although noted during the performance of the work were not communicated to Consob.

Internet enforcement

Last year was Consob's fifth year of supervising investment services on the Internet and in that time it has analyzed about 600 websites, of which around 350 have had enforcement action taken against them.

In 2004 the Commission adopted 97 disciplinary and precautionary measures in connection with its supervision of websites and reported 16 cases of unlawful activities to other authorities (Table aVII.2).

The number of Internet irregularities that are such as to warrant enforcement action not only highlights the effectiveness of the supervisory tools developed by Consob but is also an indication of widespread illegality in financial websites. The experience gained over the last five years has evidenced some special features of this area of supervision.

In particular it has emerged that this field has nothing to do with the Internet activities of authorized persons (intermediaries, issuers and markets) in terms of the checks, aims and investigative tools involved. Moreover, it is impossible to identify a priori the types of irregularities characteristic of activity carried out on websites. Action may require inputs from any number of Consob departments and very often from various other authorities as well.

In the last few years Internet supervision and enforcement has grown in importance, not least because Consob has been participating since 2002 in an EU-financed programme called "FFPOIROT" (Financial Fraud Prevention Oriented Information Resources using Ontology Technology) with a view to improving web spidering through the application of artificial intelligence algorithms based on the concept of ontology as a method of interpreting the contents of websites.

The supervisory experience gained shows that the effectiveness of Consob's supervision must be backed up by the possibility of blocking savers' access to the websites used for illegal activities. This need

was addressed in July 2003 with the enactment of Legislative Decree 70/2003 implementing Directive 2000/31/EC on electronic commerce. This legislation has granted specific powers to Consob within the framework of its supervision of websites. For example, it may demand that internet service providers disable access to the offending internet addresses (known as "shutting down" the site) – including storage, caching and transmission – in order to prevent the protraction of violations and it may request information from such providers in various ways.

The exercise of the new powers envisaged in the Decree has led to the updating of the Internet supervisory procedures and the broadening of the duties of the Internet task force that applies them.

Experience has shown, however, that the owners of websites which have been shut down tend to transfer the site to non-EU internet service providers in order to escape Consob action.

This trend raised the need to examine the clauses contained in private contracts for the provision of international services mainly based on the standard forms drawn up by ICANN (Internet Corporation for Assigned Names and Numbers). This examination showed that the contracts governing the provision of various services that can be offered on the Internet envisage that unfair terms must be specifically acknowledged in writing. Among other things, such clauses allow the persons providing the service to interrupt it unilaterally and unappealably if they become aware of unequivocal evidence to the effect that the provision of the service facilitates the carrying out of unlawful activities through the Internet.

Such clauses have de facto given Consob the possibility of interacting with non-EU internet service providers as well. In this regard the first shutting down of websites hosted by foreign Internet service providers was achieved in the second half of 2004.

With reference to the supervision of financial information disseminated through the Internet, 2004 witnessed the rapid growth of blogs with specifically financial contents through which investors report and spread stock exchange news and rumours or specify their own investment strategies, sometimes even mentioning the securities portfolio held by the author. Those sites have been included in the database of websites, fora, newsgroups and on-line information channels that are regularly monitored in view of the ease and rapidity with which such information can be posted on the Internet.

Special attention is paid to examining the operating advice contained in such blogs in light of the risks associated with the spreading of investment strategies which are not sufficiently well-founded, accurate or updated or which in any event could potentially modify share prices in line with the expectations of the author of the strategy, especially where securities that are not readily marketable are involved.

Because of its particular investigative worth, the information gathered during 2004 as a result of Internet supervision constituted an integral part of the documentation forwarded to the judicial authorities pursuant to Article 186 of the Consolidated Law on Finance.

VIII. REGULATORY AND INTERPRETATIVE ACTIVITY AND INTERNATIONAL DEVELOPMENTS

Regulation of public offerings

The most important innovation regarding the solicitation of investors was the publication in April 2004 of the European Commission regulation with the measures implementing the directive on the prospectus to be published when securities are offered to the public or admitted to trading on regulated markets.

This regulation, which will become effective on 1 July 2005, will in fact replace the Consob regulations currently in force.

The regulation adopted by the European Commission has introduced the European passport for issuers, i.e. a procedure that allows the prospectus cleared by the home country authority to be used in all the EU member states. To ensure this mechanism is effective, the regulation states that requests for supplements to the prospectus that the competent authority may make must refer to information already provided for in the attached schedules and building blocks.

In drawing up the regulation, the European Commission deemed it necessary to include a restricted list of issuers operating in particular sectors of activity, with respect to which the regulation gives the competent authority the right to require the insertion of information in the prospectus in addition to that provided for in the schedules and building blocks. The regulation also charged CESR with promoting convergence within the Community on the information requirements for the prospectuses to be published by issuers.

The European prospectus regulation, in line with the provisions of Regulation (EC) 1606/2002 on the application of the IAS/IFRS international accounting standards, requires issuers that adopt those standards in the subsequent fiscal year to restate (for the last two fiscal years in the case of issuers of shares and for the last fiscal year in the case of issuers of bonds) the historical financial data included in the prospectus in accordance with the IAS/IFRS international accounting standards. This rule applies to any change in the accounting standards used by issuers in order to guarantee, albeit for a limited period, the comparability of the financial data included in the prospectus with those that will be published subsequently.

The regulation contains specific provisions for issuers of third countries, which will be able to use their own national accounting standards if they are equivalent to IAS/IFRS.

Where prospectuses are for share issues, it is also worth mentioning the requirement for issuers to declare whether the cash flows expected in the twelve following months are sufficient to fulfil the obligations falling due.

In 2004 CESR started work on preparing recommendations to be issued before 1 July 2005 aimed at harmonizing the interpretation of the rules on prospectuses contained in the above-mentioned European legislation and at providing indications concerning the information to be inserted in the prospectuses of issuers operating in particular sectors of activity.

Turning to the regulation of takeovers, it is worth noting the Commission's response to a particularly complex query concerning the applicability of the rules on mandatory tender offers following changes to shareholders' agreements.

Very briefly, in reply to a query concerning a blocking and consultation shareholders' agreement involving the shares of RCS Media Group s.p.a., the Commission ruled that in order to determine the total shareholding of the parties to the agreement for the purposes of Article 109 of the Consolidated Law on Finance ("Concerted acquisitions"): a) it was necessary to sum all the shares held by the parties to the agreement, regardless of whether or not they were committed to the agreement (thus confirming what it had already stated in earlier communications); b) shares lent by the parties to the agreement could not be counted since the lender no longer holds shares of which it no longer has possession or the voting rights; and c) treasury shares could not be included in the calculation of the total percentage shareholding of the parties to the blocking and consultation agreement.

Having determined the total shareholding of the parties to the agreement, corresponding to about 46.68 per cent of the listed company's ordinary share capital, the Commission replied to the further query "whether the addition of new parties to the agreement with holdings that had been held for more than twelve months and that caused the total shareholding to rise above 50 per cent would make it possible (immediately afterwards or later) for further contributions to or increases in the shareholding (i.e. including the contribution by new parties to the agreement of shares held for less than twelve months) not to trigger the tender offer obligation".

The Commission, on the grounds set out in a communication published in August 2004, ruled, on the basis of the joint application of Article 109 of the Consolidated Law on Finance ("Concerted acquisitions" and Article 46 of Consob Regulation 11971/1999 on issuers ("Consolidation of shareholdings"), that the tender offer obligation is not triggered "in the case of a series of additions over time" to a shareholders' agreement "as a result of persons joining the agreement by contributing shares held for more than twelve months in a quantity that causes the total holding of the parties to the agreement to rise above 50 per cent".

Moreover, in the case the query referred to, the Commission ruled that, even if the new parties joining the agreement were considered "in a unitary perspective" (provided the timing indicated in the query was maintained), the obligation to make a tender offer would not be triggered, for the reasons given in the above-mentioned communication.

Regulation of ongoing corporate disclosure

The most important developments as regards the rules on corporate disclosure were linked to initiatives undertaken at international level.

In particular, it is worth noting the progress made in the preparation of level 2 measures implementing the Transparency Directive.

In June 2004 the European Commission gave CESR a mandate to provide technical advice on possible measures implementing the directive for the harmonization of transparency obligations. In October 2004, in order to fulfil the mandate, CESR published a consultation document covering the "Dissemination of Regulated Information by Issuers and the Period for Keeping Financial Reports Available" and a progress report on the "Role of the Officially Appointed Mechanism and the Setting up of a European Electronic Network of Information about Issuers and Electronic Filing". The consultation was completed at the end of January 2005.

As regards the dissemination of regulated information, the document states that it is necessary to ensure the effective and timely dispatch of regulated information to the market by issuers by using systems that "push" the information towards investors. The document envisages that recourse be made mainly to a system based on a centralized operator that would receive information from issuers and redistribute it to the media (press agencies) in real time, guaranteeing specific quality standards (security, usability, etc.); at the same time the document envisages the possibility, provided the same standards are maintained, of using other ways of disseminating the same information, such as other channels based on the direct intervention of the media. In this context the role of operator could be played by the competent authority itself or a commercial entity; in the latter case it would be necessary to ensure that the operator did not abuse its dominant position.

As regards the storage of information, the aim is to ensure that regulated information can be used effectively by investors by means of collection systems that are historically based and provided with adequate search mechanisms. The document envisages central storage mechanisms based on a single national centre or different centres according to the type of information or category of issuer. In the second case the document also envisages the need for a national link between the various systems. The service, which in any case should be provided at fair prices for users, could be run by the competent authority or commercial entities.

The document also states that the electronic network should link the various storage systems at European level, so as to permit easy access to regulated information on all European issuers. In addition, it envisages the possibility of setting up a single or multiple centralized European system that would contain all the information on European companies, which would eliminate the need for a network. Alternatively, national central storage systems could be set up linked via the websites of the competent authorities. In the first case there would be significant economies of scale, while in the second case the costs would be borne by the individual authorities or commercial entities. In any case the operation of the systems would be under the control of the national authorities.

As regards the electronic transmission of information to the competent authorities by entities subject to the requirement to disclose information to the public, the CESR is of the opinion that common standards should be established, valid for all the member states. The document envisages that the procedures for the transmission of information to the authorities by entities subject to the requirement should reconcile the interests of both parties. On the one hand they should therefore be easy to use and inexpensive while on the other they would have to meet high quality standards (security, authentication, validation of the source and confidentiality, etc.).

Other regulatory initiatives in connection with the European Union include amendments to the rules on stabilization contained in Consob Regulation 11971/1999 on issuers.

In October 2004 Consob approved changes to Article 15 of the above regulation on the stabilization of securities that are the subject of an offering in order to bring its provisions into line with those contained in EC Regulation no. 2273/2003 of 22 December 2003, which was adopted with a view to implementing Article 8 of the new Community Directive on Market Abuse.

Unlike the earlier Italian rules, Article 8 of the directive does not establish binding obligations for stabilization activities but provides for the

"exemption from the prohibitions" in the case of transactions that satisfy the conditions laid down in the above-mentioned EC regulation (so-called safe harbour). In other words, if the interested parties (the offeror and placers) choose to carry out stabilization transactions in compliance with the operating limits and disclosure requirements envisaged in the EC regulation, the trades they conclude are to be presumed not to be punishable as market abuse. This does not mean that transactions concluded without complying with the above-mentioned constraints have to be deemed in themselves as prohibited, but rather that they could be investigated by the supervisory authority.

Pending the introduction in Italy of the above-mentioned Community safe-harbour regime, to be achieved through the transposition of the Market Abuse Directive, as of 12 October 2004 there would have been two different indications in the Italian legal system concerning stabilization activities, provided for respectively by the above-mentioned EC regulation and by Article 15 of Consob Regulation 11971/1999 on issuers. In fact the earlier version of Article 15 did not follow the safe-harbour approach but contained binding rules for stabilization, the content of which, moreover, differed from the Community constraints and requirements. For these reasons, in order to avoid creating uncertainty in market participants as to the correct course of conduct to follow, it was necessary, pending the transposition of the directive, to introduce transitional amendments to Article 15 of the regulation on issuers, so as to bring its terms and conditions into line with those of Community law, with special reference to the parameters for the stabilization period and price limits. Accordingly, the Commission also approved Communication no. 4090018 of 14 October 2004, which indicated the scope of the new rules and replaced Communication 99038941/1999.

On the domestic front, major changes to Consob Regulation 11971/1999 on issuers were made necessary by the entry into force of the reform of company law (Legislative Decree 6/2003 – "Reform of company law" and Legislative Decree 37/2004 – Coordination of the reform of company law with the Consolidated Law on Finance and the Consolidated Law on Banking") (Box 7).

Lastly, as regards so-called "derivative" corporate information, it should be noted that numerous international initiatives were launched in 2004 concerned with the possible regulation of credit rating agencies.

The growing importance of the role of such agencies in providing the market with information has led both individual countries and international bodies to consider adopting measures to modify the regulatory framework.

As early as September 2003 IOSCO's Technical Committee had issued a "Statement of Principles regarding the manner in which CRA activities are conducted" establishing high-level objectives that credit rating agencies, regulatory authorities, issuers and other market participants should pursue in order to safeguard the analytical integrity and independence of the processes of producing and disseminating ratings.

In order to provide credit rating agencies with more specific and detailed guidance as to how the principles were to be implemented, IOSCO's Technical Committee set up a Chairmen's Task Force, which produced a document called the "Fundamentals of a Code of Conduct for Credit Rating Agencies" (the "Code Fundamentals"), which was issued as a public consultation paper and finally approved in December 2004.

Box 7

Amendments to the regulation on issuers linked to the entry into force of the reform of company law

In August 2004 the Commission made amendments to Consob Regulation 11971/1999 on issuers to bring it into line with the changes to companies' governing bodies introduced by the reform of company law.

In particular, since listed issuers are free to adopt the alternative management and control bodies introduced by the reform of company law, the regulation on issuers was amended so as to make the provisions that referred to the board of directors and the board of auditors of the traditional system and their members applicable to the corresponding alternative bodies and their members.

For the sake of clarity, instead of inserting a general provision that would make the rules concerning the governing bodies of the traditional system applicable, insofar as they were compatible, to the governing bodies of the one-tier and two-tier systems, the articles of the regulation were amended with a specific reference, provision by provision, to the corresponding governing bodies of the new systems of management and control.

In addition, changes were made to some articles of the regulation on issuers governing the disclosures listed issuers are required to make to the public and Consob in the event of extraordinary corporate actions.

More precisely, before the reform of company law, the shareholders' meeting was exclusively responsible for extraordinary corporate actions (e.g. mergers, spin-offs, etc.), apart from the possibility of giving the board of directors a mandate to increase the capital in accordance with Article 2443 of the Civil Code or to issue bonds, including convertible bonds, in accordance with Article 2420-*ter* of the Civil Code.

In view of the shareholders' meeting's power in this respect and to enable shareholders to cast their votes in as informed manner as possible, the rules governing corporate disclosures concerning extraordinary transactions had been structured to ensure shareholders received all the necessary information prior to the meeting.

The reform of company law altered the matters that are the responsibility of respectively the shareholders' meeting and the board of directors and, in the case of the two-tier system, made provision for the assignment to the supervisory board of some matters that under the earlier regime had been the prerogative of the extraordinary shareholders' meeting.

Accordingly, the regulation was amended to make provision, in the event of extraordinary transactions approved by the board of directors or the supervisory board, for information to be provided subsequent to the vote of the competent body (disclosure to the public and simultaneous transmission to Consob of the minutes of the board meeting and any report prepared for significant mergers/spin-offs), with prior disclosure only where this is required by the Civil Code even in the absence of approval by the shareholders' meeting.

Lastly, in November 2004 a consultation document was published containing proposed amendments to the regulation on issuers, including the rules on mandatory tender offers, in light of the changes introduced by the reform of company law concerning shares other than ordinary shares and financial instruments.

Together with the proposed amendments consequent on the reform of company law, other proposals arising from the Commission's regular housekeeping activity were submitted for consultation.

The above-mentioned consultations were completed in December 2004.

The Code Fundamentals contain the essential provisions that should be incorporated into each credit rating agency's own code of conduct. The provisions are divided into four macro-areas, each of which establishes measures credit rating agencies should adopt: the quality and integrity of the rating process; protection of CRA independence and avoidance of conflicts of interest; CRA responsibilities to the investing public and issuers; and disclosure of the CRA's code of conduct with a compliance mechanism and communication with market participants.

The Code Fundamentals are not meant to be rigid or formulistic; credit rating agencies enjoy a degree of flexibility in deciding how to incorporate these measures into their own codes of conduct, according to each rating agency's specific legal and market circumstances. At the same time CRAs must disclose to the market how they have implemented the individual provisions of the Code Fundamentals and, if their own codes of conduct deviate from the Code Fundamentals, how they nonetheless intend to achieve the latter's objectives and those of the IOSCO principles.

In addition, IOSCO expressly envisaged the possibility of the Code Fundamentals being incorporated in national and supranational laws and regulations governing rating agencies.

In Europe, instead, the proposed directive on the capital requirements for intermediaries provides for the competent authorities (in Italy the Bank of Italy) to introduce a procedure for the recognition of credit rating agencies, which would be able to produce ratings within each jurisdiction for intermediaries to use in determining their capital requirements. Recognition would be based on the verification by the competent authority in each jurisdiction (or by means of mutual recognition) of compliance with the various requirements for credit rating agencies and the rating process.

At the request of the European Parliament, the European Commission has entrusted CESR with the task of preparing technical advice on the need to regulate credit rating agencies within the European Union. To this end a task force has been formed in which Consob participates. The technical advice has to be submitted to the European Commission by 1 April 2005.

CESR's technical advice, drawn up taking into account the results of two public consultations and two public hearings, concerns the following matters: the interests and conflicts of interest of credit rating agencies; the fair presentation of ratings; the relationship between issuers and credit rating agencies; and the use of ratings in private contracts and European legislation.

The technical advice also addresses the question of the need to introduce a registration and/or recognition mechanism for credit rating agencies in Europe, taking into account the competitive aspects of the rating market and the potential (positive and negative) effects of regulations on entry barriers to the rating industry.

Regulation of corporate disclosure, financial reporting and auditing firms

As regards financial reporting, the most important innovation was the transposition into the Italian legal system of the new IAS/IFRS international accounting standards.

Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 had in fact made it obligatory for listed companies to prepare their consolidated accounts

for each financial year starting on or after 1 January 2005 in conformity with the IAS/IFRS international accounting standards issued by the International Accounting Standards Board (IASB). The purpose of the regulation was to define a single body of accounting rules for European listed companies so as to harmonize the financial information provided and ensure a high level of transparency and comparability of financial statements.

Last year Consob participated in the work of the Accounting Regulatory Committee (ARC), charged with approving the IAS/IFRS as part of the process of incorporating the new standards into European law. In particular, Consob contributed to the intense debate on the adoption of IAS 39 for the recognition and measurement of financial instruments.

The shift to IAS/IFRS will affect some 8,000 listed European companies and will result in a radical change compared with the accounting system currently in use (Box 8).

Among other things Regulation (EC) 1606/2002 states that member states may permit or require the application of the international accounting standards by listed companies for their annual accounts and by unlisted companies for their consolidated accounts and/or their annual accounts.

In Italy the legislative decree that implemented the Community regulation extended the obligation to use IAS to the consolidated accounts of all banks and insurance companies and to those of companies whose financial instruments are widely distributed among the public. These companies, with the exception of those in the insurance industry, may also use the new standards for their 2005 annual accounts; as of the following year this right will become an obligation. The decree also permits the new international standards to be used for the consolidated accounts of subsidiaries and affiliates of companies subject to the obligation to use IAS/IFRS for their consolidated accounts; the same also applies to other companies that prepare consolidated accounts.

As part of the cooperation between CESR and the European Commission, work continued during the whole of last year aimed at improving and harmonizing financial reporting in the European Union.

In particular, CESR – acting through its permanent operational group on financial reporting standards (CESR-Fin) and the latter's Subcommittee on Enforcement (SCE) – is playing an active role in creating instruments capable of ensuring the effective coordination of enforcement with regard to financial reporting at European level.

In this connection CESR has published two standards for the coordination of enforcement activities concerning financial reporting: the first standard establishes general principles with which enforcement must conform at European level; the second, accompanied by a document providing guidance on the implementation of the standard, focuses instead on the technical aspects of applying the rules and the coordination of the enforcement decisions adopted by national enforcers.

At present the Subcommittee on Enforcement is preparing plans for some projects of special importance for CESR-Fin's future activity: (i) the creation of a database fed by all the national enforcers of the European Union and accessed by them as an archive to draw on for the consultation

of decisions taken in specific cases of enforcement; and (ii) the start of European Enforcers Coordination Sessions to discuss decisions taken by national enforcers within the European Union; supervisory bodies other than CESR members will also take part in these sessions.

In addition, the Subcommittee on Enforcement is preparing other documents intended to promote cooperation among regulatory authorities on enforcement activities in the field of financial reporting.

In implementing its programme, the CESR-Fin Subcommittee on International Standard Endorsement (SISE) has continued to address issues concerning the transition from national accounting standards to IAS/IFRS, which, as laid down in Regulation (EC) 1606/2002 will be applied in Europe as of 2005. In particular, the Subcommittee has produced documents for CESR members on various aspects of the application of IAS/IFRS (e.g. their application by companies on a voluntary basis and by companies intending to apply for listing on a regulated market).

Turning to Consob's interpretative activity, in 2004 the Commission responded to a query from an issuing bank concerning the accounting treatment of a commitment to buy its own shares (put option).

The original put option gave the bearer the right to sell the issuer shares of one of its subsidiaries. Following the latter's merger into the issuing bank, the financial instrument had turned into a put option on the issuing bank's own shares.

The Commission agreed with the bank's decision to continue valuing the option at cost after the merger of the subsidiary since the merger did not entail any change in the related financial risk; the Commission nonetheless drew attention to the need, in order to value the put at cost, for the bank to intend to consider the securities obtained if the option was exercised as a lasting investment.

In the field of auditing, of notable importance was the approval in March 2004 of the proposed directive on statutory audits aimed at harmonizing the numerous aspects of the matter by laying down fundamental principles clearly indicating the path to be followed in national regulations.

Although the proposed directive addresses all the statutory audit activities required by the 4th and 7th Directives, its primary aim is to increase the reliability of market-oriented audits, so as to ensure the investing public has the necessary confidence in the credibility of financial reports.

The need for comprehensive and harmonized rules in this field had long been recognized by the European Commission, which in 1998 had set up a committee to prepare new initiatives. On the basis of the latter's work, in November 2000 the EU Commission had published a recommendation on quality assurance for the statutory audit (minimum requirements) and in May 2002 another on the independence of auditors. To a great extent the content of these documents was reproduced in the proposed directive.

In addition to updating the parts of the 8th Directive of 1984 concerning the authorization of persons to act as auditors, the proposed directive addresses many other issues: auditors' code of ethics and independence, professional secrecy, fees, auditing standards, responsibility for auditing consolidated accounts where several auditors are involved, supervision of auditors through regular quality controls, investigative activity, sanctions and cooperation between supervisory authorities within the EU and with those of third countries.

Box 8

The IAS/IFRS international accounting standards

The problems deriving from the introduction of the IAS/IFRS standards are many, above all as a consequence of the change in the purpose financial statements are intended to fulfil.

Under the international accounting standards, financial statements are aimed primarily at present and potential investors and at providing support for economic decisions. The utility of financial information for decision-making purposes is the new objective of financial statements prepared in conformity with international accounting standards.

According to the new standards, the objective of financial statements is "to provide information about the financial position, performance and changes in financial position of an enterprise that is useful to a wide range of users in making economic decisions".

Financial statements must therefore contain all the information need to enable the various types of user to assess the present and future performance of the business (to this end the new standards require financial reports to contain specific disclosures and explanatory notes).

The introduction of the new international accounting standards will bring significant changes both in the presentation of the items of the accounts and in the determination of the economic results. In fact the standards are based on the so-called principles of common law, which identify the economic performance of a firm with the income produced and allow the inclusion of unrealized gains, such as those deriving from the use of valuation techniques.

These principles differ considerably from those of the present system, which tends to identify the economic performance of a firm with the income that can be distributed and is therefore based on the prudence principle and the use of cost as the method of valuation.

The prudential approach underlying the Italian system means that "expected" and "potential" losses must also be included in the accounts, but not profits that are only "expected".

According to the international accounting standards, the prudence principle consists instead merely in an attitude that directors must adopt when making discretionary decisions, so as to prevent the overvaluation of assets and revenues and the undervaluation of liabilities and costs. This principle is considered to derive from the reliability of accounting data.

The international accounting standards thus permit the inclusion in the accounts of unrealized positive and negative items of income (a typical example is valuation at fair value, i.e. the value at which an asset can be exchanged between knowledgeable, willing parties in an arm's length transaction). The cases in which this valuation method must or may be used are not restricted to financial instruments but include, for example, fixed assets such as plant and machinery and intangible assets.

The introduction of the concept of fair value will lead to significant changes in firms' results. On the one hand they will tend to be more variable and basically correlated with the general movement of the market, on the other hand the users of financial reports will be better able to evaluate the quality of directors' performance and, among other things, to assess whether and to what extent they have grasped the financial opportunities offered by the market in terms of ability to exploit movements in prices, exchange rates and interest rates.

The complexity of the innovations, primarily owing to the use of fair value, can be seen in the extensive international debate that arose over the approval of the standards to apply in accounting for financial instruments (IAS 32 and especially IAS 39). Following severe criticism, above all by the banking industry, the European Commission allowed European companies not to apply the most controversial aspects until agreement was reached.

The new concept of prudence, as defined by the new accounting standards, produces effects that may also be material in accounting for negative items of income. Fundamentally the reference is to the fact that negative items may be included in the income statement and funds allocated to provisions only when the firm is committed to carrying out the transaction, i.e. when it is under a legal or so-called implicit or de facto obligation. The recognition of such negative items is in fact permitted only when a firm has informed third parties of its acceptance of certain liabilities and has created a reasonable expectation in such third parties that it will honour its commitments. This differs from the legislation currently in force, which requires all expected and potential losses to be stated in the accounts.

The introduction of the new system of accounting rules will therefore require a redetermination of the assets and liabilities measured under the present legislation to see whether they satisfy the conditions for inclusion in the accounts under the new rules. In particular, it will be necessary to include assets and liabilities not considered to be such under the present legislation but considered to be such under the new international accounting standards.

Among the innovations that the international accounting standards will bring and that may have a material effect on the next financial statements, it is worth mentioning the change in the treatment of goodwill and the method of accounting for stock options.

Under the new standards goodwill does not have to be amortized systematically, as required by the present legislation, but each year the existence of permanent diminutions in value must be verified by means of impairment testing. While this method, which calls for complex calculations and the inclusion of detailed information in the notes, avoids the need for systematic annual amortization charges, it could lead to the loss of the entire goodwill entered in the accounts having to be accounted for in a single year.

The international accounting standards require the inclusion in the income statement of the effects of purchases of goods and services to be paid for by assigning company shares or stock options. The most important transactions of this type are the payments made to employees and directors. In Italy the absence of national rules in this field led to the cost of such transactions not being recognized in the income statement.

The proposed directive also deals with some aspects of corporate governance that bear on auditing, such as the appointment and revocation of auditors, and establishes special rules for the auditors of "public interest entities".

In Italy two interventions of a general nature in the field of auditing are worthy of note.

In a communication issued in October 2004 the Commission requested auditing firms entered in the special register to submit a document describing the guarantee covering the risks of their audit activity referred to in Article 161.4 of the Consolidated Law on Finance.

The receipt of this document, accompanied by the current insurance policy or bank guarantee, allows Consob to have a constantly up-to-date database with the types, amounts and features of the guarantees of auditing firms entered in the special register and to check for failures to comply with the requirements for continued entry in the register.

As regards the updating of the information requested, auditing firms are required to follow two separate procedures: the first for subsequent changes to the guarantee and the second for legal disputes that arise during the year, which must be notified to Consob by 30 October.

In November 2004, in a communication issued in accordance with Article 162.2c) of the Consolidated Law on Finance, the Commission also recommended that auditing firms entered in the special register should apply a new standard for the audit of banks' annual accounts for periods closing on or after 31 December 2004.

The standard, prepared by the Committee for the Drafting of Auditing Standards in cooperation with Consob, the Bank of Italy and Assirevi, was approved on 13 October by the Consiglio Nazionale dei Ragionieri and on 22 October by the Consiglio Nazionale dei Dottori Commercialisti.

The standard lays down criteria for the audit of banks' annual accounts and adapts some of the general auditing standards in force to take account of the special features of banking business. The adoption of the new standard is part of the process of bringing Italy's standards into line with the International Standards on Auditing (ISAs). The process was launched in October 2002 and led in 2003 to the adoption of ISA 600 on the auditing of groups and ISA 260 on the communications between the auditor and the persons responsible for the governance of the audited company.

Regulation of markets

The most important innovation as regards the regulation of markets was the final approval in April 2004 of the directive on markets in financial instruments (which repealed Directive 93/22/EEC on investment services). The new directive redesigns the regime for markets (Box 9) and the rules of conduct for intermediaries (see next section "Regulation of intermediaries").

Again in the international sphere it is worth noting the approval in 2004 of the ECB-CESR standards for clearing and settlement.

Box 9

The new regime for markets contained in Directive 2004/39/EC on markets in financial instruments

The directive on markets in financial instruments reshapes the regulatory framework for trading in financial instruments; in particular, it introduces specific provisions for multilateral trading facilities (MTFs) and for intermediaries that systematically internalize customer orders.

The directive follows a function-based approach and, in accordance with the Lamfalussy process, establishes general principles that will be given practical application in level 2 legislation.

The directive assumes that the basic economic function performed by regulated markets and MTFs is essentially the same. The definition of a regulated market coincides in fact with that of an MTF (Article 4.1) and recital 6 recognizes that “they represent the same organized trading functionality”. Accordingly, since they perform a similar economic function, the directive establishes a basically homogeneous regulatory framework for regulated markets and MTFs.

The so-called level playing field for regulated markets and MTFs is created by laying down rather general rules, whose prescriptiveness can be varied between regulated markets and MTFs by individual member states. From this point of view the most important aspects are the definition of the organizational requirements and that of the management of risks and conflicts of interest. The aim of the rules applicable to regulated markets and MTFs is to ensure their sound and prudent management. Since no level 2 regulation is envisaged in this respect, member states will have considerable discretion in establishing their implementing regulations.

The directive nonetheless assigns a specific and complex task to regulated markets by requiring them to verify compliance with initial, ongoing and ad hoc disclosure obligations laid down in other directives, obligations that apply only to instruments admitted to trading on regulated markets. This particular feature of regulated markets will necessarily have to be translated into more detailed and prescriptive organizational requirements.

The directive also contains specific provisions concerning remote access and provides for entities other than intermediaries to have access to markets.

As regards the micro-structure of the market, the directive again tends to go no further than identifying the “final objectives” of regulation (to ensure “fair and expeditious” trading for MTFs and “fair and orderly” trading for regulated markets) by requiring markets to establish non-discriminatory and transparent rules. More detailed harmonization is found instead with regard to the pre- and post-trade transparency requirements, but only for shares. These minimal rules are perfectly aligned for regulated markets and MTFs and the directive provides for the level 2 regulations governing exemptions to be basically comparable.

The directive redesigns the transparency rules for trading in shares with reference to an “integrated” concept of the market, made up of regulated markets, MTFs and internalizers, following, as mentioned earlier, a functional approach.

In tackling the problem of defining a harmonized framework for pre-trade transparency, the directive inevitably had to search for a "reasonable" balance between the transparency and liquidity of the market and between the transparency and economic incentives of intermediaries. In practice this problem is mainly addressed by identifying the transactions that can benefit from an exemption from the transparency rules, basically in relation to their size and (consequently) the type of counterparties (retail or professional investors).

The more difficult problem will arise, however, in actually establishing the threshold beyond which an order or a transaction must be considered "large in scale compared with the normal market size" (Articles 29 and 30 of the directive).

Under the approach adopted in the directive the size threshold for orders becomes of strategic importance since, in addition to establishing the scope of post-trade information exemptions, as was already the case in the past for block trades, it will also affect the pre-trade transparency obligations applicable to investment firms that internalize customer orders and to MTFs. The definition of the threshold for blocks will in fact influence the determination of the standard market size (SMS) that is taken as the baseline for establishing the transparency obligations of internalizers. In particular, the higher the threshold for blocks, the higher the SMS threshold and therefore the broader the range of transactions concluded off market by internalizers that are subject to transparency obligations.

Lastly, internalizers' so-called price improvements, which were previously "tolerated", have been defined and subjected to specific rules. Internalizers may apply better prices than those quoted only: a) in dealings with professional clients; b) for orders of a size bigger than the size customarily undertaken by a retail investor; and c) provided the price falls within a range that has previously been made public. Internalizers are therefore not allowed to apply better prices than those quoted to retail clients.

The new regulatory framework designed by the directive gives particular importance to the mechanisms for consolidating information, since effective competition between different execution venues requires that market participants and investors be able to compare the prices that the different trading venues must make public. Although the directive recognizes the importance of an effective system for consolidating information, it nonetheless leaves its implementation to market forces.

The standards are designed to foster the safety, soundness and efficiency of clearing and settlement services for transactions in financial instruments and represent the adaptation to the European context of the recommendations issued in this field by the CPSS-IOSCO working group.

Considering the complexity of the subject and the highly fragmented nature of the related regulation, the standards are an important step forward in harmonizing European rules.

The standards were developed using a functional approach and taking into account the risks associated with securities clearing and settlement business, without regard to the legal status of the institutions concerned; they seek to introduce measures to prevent systemic risk without damping the spontaneous working of competitive and organizational forces within the industry. Provision is also made for forms of regular and structured cooperation between

national authorities to ensure the uniform application of the standards throughout Europe.

As regards regulation in Italy, in 2004 the Commission launched consultations on a series of amendments and additions to Consob Regulation 11768/1998 on markets.

The changes concern: a) simplification of the transparency regime for transactions involving listed bonds carried out off market and subject to notification requirements; b) a derogation from the conditions for executing transactions off regulated markets to take account of special operating needs of Italian and foreign intermediaries; c) a derogation from the time limits for the obligation to notify share transactions when these are related and subsequent to a private placement; d) an update of the related and instrumental activities that market operating companies may engage in; and e) the rules on centralized securities systems to bring them into line with the reform of company law, with reference to the second paragraph of Article 2370 of the Civil Code on the exercise of the right to participate in shareholders' meetings.

Regulation of intermediaries

The most important regulatory changes made by the Commission in the field of asset management were related to the transposition into Italian law of Directives 107/2001/EC and 108/2001/EC amending Directive 85/611/EEC on UCITS.

The new Community legislation has introduced harmonized rules on access to markets and the activity of UCITS management companies and prudential rules the latter must comply with. In this way a European passport regime has been introduced equivalent to that applicable to other providers of financial services (such as banks, investment firms and insurance companies) and permitting a financial company authorized to provide services in one EU member state to carry on its activity throughout the internal market without having to obtain a new authorization.

The information to be made available to investors has also been improved in order to make it clear, concise and easily understandable. The original model prospectus has been divided into two documents (the simplified prospectus and the full prospectus) in order to match the type and quantity of the information and the communication technique to the needs of the investors they are addressed to.

The simplified prospectus must be delivered free to investors before concluding a transaction, while the full prospectus, together with periodic reports, must be made available free to subscribers who request a copy. The simplified prospectus, duly translated into the language of the host country, is valid for the distribution of UCITS in other EU member states.

In order to ensure the uniform reading of the contents of the simplified prospectus and its correct application, in a recommendation issued on 27 April 2004 the European Commission clarified how economic data were to be presented (with regard, for example, to the structure of the costs and other expenses to be borne by subscribers and the fund), the UCITS' investment objectives, the associated risks, and its past performance.

Directive 108/2001 removed some of the restrictions imposed by Directive 85/611 as regards the possibility of investing UCITS assets in derivatives, units/shares of other UCITS and index funds. In order to ensure the regular measurement of the risks and commitments associated with transactions in derivative instruments, management companies are required to create a risk management function as part of their organizational structure.

The provisions of Directives 107/2001 and 108/2001 came into force in February 2002 and became binding for member states on 13 February 2004. However, especially as regards the rules on management companies, there is a transitional period lasting until 13 February 2007 to allow companies authorized before 13 February 2004 to adapt. To clarify the application of the transitional provisions, in February 2005 the CESR Expert Group on Investment Management adopted a set of guidelines for supervisory authorities (see also Chapter IX "International Affairs").

The regulatory activity undertaken by Consob at national level was therefore aimed at adapting the existing regulations to take account of the transposition of the above-mentioned directives.

A start was made on an extensive revision of Consob Regulation 11971/1999 on issuers as regards the rules on listing and public offerings applicable to units/shares of collective investment undertakings. The process involved two public consultations (launched in 2003) during which the Commission received the comments of the associations of intermediaries, consumer associations and other interested parties.

With reference to collective investment undertakings of the open-end type, the innovations that will be made include the distinction between simplified and full prospectuses, the indication in percentage terms of the average fee retrocessions to distributors and the provision for information obligations to be fulfilled over the Internet. Provision has also been made for new model prospectuses and procedures for updating the prospectuses issued in connection with public offerings of closed-end funds, above all because it is possible that such funds will make several issues of units.

Again with reference to collective asset management, in 2004 the Commission issued a communication laying down the operational criteria for the preparation of advertisements concerning closed-end investment funds.

The establishment of the above-mentioned criteria, which supplement those contained in Consob Regulation 11971/1999 on issuers and an earlier communication issued in April 2001, was in response to the need to achieve the uniform preparation of advertisements concerning a category of rapidly growing collective investment undertakings (closed-end investment funds) on the basis of predetermined standards that enable investors to be protected better.

In addition to being of fundamental importance for the regulation of markets, Directive 2004/39/EC on markets in financial instruments profoundly affects the regulation of intermediaries (Box 10).

The forthcoming revision of Consob Regulation 11522/1998 on intermediaries will therefore be considerably influenced by the implementing measures of the directive that will be adopted in order to ensure a high degree of harmonization of the regulations introduced by EU member states in this field.

Box 10

The new legislation on intermediaries contained in Directive 2004/39/EC on markets in financial instruments

As far as the regulation of intermediaries is concerned, the directive replaces Directive 93/22/EEC, which had provided the first harmonized rules in the investment services field; the new directive contains a number of important innovations.

The first important change concerns the addition of two new investment services: the provision of investment advice, previously classified among ancillary services, and the operation of multilateral trading facilities. Accordingly, in order to provide these services it will be necessary for intermediaries to obtain a specific authorization.

The range of ancillary services is broadened with the inclusion of investment research and financial analysis or other forms of general recommendation relating to transactions in financial instruments.

The list of financial instruments is presented analytically and includes some that were not mentioned in Directive 93/22/EEC (such as derivative contracts relating to climatic variables, freight rates, inflation rates, etc.).

The directive also identifies in more detail than before the obligations investment firms must fulfil with reference both to requirements of an organizational nature and to the rules of conduct in providing investment services.

Some important innovations concern the possibility of providing investment services consisting exclusively in the execution and/or reception and transmission of client orders (execution only) and the new approach to ensuring fulfilment of the best execution obligation

As regards the first aspect, the provision of execution only services exonerates the investment firm from the normally applicable obligation to obtain information from the client and assess the suitability of transactions for clients (Article 19.6 of the directive). However, the directive sets limits on the provision of execution only services, with respect both to the type of financial instrument involved and to the manner of establishing the relationship with the client.

As regards the second aspect, the directive emphasizes the organizational and procedural arrangements that intermediaries must put in place in order to establish and implement an execution policy that will permit the best possible results to be obtained in the execution of client orders (Article 21 of the directive).

This provision needs to be set against a background marked by the absence of the rule requiring trades to be concentrated on a stock exchange and the possibility of a greater fragmentation of trading among different execution venues (regulated markets, multilateral trading facilities and internalizers).

As for Consob's interpretative activity concerning intermediaries, the Commission responded to numerous queries. However, as regards the revision of the Community legal framework, the Commission preferred to wait until the transposition of the provisions in question before analyzing the requests for clarification of greatest general interest, in order to lay down uniform interpretative guidelines.

As usual, the Commission also provided responses to numerous queries concerning financial salesmen submitted by individuals, trade associations and regional commissions. Some of the questions considered were of general interest while others referred to specific matters. The latter concerned entry in the register by right, candidates' satisfaction of the integrity and experience requirements, and the compatibility of the activity of financial salesman with other activities.

In particular, the Commission addressed the question of the offering of shares of the parent company to employees of its subsidiaries on the latter's premises. In this respect the Commission – in light of the legal autonomy of companies belonging to a group and the fact that an offer aimed at employees could be taken as constituting a public offering – ruled that the offer of shares for a consideration by the parent company to employees of its subsidiaries on the latter's premises amounted to door-to-door selling as defined in Article 30 of the Consolidated Law on Finance, with the consequent obligation to use financial salesmen.

In 2004 the new procedures for the Internet-based transmission of data to Consob by persons authorized to provide investment services were fully implemented after a successful trial period.

In 2004 Consob definitively shifted to an Internet-based system for the transmission of periodic data by intermediaries known as "Nuova Teleraccolta". After intermediaries have logged on to Consob's website and entered their passcodes, the system allows them to send electronic documents and structured data that are added to the Institute's databases when they have been protocolled.

This system, which has almost entirely eliminated the flow of paper-based documents and data, will increase the efficiency of the supervisory departments' processing of information and simplify the formalities authorized entities are required to perform.

IX. INTERNATIONAL AFFAIRS

International cooperation

In 2004 Consob continued intensive bilateral cooperation with foreign regulatory authorities, aimed at obtaining information on cases of international financial fraud, and participated assiduously in the activities of the international organizations of which it is a member (in particular IOSCO and CESR).

In particular, Consob was called upon to co-chair with the SEC a special Chairmen's Task Force On Securities Fraud and Market Abuse set up by IOSCO and to chair the Expert Group on Investment Management set up by CESR.

Consob also took part in European Union regulatory initiatives of interest to the Institute and, on a national level, in the implementation of EU directives already approved in the securities field.

In 2004, Consob participated in the IMF Financial Sector Assessment Program (FSAP), which involved assessing the degree of implementation in Italy of the international standards set by IOSCO and IOSCO/CPSS (Committee on Payment and Settlement Systems) and of national legislation on corporate governance.

The final assessments on corporate governance were presented and discussed at a meeting of the IMF's Executive Board, while the assessments of compliance with the IOSCO standards will be presented once the entire FSAP programme has been concluded. Part of the programme will deal with anti-money laundering legislation.

On the occasion of its annual assessment, the IMF announced that the legislation on securities markets and supervisory standards in Italy are comparable with those of other G-7 countries and in some cases higher than existing standards in other EU countries. However, it highlighted the need to strengthen Consob by granting it greater resources and the power to impose sanctions directly, as contemplated under the draft law implementing the EU's market abuse directive, which the IMF hoped would shortly be approved by Parliament.

The IMF also pointed out that corporate governance could be strengthened either by granting minority shareholders the right to appoint some directors or by requiring the election of a majority of independent directors.

In 2004 Consob continued to expand its bilateral cooperation with foreign regulatory authorities and in particular, concluded memorandums of understanding with the Egypt Capital Market Authority and the Monetary Authority of Singapore.

To date the Commission has entered into 32 bilateral agreements on cooperation and the sharing of information and one understanding providing for the confidentiality of the information shared. Consob is also a signatory of the multilateral memorandum of understanding drawn up by the CESR countries belonging to the European Economic Area and the IOSCO Multilateral MOU. The latter sets a benchmark for minimum levels of cooperation among the signatories and introduces, for the first time, a

screening process to verify their ability to fulfil their obligations under the agreement.

In the field of cooperation, last year information sharing activities for supervisory purposes between Consob and foreign regulatory authorities were concentrated primarily in Europe. However, recent financial scandals have highlighted the problem of cooperation with off-shore jurisdictions, and prompted a series of new initiatives within IOSCO and the Financial Stability Forum (FSF).

The cases examined were mainly concerned with market abuse and the integrity and experience requirements applicable to authorized inter-mediaries, but there were also inquiries regarding corporate disclosure, the violation of rules of conduct and unauthorized solicitation.

As regards the volume of international activity during 2004, there was a slight decrease both in the number of requests sent by Consob and in the number of requests received from foreign authorities.

The decrease in the number of requests received from foreign authorities can be explained by the reduction in those for international cooperation on the compliance of managers of investment firms with the integrity and experience requirements, which last year fell to 44, compared with 70 in 2003 (See Table IX.1).

However, the Parmalat affair accounted for a large proportion of Consob's international cooperation activity owing to the sheer volume of data involved and the frequent contacts with foreign regulatory authorities and Italian and foreign judicial authorities.

Table IX.1

International cooperation
(*requests for cooperation*)

Subject of requests	1998	1999	2000	2001	2002	2003	2004
From Consob to foreign authorities							
Insider trading	17	43	32	24	24	11	8
Market manipulation	2	--	1	4	--	4	8
Unauthorized solicitation and investment services activity	7	4	3	10	9	5	2
Transparency and disclosure	--	--	1	--	--	6	9
Major holdings in listed companies and authorized intermediaries	--	--	--	1	1	3	1
Integrity and experience requirements	12	10	19	14	34	21	7
Violation of rules of conduct	--	--	2	--	--	1	2
Total	*38*	*57*	*58*	*53*	*68*	*51*	*37*
From foreign authorities to Consob							
Insider trading	2	3	5	20	13	17	18
Market manipulation	1	3	--	1	1	2	3
Unauthorized solicitation and investment services activity	3	3	1	2	7	4	3
Transparency and disclosure	1	--	2	--	--	--	--
Major holdings in listed companies and authorized intermediaries	--	--	--	--	2	1	--
Integrity and experience requirements	30	44	53	49	80	70	44
Violation of rules of conduct	--	--	--	--	--	--	--
Total	*37*	*53*	*61*	*72*	*103*	*94*	*68*

Meanwhile the number of requests for cooperation on suspected cases of insider trading, unauthorized solicitation and investment services, and market manipulation were unchanged with respect to previous years.

European Union activity

In 2004 three directives of particular importance for the financial services sector were formally adopted (see also Chapter VIII "Regulatory and interpretative activity and international developments"): the Transparency Directive, the Market in Financial Instruments Directive (MiFID) and the Takeover Directive.

The Transparency Directive and the MiFID Directive were adopted in accordance with the Lamfalussy process, which empowers the European Commission (after it has consulted with CESR and under the comitology procedure) to adopt level 2 measures to ensure the consistent implementation of the aforementioned directives by EU member states.

Last year the application of the Lamfalussy process *was extended to the banking and insurance sectors under a directive that is due to be published shortly. New permanent committees were established bringing together the two sectors' supervisory authorities: the Committee of European Banking Supervisors (CEBS), headquartered in London, and the Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS), headquartered in Frankfurt.*

In 2004 the European Commission published a communication entitled *"Clearing and Settlement in the European Union"* to assess what remains to be done in this sector. In fact, while the MiFID Directive does envisage some principles of freedom of access to post-trading services, it does not embody standards for the harmonization of clearing and settlement systems.

The communication, the second such public consultation on "clearing and settlement", includes an Action Plan that sets out the main steps deemed necessary to achieve a fully-integrated internal market and at the same time a level playing field for the various suppliers of post-trading services.

In particular, the communication proposes the adoption of a framework directive establishing general principles aimed at ensuring access to all European markets by suppliers of post-trading services under the principle of mutual recognition. The directive is also expected to contain rules of corporate governance, including disclosure requirements, accounting separation and the unbundling of services.

The European Commission has also set up a working group composed of experts from public and private entities (including the European Central Bank and CESR), with advisory and monitoring functions. The group will verify the persistence of barriers that unnecessarily impede freedom of access to the market or restrict competition in the sector.

In addition to its work in the clearing and settlement sector, the activity of the European institutions in the securities field focused on cooperation with CESR and the European Securities Committee (ESC) with a view to formulating second-level implementing legislation (directives and regulations) for the MiFID and Transparency Directive.

The European Commission, meanwhile, launched numerous initiatives concerning the

regulation of limited companies, with a view to implementing its communication on the modernization of company law and the enhancement of corporate governance.

In particular, in 2004, the European Corporate Governance Forum was set up to examine best practices in member states with a view to enhancing the convergence of national corporate governance codes and to provide guidance to the Commission on possible future initiatives.

The initiatives on company law and corporate governance outlined in the Action Plan comprise legislative measures that member states will be obliged to implement at a national level and recommendations from the European Commission, which member states will be invited to adopt on a voluntary basis.

The proposed amendment of the Second Company Law Directive is among the measures that, if adopted, would be binding on member states and would profoundly alter the regulatory framework in this field. The proposed directive sets out to simplify the current directive by easing procedures for the issue of shares without pre-emption rights and eliminating requirements considered to be overly restrictive, such as the need for an expert valuation of contributions in kind and the rule prohibiting companies from granting financial assistance for the acquisition of their shares by a third party. Companies should also be allowed to buy back their shares up to the limits of distributable reserves (thereby eliminating the 10% limit envisaged under the current directive). To protect shareholders of a company whose shares are traded on regulated markets, it is proposed that new rules on "squeeze-out" and "sell-out" rights be introduced: i.e. the right of the majority shareholder to buy out minority shareholders at a fair price, and the right of minority shareholders to compel the majority shareholder to buy their shares.

Again in respect of company law, it is worth noting the adoption of a proposal to revise the Eighth EU Directive on Auditing (see also Chapter VIII "Regulatory and interpretative activity and international developments").

The aim of the proposal is to ensure a high degree of harmonization throughout the European Union in respect of access to the profession of statutory auditing and compliance with professional integrity requirements, professional ethics, auditing principles and quality assurance requirements. In line with international principles, the proposal also introduces pubic oversight of the auditing profession and rules for cooperation between the competent supervisory authorities.

The EU Council has already reached political agreement on the general approach of the draft directive, which is now being examined by the European Parliament pending approval on first reading. The review by the Parliament has revealed some divergences with respect to the compromise reached in the Council depending on the solutions adopted, this could have a significant impact on Italian law.

One of the problem areas concerns the degree of harmonization of international auditing standards (ISA). The Commission advocates the maximum degree of harmonization while in its general approach, the Council holds that Member States should enjoy a degree of freedom – albeit limited – to impose additional requirements. The implementation of the ISA at European level is to be carried out in accordance with the comitology procedure. The fact that this procedure prevents Member States from imposing additional requirements could be another difficulty.

In addition, the European Parliament wishes to amend the text of the Council by limiting the liability of auditors and introduce an option for the establishment of an audit committee, something which, according to the Council, is envisaged for public interest entities.

Turning to the rotation of audit partners or of audit firms themselves, the text of the Council foresees the introduction of partial changes to the system currently in force in Italy (mandatory rotation of senior partners or of auditing firms, provided the partners do not stay the same). Some of the amendments proposed by the European Parliament set limits on the rotation of audit firms.

Among the proposals for directives currently being discussed within the European Council and Parliament is the revision of the EU's accounting directives, aimed at introducing the collective responsibility of directors for companies' annual accounts and the disclosure of important information of a non-financial nature, as well as measures to ensure the transparency of transactions with related parties for unlisted companies, which are not subject to international accounting standards.

The draft directive also proposes that listed and unlisted companies be made subject to transparency requirements when they use special purpose entities for certain transactions; listed companies will be asked to include a "declaration on corporate governance" in their annual reports, including among other things, a corporate governance code (with which companies must comply), the rules governing shareholders' meetings and corporate management bodies.

Also under discussion are proposals for a directive on cross-border mergers, aimed at facilitating mergers between companies established in two different Member States, and for a directive on the cross-border transfer of companies' registered office, aimed at making it easier for companies to relocate within the European Union.

The other EU initiatives taken in 2004 were recommendations, primarily in the field of corporate governance.

In particular, the Commission adopted recommendations on the Role of Independent Directors and on Directors' Remuneration, and adopted a communication on Preventing and Combating Financial and Corporate Malpractice.

The European Commission also initiated consultations on the protection of shareholders' rights.

The salient points of the consultation process are concerned with the recognition of shareholders' voting rights (in particular, when they reside in another Member State), the criteria for participating in shareholders' meetings and the dissemination of information before and after such meetings.

In 2004, Consob continued to cooperate on twinning projects under the European Commission's Phare programme.

In particular, Consob cooperated on and completed a twinning project between the Czech Securities Commission and the Italian Ministry for the Economy and Finance. Also in 2004, a new twinning project with a total duration of six months was launched between the Romanian National Securities Commission (CNVM) and Consob. The project aims to assist the Romanian supervisory authority in drawing up secondary legislation on intermediaries, financial markets, issuers and securities settlement and clearance systems, thereby enabling the transposition of the relevant

EU's legislation into the Romanian legal system. The project is being carried out together with the Spanish Comisión Nacional del Mercado de Valores and the Bank of Italy.

Consob was also a member of the teams sent to Romania and Bulgaria under the "peer review" programme organized by the European Commission and financed with funds from its Technical Assistance and Information Exchange unit (TAIEX).

Activity of the Committee of European Securities Regulators (CESR)

Last year Consob was particularly active within CESR, especially in the ad hoc working groups set up to prepare second- and third-level implementing measures of several EU directives (including that on markets in financial instruments) and above all, as chair of the CESR Expert Group on Investment Management.

CESR also created three expert groups for the preparation of implementing measures for the Markets in Financial Instruments Directive; when the work of these groups was concluded in February 2005, CESR sent its advice to the European Commission (in response to the first set of mandates) on the rules to be applied to intermediaries, as well as on cooperation and enforcement.

As regards intermediaries in particular, the following issues were dealt with: the role of firms and of employees in ensuring compliance with the relevant rules and the handling of complaints by investors; obligations relating to internal organization; obligations relating to the need to avoid additional operational risks in the event of outsourcing; company registration requirements; the safeguarding of clients' funds; conflicts of interest; the obligation on the part of companies authorized to distribute financial products and/or services to provide clear and accurate information that is not misleading; information that must be disclosed to the client by the investment firm prior to the supply of the service; retail agreements with clients; and finally, relations with clients governing the execution of orders and periodical reports.

The section on cooperation and enforcement contains, instead, detailed rules on the exchange of information between supervisory authorities, and in particular, on speeding up information flows to market authorities of data on transactions carried out by investment firms. To this end, a special Task Force of technical experts was established to explore ways of standardizing information and communication procedures for data that is transmitted to supervisory authorities electronically.

CESR must communicate its opinion to the European Commission by the end of April 2005 on the so-called suitability test, the rules of best execution and rules for regulated markets (including rules for pre-trade and post-trade transparency).

The Expert Group on the Transparency Directive has already prepared level 2 measures on the dissemination of information by issuers whose shares are traded on regulated markets and has published proposals for the notification requirements of major holdings, the issue of periodic information and the equivalence of transparency requirements for third-country issuers.

The level 2 measures on the notification requirements for major holdings are of special importance for Consob. Italian law is particularly

strict in this respect (unlike the 5% threshold under the directive, in Italy once the 2% threshold has been exceeded notification of major holdings by shareholders or holders of voting rights is mandatory) and in respect of shareholders' agreements (insofar as the current legislation applies to agreements other than those on the exercise of voting rights).

The intensive work of CESR-Fin and of its sub-committees continued last year. CESR-Fin is the permanent working group of CESR members in the area of financial reporting (see also Chapter VIII "Regulatory and interpretative activity and international developments"). The group focused primarily on the preparation of a working paper assessing the equivalence of third countries' Generally Accepted Accounting Principles (GAAP) with respect to CESR's recommendations on the transition to International Financial Reporting Standards (IFRS) and procedures for setting up a data base of cases of enforcement.

Last year CESR also set up a task force on credit rating agencies to advise the European Commission on the desirability of a Community legislative initiative in this field. The working group published a consultation paper on the issue (see also Chapter VIII "Regulatory and interpretative activity and international developments").

In 2004, CESR-Pol (the permanent operational group for cooperation and exchange of information for the purposes of surveillance) worked intensively to prepare third-level guidance on the implementation of the Market Abuse Directive, with particular reference to the operation of the Accepted Market Practices (AMPs) regime, a common format for reporting suspicious transactions, CESR's role as defined in Article 16 of Directive 2003/06/EC on market abuse, and the creation of a European data base for enforcement.

CESR-Pol also approved the guidelines on best practices in respect of requests for cooperation and in particular regarding the procedures for processing declarations by individuals; the aim of the guidelines is to facilitate cross-border cooperation between the competent authorities.

During 2004, the Expert Group on Investment Management chaired by Lamberto Cardia, Chairman of Consob, worked intensively on the mandates given by CESR and the European Commission. In particular, it drew up a document, approved in December 2004 at a plenary meeting of CESR, setting out guidelines regarding the transitional provisions of the UCITS directives approved in 2001.

The approval of the guidelines was a particularly significant achievement and recognized as such by the European Commission, as it ended many years of uncertainty surrounding the transitional arrangements.

The EU Commission had come to the conclusion that the rules for the transitional regime envisaged under the 2001 directives (rules on authorization of fund managers and assets in which funds could invest their resources) had given rise to different interpretations among Member States and had established a UCITS Contact Committee to look at the issues involved; the Committee was subsequently abolished when its powers were transferred to CESR.

The guidelines aim to ensure a uniform approach to UCITS throughout the European Union and in 2005 CESR's Review Panel will be responsible for ascertaining to what extent they have been implemented at a practical level by the Member States. The aim of the Review Panel, which is a permanent group within CESR, is to verify the implementation of standards with respect to rules of conduct adopted by Member States.

The group's activities, which commenced in 2004, included work on the European Commission's mandate to prepare proposals for level 2 measures on the financial instruments in which funds may invest.

The group is charged with clarifying some definitions of the different types of eligible assets for harmonized funds. This will involve determining the types of investment these funds are allowed to make: for instance, closed-end funds, structured bonds, various kinds of money market instruments and indexes etc. Once it has been approved in CESR's plenary session, the advice on eligible assets will be the subject of a public consultation.

The group's mandate also extends to level 3 measures, some of which concern important aspects of the regulation of collective investment undertakings, such as the rules of conduct for managers and simplifying the registration of funds.

Having concluded in 2003 the work requested on level 2 measures for model prospectuses (transformed by the EU Commission into Regulation 809/2004/EC; see also Chapter VIII "Regulatory and interpretative activity and international developments"), in 2004, The Expert Group on Prospectus focused on level 3 measures and prepared a series of recommendations for the coordinated implementation of rules on prospectuses.

These recommendations are intended to ensure that different interpretations of the level 2 rules do not result in operational problems with respect to the European passport and the automatic recognition of prospectuses.

Finally, it is worth noting the establishment of a joint CESR-ESCB working group, which reviewed the draft clearing and settlement standards (see also Chapter VIII "Regulatory and interpretative activity and international developments").

Activity of the International Organization of Securities Commissions (IOSCO)

Last year Consob was particularly active within IOSCO's High Level Chairmen's Task Force Regarding International Securities Fraud. The Task Force, which is co-chaired by Consob and the SEC, presented a report to the Financial Stability Forum held in February 2005.

The report contains recommendations for adoption at an international level by IOSCO's member agencies in their activities for combating financial fraud. Due to the increasing interdependence and interconnectedness of financial markets and of intermediaries working in these markets, financial fraud poses an ever-greater threat to the financial system and the proper functioning of supervision mechanisms. The main recommendations concerned: company controls related to aspects of corporate governance; public oversight of auditing firms and the international auditing standards with which these firms must comply; complex corporate structures, especially as regards special purpose vehicles; the conduct of intermediaries in placing issuers' securities; the need for the market to receive adequate information on issuers and

international cooperation between supervisory bodies based on high standards, especially for transactions carried out by off-shore financial centres.

The recommendations of the Task Force will translate into a major action plan for IOSCO in this field, and together with the OECD in the field of corporate governance.

Among the other IOSCO initiatives of particular importance, it is worth noting the approval by the Committee of Chairmen of Principles on Client Identification and Beneficial Ownership for the Securities Industry and the publication in December 2004 of a set of Code of Conduct Fundamentals for Credit Rating Agencies (CRA).

This code contains a series of provisions that should be adopted by individual credit rating agencies in their internal codes of conduct; moreover, these measures should provide CRAs with a useful instrument for safeguarding the independence of their analyses, eliminating and/or managing conflicts of interest and maintaining the confidentiality of information provided by issuers. The ultimate objective of the document is to increase the protection of investors, while guaranteeing the integrity of credit rating procedures.

Another important initiative taken last year was the publication by the Committee on Payment and Settlement Systems (CPSS) and IOSCO of a series of Recommendations for Central Counterparties. These recommendations set out standards intended to ensure the proper management of risk by central counterparties in financial transactions.

X. JUDICIAL REVIEW

Disputes concerning sanctions and other supervisory measures

The number of appeals made in 2004 to the ordinary and special administrative courts against measures adopted by Consob itself or others on a proposal from Consob in the exercise of its supervisory powers did not change significantly from the previous year.

More specifically, there were 31 appeals (the same as in 2003) to the administrative courts seeking to quash measures adopted by Consob in the exercise of its supervisory and enforcement powers whereas there was a slight drop in proceedings instituted before the ordinary courts, from 62 in 2003 to 61 in 2004 (Table X.1).

Some of the most important judgements issued by both the ordinary and the administrative courts during 2004 addressed various aspects of the right of access to administrative documentation in Consob's possession.

Table X.1

Appeals against measures proposed or imposed by Consob [1]
(outcomes at 31 December 2004)

	Administrative court [2]						Ordinary court [3]					
	Upheld [4]	Dismissed	Pending	of which: Stay granted	of which: Stay not granted	*Total appeals*	Upheld [4]	Dismissed	Pending	of which: Stay granted	of which: Stay not granted	*Total appeals*
2002	2	5	34	--	14	*41*	12	24	4	--	--	*40*
2003	--	6	25	1	12	*31*	43	19	--	--	--	*62*
2004	1	3	27	--	12	*31*	17	30	14	1	--	*61*

[1] The appeals are shown according to the year in which they were made. [2] Appeals to Regional Administrative Tribunals and the Council of State and extraordinary appeals to the President of the Republic. [3] Tribunals and Appeal Courts. [4] Wholly or in part. [5] Includes appeals restricted to stays.

First and foremost, the Lazio Regional Administrative Tribunal dealt with the issue of whether or not consumer associations and users had a right of access to administrative documentation in relation to enforcement proceedings brought against persons subject to Consob's supervision. In this regard the administrative court ruled that a consumer association had a relevant legal interest to access only if "it is strictly connected to protection of the association's individual sphere and is such that, firstly, it differs from that of the single members and, secondly, will not end up affording the association the opportunity of bringing merely corrective popular actions. (..) the right of access to documents of governmental bodies cannot be transformed into an instrument of 'popular inspection' of the efficacy of administrative action, an objective which goes beyond the principles enshrined in Article 22 of Law no. 241 of 7 August 1990 denying recognition of a general and indistinct interest of a citizen – be it an individual

or an association – to check that administrative functions are being properly performed". Those principles, said the administrative court, retain their validity also in light of Law no. 281 of 30 July 1998 (regulating the method of protecting the collective interests of consumers and the users of public services), which "does not contemplate a general power of access for inspection purposes, which continues to be governed by the key law of 1990".

With reference to the relationship between the right of access to records and the right of defence in appeals against pecuniary administrative sanctions under Article 195 of the Consolidated Law on Finance, the Milan Court of Appeal rejected the notion that per se a challenged measure could be rendered invalid owing to limitations on defence rights stemming from the fact that the defendant's application for access during the enforcement proceedings was only partially granted. On this point the Court of Appeal – considering that "Article 25 of Law 241/1990 affords whoever complains of a refusal to grant access or of the granting of partial access to administrative documentation the special remedy of petitioning the regional administrative tribunal within 30 days" – ruled that "the incompleteness of any given document can at most have repercussions on the sufficiency of the evidence (..) without prejudice to the power of the courts to assess in the light of the grounds of appeal whether the sanctions to be imposed are well founded or not. Therefore, it is in relation to this aspect that any shortcomings in evidence would lead to the appeal being upheld".

The same Court of Appeal then tackled the issue, with specific reference to observance of procedural deadlines, of access to documentation which the judicial authorities declare cannot be shown on grounds that it is subject to secrecy as part of a criminal investigation. Dealing with a plea that an order imposing a sanction was null and void in that there had been a failure to observe the prescribed 180-term (from service of the letter outlining the charges) within which Consob is obliged to make its proposal on sanctions to the Ministry for the Economy and Finance, the Appeal Court held that there had been no violation since Consob had lawfully suspended the enforcement proceedings until the competent Chief Public Prosecutor's Office had cleared the disclosure of the documents.

As for issuers, in July 2004 the Milan Court of Appeal once again addressed the topic of the co-liability of the board of auditors with directors for violations of the Consolidated Law on Finance. In its decision regarding the pecuniary sanction that had been imposed acting on a proposal from Consob by the Ministry for the Economy and Finance following a failure (contrary to Articles 106.1 and 106.2 of the Consolidated Law on Finance) to launch a public tender offer for the shares of a listed company, the Court of Appeal upheld Consob's reasoning with regard to the involvement in the offence of the members of the board of auditors of the company obliged to make the tender offer, who had been called to answer for failing to liaise promptly with the board of directors to prevent the violation.

In dismissing the arguments submitted by the members of the board of auditors at trial (to the effect that they were totally unaware of the transaction which triggered the obligation to launch the public tender offer), the Court of Appeal ruled that they were liable since they had not complied with their duties to oversee transactions carried out by the board of directors in breach of the rules on mandatory public tender offers. These were transactions that the members

of the board of auditors "could not ignore by reason of the office they held" and in respect of which they should have "in any event taken steps to find out about and remedy within the company" since it "is the precise duty of the board of auditors to assure transparent, prudent and proper management so that the company's assets and business performance are safeguarded".

There were also two important judgements in relation to proceedings challenging the financial statements of listed companies brought by Consob pursuant to Article 157.2 of the Consolidated Law on Finance.

The first case was decided in March by the Supreme Court, which, by overturning the judgements at first instance and on appeal (that had ruled against Consob) proceeded to fully adopt the reasons which had led Consob to challenge the listed company's financial statements for the financial year ended 31 December 1997 and appeal the two previous judgements.

In particular, Consob disagreed with how a particular item had been treated in the accounts. A penalty paid by the company in question to its parent to terminate an agency agreement for the distribution of products had been recorded in the accounts not as an "extraordinary cost" (to be included in full in the profit and loss account for the year in question) but as an "expansion cost" to be amortized over five years further to the provisions of subparagraph 5 of Article 2426 of the Civil Code.

In this regard the Supreme Court stated that "multi-year use which is a prerequisite for the capitalization of the cost and its inclusion among the assets in the balance sheet, with the consequent charging to the profit and loss account of just the figure for amortization spread over a number of years (...) cannot be equated with the mere benefit accruing from a positive transaction, from a good investment or from a saving on costs but must take the form of business revenue that is strictly linked to the cost and directly referable thereto". The Supreme Court was of the view that no such link existed between the cost of terminating the agency agreement in advance and the positive effects obtained by the company as a result of reorganizing its commercial network: "the costs of the termination of the agreement thus not only constituted the basis for achieving greater productivity and an expansion of the company's network ... but the condition for the making of the expansion costs which would then be the sole reason for the subsequent greater productivity".

The second case was decided in May 2004 by the Parma Tribunal, called upon to judge the statutory and consolidated financial statements for the year ended 31 December 2002 of a listed company (put into special administration under Legislative Decree 347/2003), which Consob alleged did not provide a true and fair view of the accounts.

The case, which concluded with a judgement fully upholding the objections made by Consob (which the defendant itself had not disputed), also addressed the issue of whether the running time in relation to the limitation period of 6 months laid down by Article 157 of the Consolidated Law on Finance should be suspended during holiday periods. The defendant company argued that it should not while Consob was of the opposite view. The court ruled in Consob's favour.

Reiterating the trend that was already evident in the precedents of the Supreme Court and the Constitutional Court, the Tribunal clarified

that "the limitation periods that Article 1 of Law 742/1969 provides are to be suspended during holiday periods are not only those applicable to the trial itself but also cover initial limitation periods within which the legal proceedings must be instituted ... when such is the sole means of protecting the applicant's rights. In the case in point, there is no doubt that the sole way of achieving Consob's desired result is recourse to the courts".

In light of the foregoing the Tribunal held that Consob's application was not statute barred and hence dismissed the defendant's plea in this regard.

The full bench of the Supreme Court on numerous occasions ruled on questions concerning which courts have jurisdiction to hear appeals against measures imposing sanctions adopted directly by Consob or by others on a proposal from Consob.

As regards measures imposing sanctions adopted directly by Consob against financial salesmen, the Supreme Court ruled that the ordinary courts also enjoyed jurisdiction over proceedings instituted after the entry into force of Law no. 205 of 2000, which amended the rules on exclusive jurisdiction laid down by Article 33 of Legislative Decree no. 80 of 1998. In the view of the Supreme Court "by expressly recalling in connection with the sanctions applicable to financial salesmen the provisions of Law no. 689 of 24 November 1981 except for Article 16, the third paragraph of Article 196 of Legislative Decree no. 58 of 1998 lays down that the proceedings for appeals against such sanctions fall within those governed by Articles 22 and 23 of that law, which vests jurisdiction in the ordinary courts". In holding that Article 196 was an exception to the rules on exclusive jurisdiction, the Supreme Court upheld the principle that the ordinary courts will also have jurisdiction in cases where the sanctions take the form of debarment/disqualification orders "given that such sanctions, just like pecuniary ones, must also be imposed taking account of the seriousness of the violation and recidivism (and hence must be decided on the basis of criteria which cannot be considered as merely discretionary)".

Similarly, the Supreme Court on more than one occasion in 2004 held that the provisions of Article 195 of the Consolidated Law on Finance were an exception to the rules on exclusive jurisdiction, which lay down that appeals against measures imposing sanctions adopted by the Ministry for the Economy and Finance under that article are to be heard by Court of Appeal. This conclusion is bolstered by Article 1.2 of Legislative Decree no. 5 of 17 January 2003 (which entered into force on 1 January 2004 and is recognized as being of interpretative value by the Supreme Court) according to which: "All rules on jurisdiction shall remain unchanged. The Court of Appeal shall have sole jurisdiction over all the disputes under Article 195 of Legislative Decree no. 58 of 24 February 1998".

The Lazio Regional Administrative Tribunal expressed itself in different terms in a judgement issued in November 2004 (and published in January 2005). That court was of the view that the imposition of sanctions under Article 195 of the Consolidated Law on Finance "must be considered as part of the supervision of securities markets, understood as indivisibly embracing not only the investigations, inspections, authorizations and regulatory aspects governed by Legislative Decree no. 58 of 24 February 1998 but also the sanctions". Therefore, the precedent cited holds that the administrative courts enjoy jurisdiction for disputes under Article 195 of the Consolidated Law on Finance. According to the Lazio Regional Administrative Tribunal it is only for disputes

arising after 1 January 2004 that the Court of Appeal enjoys jurisdiction given that the aforementioned Article 1.2 of Legislative Decree no. 5 of 17 January 2003 is to be considered as having introduced a new rule and not merely confirmed an old one.

Legal proceedings involving Consob

Worthy of special mention is judgement no. 466 of the Milan Court of Appeal (published on 13 February 2004), which, by upholding in full the judgement at first instance of the Milan Tribunal of 27 January 2000 (published on 20 March 2000), dismissed a claim for damages brought against Consob for supposed negligence in the exercise of its supervisory powers concerning an alleged violation by a company, it too a defendant in the case, of an obligation to launch a public tender offer pursuant to Article 10.8 of Law 149/1992.

In its judgement the Milan Court of Appeal held that a public tender offer, though mandatory, "is effective and valid as an offer to the addressees thereof solely in cases where it is made in the form required by the circumstances and complies with the legal provisions governing the matter (including Article 1366 of the Civil Code). The moment an offer becomes effective is when it is disclosed and made known to the public and not when it is communicated to Consob". In the case in point, since the minority shareholders, plaintiffs in the proceedings at first instance, were not "addressees of a valid and effective published offer addressed to them", the Court of Appeal ruled that they had acquired no rights vis-à-vis the person obliged by law to launch a public tender offer. With specific reference to Consob, the Court of Appeal confirmed that "there is no proof that Consob failed to comply with its supervisory and oversight duties and, if anything, there is documentary proof that it complied strictly with them as the court at first instance found".

By judgement no. 22790 of 13 July 2004, published on 26 July 2004, the Rome Tribunal ordered Consob to pay a group of savers damages as a result of its failure to carry out controls on some investment firms.

The case arose out of the financial difficulties that befell a group of companies of which only some were authorized to engage in the activities regulated by Law 1/1991 (and hence subject to supervision by Consob) with the consequence that some of the companies were operating illegally. The judgement has been appealed since the evidence that emerged at trial was not fully considered in the decision, which also inaccurately reconstructed the legislative framework applicable at the time.

XI. CONSOB'S INTERNAL MANAGEMENT AND EXTERNAL RELATIONS

Financial management

Net of the prior-year surplus, Consob's total income in 2004 amounted to €76.4 million (Table XI.1), of which €46.0 million came from fees (60.2 per cent of the total). The largest share of own revenue came from fees paid by financial salesmen, intermediaries and issuers (Table aXI.1).

Turning to expenditure, there was an increase in that on current account, attributable primarily to staff costs and the need, which emerged during the year, to make provision for possible damages under Article 2043 of the Italian Civil Code.

Capital expenditure totaled €4.7 million, which was more than in 2003, mainly owing to the allocations for the creation of a new library at the Institute's Head Office in Rome and the costs incurred in restructuring the building in Via Broletto made available by the Milan City Council in 1999 for Consob's offices in Milan.

Table XI.1

Summary table of income and expenditure
(millions of euros)

	2000[1]	2001[1]	2002[1]	2003[1]	2004[2]
Income					
Prior-year surplus [3]	50.7	74.0	12.3	11.6	11.7
State funding	31.0	31.0	23.7	23.3	27.8
Own revenue					
Application fees [4]	3.0	1.5	–	–	–
Exam fees [4]	3.0	1.5	–	–	–
Supervision fees	31.8	27.4	39.9	41.6	46.0
Trading fees [4]	5.2	3.6	–	–	–
Sundry revenues	4.2	11.6	3.8	4.9	2.6
Total income	*128.9*	*150.6*	*79.7*	*81.4*	*88.1*
Expenditure					
Current expenditure					
Members of the Commission	1.2	1.4	1.4	1.3	2.4
Staff	33.7	45.8	42.2	43.2	48.9
Goods and services	14.2	16.4	18.7	18.9	21.7
Renovation and expansion of fixed assets	2.4	3.8	4.7	4.6	5.0
Unclassified	0.1	4.9	1.1	0.4	5.4
Total current expenditure	*51.6*	*72.3*	*68.1*	*68.4*	*83.4*
Capital expenditure	3.6	66.8	2.8	1.7	4.7
Total expenditure	*55.2*	*139.1*	*70.9*	*70.1*	*88.1*

[1] Annual accounts. [2] Budget. [3] The surplus is the difference between total income and total expenditure plus the difference in respect of expenditure carryovers and value adjustments of investments, which are not shown in the table. The 2003 surplus is included in 2004 income. [4] As a consequence of the amendment of Article 40.3 of Law 724/1994, as of the 2002 fiscal year only one type of fees exists, known as "supervision fees".

The 2005 budget was approved in December 2004. Total income is expected to amount to €76.1 million, comprising €25.4 million of State funding, €47.1 million of fees and €3.6 million of sundry revenues. A further €13.7 million represents the expected operating surplus in 2004; this consists of the operating surplus available for planned expenditure in 2005 (€13.2 million), and 2004 commitments carried over to 2005 under Article 19 of the Accountancy Rules (€0.5 million). The latter amount refers exclusively to the postponement of the creation of the above-mentioned new library in the Rome Head Office.

Total expenditure in 2005 (net of the prior-year commitments carried over from 2004 and included in capital account expenditure) is expected to amount to €89.3 million, of which €86.4 million on current account and €2.9 on capital account. Budgeted current expenditure shows an increase of €3 million on last year's budget figure, mainly owing to a forecast increase in staff costs, the calculation of which takes account of the 2004 Community Law and the provisions relating to the increase in Consob's staff. Capital expenditure for 2005 reflects further work on the plan to modernize the information system, the creation of a new library at the Head Office in Rome referred to above, and expenses for additional workplaces in connection with the above-mentioned increase in staff.

In December 2004, Consob established the fee schedule for 2005, identifying, on the basis of Article 40 of Law 724/1994, the categories of persons subject to supervision required to pay fees and the fee amounts.

The measures adopted to this end reflect the absence of change in the legislative framework. They therefore provide for the same categories of persons to be charged an annual supervision fee as in the 2004 schedule.

Personnel management

Last year one permanent position was created and three positions with fixed-term contracts, so that a total of 4 new employees joined Consob in 2004. On the other hand, 8 permanent staff members left (all voluntarily) and 2 employees following the termination of their fixed-term contracts. The total number of employees at the Institute therefore decreased by 6 with respect to 2003 (from 408 to 402). (Tables XI.2 and aXI.2).

Table XI.2

Distribution of staff by grade and organizational unit [1]

	Managerial staff		Operational staff	Other	*Total*
	Senior managers	Junior managers			
Divisions					
Issuers	8	29	34	–	*71*
Intermediaries	5	13	58	–	*76*
Markets and Economics	6	20	25	–	*51*
Administration and Finance	5	5	36	16	*62*
Legal Services	3	8	14	–	*25*
External Relations	4	5	6	–	*15*
Resources	3	5	21	–	*29*
Other offices [2]	11	14	48	–	*73*
Total	*45*	*99*	*242*	*16*	*402*

See the Methodological Notes. [1] At 31 December 2004. Fixed-term employees are classified according to the equivalent grades of permanent employees. [2] The offices outside the division structure.

In particular, Consob used the rankings of a competitive examination held in 2003 to recruit one grade 2 officer on a permanent basis for the Personnel Administration Office at the Rome Head Office.

Two other persons were hired with the equivalent rank of assistant central manager for positions in Milan and Rome and one person with the equivalent rank of coadjutor for the Rome office, in accordance with Article 3.2 of the Rules on Fixed-Term Contracts, as approved by Resolution no. 11412/1998.

In order to fill vacant positions several public competitive examinations were held last year to hire staff on a permanent and fixed-term basis for the Milan and Rome offices; the results will be announced in 2005.

More specifically, Consob held competitive examinations to recruit ten coadjutors (with a degree in economics) for the Milan office; six coadjutors (with a degree in law) for the Rome office; three coadjutors (with a professional background in statistics) for the Rome office; four deputy assistants for the Milan office and two deputy assistants for the Rome office.; In addition, a competitive examination reserved to blind persons was held to hire a deputy assistant for the position of receptionist at the Milan office.

Interviews were held for the selection of persons: with a professional background suited to the information technology division for one position with the equivalent rank of manager on a fixed-term employment contract; qualified to work as financial analysts, for one position with the equivalent rank of assistant manager on a fixed-term contract; qualified to work as financial analysts for six positions with the equivalent rank of grade 2 officer for contract work; with a professional background in international relations for three positions with the equivalent rank of grade 2 officer for contract work; and finally, with a professional background suited to work in the management control division for one position with the equivalent rank of grade 2 officer for contract work.

Last year Consob held an internal exam for officers, enabling 28 employees with the rank of grade 2 officers to rise to managerial level.

In 2004 contractual agreements were finalized concerning: staff remuneration levels, changes to working hours, and rules for a supplementary pension fund for staff members recruited since 28 April 1993.

Turning to training, a total of 13,832 hours were devoted to this activity in 2004 (16,775 in 2003), corresponding to a per capita average of about 35 hours (41 in 2003).

In terms of content, investment in training focused on technical-professional courses, with a view to updating specialist skills, and language courses to facilitate Consob's international work.

Training related to the reform of company law and on the new international accounting standards continued last year, in light of the importance of these areas for Consob's institutional activities.

External relations and investor education

Last year Consob continued to engage in intensive external communication activities. Alongside its traditional commitment to providing investors and market participants with all the information they require, special emphasis was placed on relations with other national institutions, especially with respect to Parliament's broad range of activities aimed at

introducing significant changes to the laws on financial markets.

Consob accorded the highest priority to its relations with Parliament and launched a series of initiatives to this end. Aside from its daily monitoring of parliamentary activity, it is worth noting the commitment to providing Parliament with all the necessary support for holding numerous hearings and question times on matters of interest to Consob. In view of the degree of urgency involved, question times in particular required skilled and prompt action.

In 2004 Consob took part, in various parliamentary fora, in investigations into events that have recently had a profound impact on financial markets in Italy, as well as in the drafting and discussion of important legislative measures. Lastly, leading members of the Institute took part in hearings and addressed parliamentary bodies on eight occasions. Also significant was the assistance provided by the Institute in the various phases of the enactment of new legislation and, in accordance with the reciprocal institutional roles, in the preparation of important measures relating to financial markets.

In particular, Consob contributed to various bills with measures for the protection of investors and, in the context of the 2004 Community Law, to the reformulation of the rules governing market abuse in transposing the relevant European legislation.

Turning to Consob's communicational activities, aimed at satisfying the information requirements of investors and market participants, last year the Institute's website was completely overhauled and updated. The new site became fully operational in November 2004.

Aside from changing the graphic layout, to give it a more modern and dynamic appearance, the site was restructured to enable both professional operators and members of the public to benefit from a more a user-friendlier instrument, thereby facilitating the navigation of the vast quantities of data and information that have always been available. Special attention was paid to the needs of users with disabilities.

Among the significant changes introduced to the website was its restructuring to meet the needs of the three categories of typical users: investors, market participants and journalists. For each category there is a corresponding navigation tree that highlights and makes available the information of most interest.

For example, the navigation area reserved to investors devotes ample space to information on investor education, which for many years now has been one of Consob's strategic objectives and perfectly complements its traditional supervisory duties. While navigating, investors can access information useful for arriving at investment choices; of note, in this respect, is the possibility of consulting a database of listed companies and the texts of prospectuses for public offerings, listing prospectuses and offer documents published in relation to cash and/or exchange tender offers. Investors can also learn more about strategies and precautions for avoiding improper or even fraudulent offers. In the latter case, the disclaimers regarding unauthorized market transactions and information in the registers on persons subject to Consob's supervision posted online play an important role. Awareness of this kind of information can, in fact, prevent investors from getting involved with operators that have not

received the necessary authorizations or are engaged in activities that are punishable by law. Finally, another very valuable feature of the website is the publication online of all the relevant laws and regulations and all Consob's guidance (communications, recommendations and responses to queries); consultation of these documents can clarify the legislative framework that governs investors' relationships with intermediaries, enabling them to identify their rights and the duties to which intermediaries are subject.

The navigational areas for market participants and journalists follow the same criterion as that reserved to investors: grouping together the information of most interest to the relevant category and therefore making it rapidly accessible, in the belief that the broad availability and exchange of information between market participants will prove to be a positive element in the correct functioning of the market itself. Through the dedicated areas, operators and journalists can also communicate online with Consob. For market participants, the website is becoming the principle means of communication with the Institute.

Last year the website content was further enhanced. In this respect it is worth highlighting the addition to the site of the list of alternative trading systems and the publication of all the related regulations. Given the paucity of information on these systems, the intervention is noteworthy in that it enables interested parties to consult a series of documents published in their entirety.

The significant increase in the number of visitors in 2004 confirms the utility of the investments made to enhance the quality of the website, seen as the core communicational tool available to Consob (Table XI.3).

Table XI.3

Visits to Consob's website

Sections	2002	2003	2004
Home page (What's new)	829,385	953,900	1,563,957
Investors' corner	102,159	144,333	156,023
Operators' corner [1]	—	70,573	69,071
About Consob	121,688	118,407	157,075
Companies	1,014,943	2,214,855	2,567,876
Intermediaries and markets	262,218	189,417	234,561
Consob decisions	416,423	387,879	421,345
Legal framework	555,583	430,937	501,071
Publications and press releases	438,993	451,318	495,005
Links	30,148	27,122	29,087
General search engine	242,315	223,459	245,013
Help and site map	63,927	64,543	72,354
English version	200,237	132,605	136,357

[1] Section added in 2003.

However, the Institute's focus on enhancing its website did not lead to neglect of more traditional instruments of communication such as Consob's official bulletin and weekly newsletter. Among the many initiatives undertaken in the communication field, mention should also be made of Consob's participation in the Public Administration Forum. As in earlier years this provided an opportunity to make direct contact with investors, and served to publicize the functions Consob performs and the instruments it uses, as well as to gain indications on the information expectations and needs of the public.

Lastly, Consob also continued to respond to the requests for information it receives on a daily basis (Table aXI.3).

Last year there was a slight increase in the level of requests for information with respect to 2003, in particular by individuals, confirming the efficacy of Consob's communication activities aimed at investors. Consob continued to report a high level of activity by the telephone help desk in responding to the needs of investors and market participants.

Developments in information technology

Last year Consob continued to adapt its hardware and software platforms to the most advanced technological standards.

In particular, it substituted front-end computers (for receiving data from external sources) with centralized data processors that physically separate data originating on the Institute's internal network from data received via external networks.

Steps were also taken to purchase and develop hardware and software systems for data protection and security, pursuant to the requirements of Legislative Decree 196/2003.

More specifically, Consob acquired the hardware and software needed for a double-firewall known as the Intrusion Detection System *and to enable employees to access the information available in the Institute's archives via the internet* (Virtual Private Network - VPN).

Turning to telecommunications, the internal connection for data transmission between Consob's Rome and Milan offices was restructured.

The new connection was completed using optic fibres with a transmission band of 100 Mbit/second; in terms of performance and capability, this brings users in Milan into line with those in Rome, where most of the Institute's servers are located. The telephone and videoconferencing traffic (2 Mbit/second) has remained on the government network, and the agreement regulating its use was renewed.

In the *e-government* sector, last year Consob's new website was launched, following intensive restructuring and restyling.

In addition to the new graphic layout, a Content Management tool generates the site's contents and simplifies its management. The use of the Internet as a data transmission vehicle for information that entities subject to supervision are required to send to Consob was extended to include other types of information (Teleraccolta).

The most noteworthy applications introduced in 2004 include the updated version of the Integrated System for the Supervision of Markets (SAIVIM) for signalling instances of market abuse; the new version includes a

computerized "forum" devoted to news useful for analyzing market malfunctions signalled by the system.

Finally, new software for the receipt and storage of data on alternative trading systems and the new regulated TLX market were developed and work also began on the development of a new software management system for financial salesmen.

In particular, an online connection was activated with the Lazio Regional Commission for data processing and the management of data flows related to the registration of financial salesmen.

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Table aI.1

Offerings of shares and convertible bonds by listed companies [1]
(millions of euros)

	Subscription of new securities						Sale of existing securities						*Total*					
	Individuals	Institutional investors	Employees	Shareholders	Other	*Total*	Individuals	Institutional investors	Employees	Shareholders	Other	*Total*	Individuals	Institutional investors	Employees	Shareholders	Other	*Total*
1995	165	103	6	4,103	....	*4,377*	1,649	1,588	159	--	....	*3,396*	*1,814*	*1,691*	*165*	*4,103*	....	*7,773*
1996	516	193	25	1,572	....	*2,306*	2,342	2,965	301	3	....	*5,611*	*2,858*	*3,158*	*326*	*1,575*	....	*7,917*
1997	1,122	226	104	4,172	....	*5,624*	11,616	5,422	1,389	--	....	*18,427*	*12,738*	*5,648*	*1,493*	*4,172*	....	*24,051*
1998	392	1,090	319	7,341	....	*9,142*	7,054	3,774	446	--	....	*11,274*	*7,446*	*4,864*	*765*	*7,341*	....	*20,416*
1999	413	802	221	21,736	....	*23,172*	14,433	10,478	884	--	....	*25,795*	*14,846*	*11,280*	*1,105*	*21,736*	....	*48,967*
2000	1,827	4,846	37	2,737	78	*9,525*	4,995	2,492	118	--	10	*7,615*	*6,822*	*7,338*	*155*	*2,737*	*88*	*17,140*
2001	798	2,080	8	7,793	9	*10,688*	692	3,750	15	--	..	*4,457*	*1,490*	*5,830*	*23*	*7,793*	*9*	*15,145*
2002	416	577	9	3,290	491	*4,783*	81	1,758	2	--	16	*1,857*	*497*	*2,335*	*11*	*3,290*	*507*	*6,640*
2003	785	55	4	9,007	21	*9,872*	179	2,469	8	--	--	*2,656*	*964*	*2,524*	*12*	*9,007*	*21*	*12,528*
2004	374	531	5	3,173	2	*4,085*	2,293	8,074	238	1,548	--	*12,153*	*2,667*	*8,605*	*243*	*4,721*	*2*	*16,238*

Sources: Consob archive of prospectuses and notices issued by Borsa Italiana s.p.a. See the Methodological Notes. [1] The figures refer to companies listed on the Stock Exchange (MTA); they include offerings made by companies listed on the Expandi Market and the Nuovo Mercato. Rounding may cause discrepancies in the last figure.

Table aI.2

Sales of public-sector holdings in listed companies by means of public offerings and private placements [1]
(1993-2004; amounts in millions of euros)

Company	Date	Value [2]	Seller	Holding sold [3]	Offering aimed at [4]			
					The public [5]	Employees	Foreign buyers	Institutional investors
Credit ordinary	04.12.1993	886	Iri	63.1	36.3	—	—	26.8
Credit savings	04.12.1993	44	Iri	17.4	—	17.4	—	—
Imi	31.01.1994	1,231	Ministry of the Economy et al.	36.5	14.8	0.8	—	20.9
Comit	26.02.1994	1,493	Iri	51.9	26.9	3.5	—	21.5
Ina	27.06.1994	2,340	Ministry of the Economy	47.2	31.6	0.6	—	15.0
Eni	21.11.1995	3,254	Ministry of the Economy	15.0	4.3	0.7	3.3	6.7
Imi	07.07.1996	259	Ministry of the Economy	6.9	—	—	—	6.9
Amga	07.10.1996	107	Genoa City Council	49.0	17.6	0.8	—	30.6
Eni	21.10.1996	4,582	Ministry of the Economy	15.8	8.0	0.8	2.0	5.0
Montefibre	08.07.1996	94	Enichem	66.4	8.2	—	—	58.2
Ist. Banc. S. Paolo	19.05.1997	1,374	S. Paolo banking group, Min. Economy et al.	31.0	12.3	2.4	—	16.3
Eni	23.06.1997	6,805	Ministry of the Economy	17.6	9.9	0.8	2.3	4.6
Aeroporti di Roma	15.07.1997	307	Iri	45.0	15.5	0.9	—	28.6
Telecom	20.10.1997	9,778	Ministry of the Economy	32.9	24.3	3.3	1.1	4.2
Banca di Roma	24.11.1997	1,195	Iri and Ente Cassa di Risparmio di Roma	45.4	—	—	—	45.4
Saipem	17.03.1998	383	Eni	17.1	—	—	—	17.1
Alitalia	22.05.1998	406	Iri	18.4	—	—	—	18.4
Eni	22.06.1998	6,594	Ministry of the Economy	14.0	10.5	0.6	—	2.8
Aem	14.07.1998	761	Milan City Council	49.0	28.9	0.5	—	19.6
Bnl	16.11.1998	2,620	Ministry of the Economy	64.7	34.8	3.6	—	26.3
Banca Monte Paschi	18.06.1999	2,217	Fondazione Monte Paschi	21.2	7.6	2.0	—	11.6
Acea	09.07.1999	934	Rome City Council	49.0	15.7	10.5	—	22.9
Acsm	20.10.1999	18	Como City Council	25.0	13.5	1.4	—	10.1
Enel	29.10.1999	16,550	Ministry of the Economy	31.7	18.5	1.5	....	14.5[6]
Autostrade	03.12.1999	3,805	Iri	48.0	41.0	0.7	—	6.2
Finmeccanica[7]	29.05.2000	6,570	Iri	44.0	33.7	0.7	—	10.7
Aeroporto di Firenze	03.07.2000	18	Sundry entities	29.0	10.5	—	—	18.5
Cassa Risp. di Firenze	10.07.2000	320	Ente Cassa Risparmio di Firenze	25.0	15.0	1.7	—	9.8
Aem Torino	22.11.2000	112	Turin City Council	14.6	6.3	—	—	8.3
Acsm	29.11.2000	42	Como City Council	24.0	18.3	0.4	—	5.4
Eni	15.02.2001	2,721	Ministry of the Economy	5.0	—	—	—	5.0
Ac.e.ga.s.	19.02.2001	174	Trieste City Council	46.8	16.0	0.8	—	30.0
Snam Rete Gas	26.11.2001	942	Snam (Eni)	22.4	11.1	0.3	—	11.0
Fiera Milano	02.12.2002	41	Ente Aut. Fiera Internazionale di Milano	22.9[8]	—	—	—	13.7
Telecom Italia [9]	09.12.2002	1,434	Ministry of the Economy	3.5	—	—	—	3.5
Meta	17.03.2003	39	Modena City Council et al.	14.9	—	—	—	14.9
Hera	16.06.2003	435	Bologna City Council et al.	44.5	18.5	0.9	—	25.1
Terna	14.06.2004	1,700	Enel	50.0	12.3	13.1	—	24.6
Enel	18.10.2004	7,636	Ministry of the Economy	18.9	7.3	0.3	—	11.3

Sources: Consob and the Ministry for the Economy and Finance (Report to Parliament on the sale of holdings in companies controlled directly or indirectly by the State under Article 13.6 of Law 474/1994), various years. [1] Rounding may cause discrepancies in the last figure. [2] Total value of the offering. [3] Percentages of the pre-offering share capital. The figures do not include any bonus shares but do include the shares corresponding to the greenshoe option actually exercised. [4] Percentages of the pre-offering share capital. The figures include the entire overallotment or greenshoe option actually exercised. [5] Includes the shares reserved to other persons (except employees) in the public offering tranche. [6] Includes the public offering abroad. [7] Includes the issue of €0.9 billion of convertible bonds. [8] Includes the private placement reserved to the organizers and the Chamber of Commerce, equal to 9.2 per cent. [9] Includes the sale of savings shares amounting to 68 million.

Table aI.3

Sales of public-sector holdings in listed companies by means of private negotiations
(1993-2004; amounts in millions of euros)

Company	Seller	Buyer(s)	Date of completion of sale	Holding sold [1]	Total value	Date of mandatory tender offer [2]
Fin. Italgel	Iri	Nestlé	06.08.1993	62.1	223	23.02.1994
Fin. Cirio Bertolli De Rica	Iri	Sagrit	14.10.1993	62.1	161	16.09.1994
Nuovo Pignone	Eni	Gen. Electric Co.	22.12.1993	69.3	361	05.07.1994
Sme	Iri	Benetton, Del Vecchio, Movenpick, Crediop	23.12.1994	32.0	373	22.06.1995
Imi II	Min. Economy	Cariplo, MPS, S. Paolo	01.07.1995	19.0	620	—
Enichem Augusta	Eni	Rwe-Dea ag	31.08.1995	70.0	155	27.12.1995
Ina II	Min. Economy	Cariplo, Imi, S. Paolo, Banca d'Italia	12.10.1995	18.4	871	—
Dalmine	Iri	Techint, Siderca	27.02.1996	84.1	156	09.04.1996
Seat	Min. Economy	Abn-Amro, Bain Capital, Comit, Bc Partners, Cvc Capital Partner, Investitori ass., De Agostini, Sofipa	25.11.1997	61.3[3]	849	—
Banco di Napoli [4]	Min. Economy	Ina-Bnl	11.06.1997	60.0	32	—
San Paolo [5]	Fondazione	Ifi/Ifil, Imi, Banco Santander, Reale Mutua Assic., Monte Paschi, Kredietbank	23.04.1997	19.0	594	—
		Altri[6] (Ina, Hdi, Credit Loc. France, Credit Comm. Belgique)	24.04.1997	3.0	134	
Telecom [5, 7]	Min. Economy	At&t, Unisource, Imi, Credit, Credit Suisse, Ass. Generali, Compagnia S.Paolo, Ifil, Comit, Monte Paschi, Fondaz. Cariplo, Ina, Alleanza Ass., Rolo Banca	29-30.09.1997	9.0	2,040	—
Bnl [5]	Min. Economy	Banco Bilbao Vizcaya, Ina, Bca Pop Vicentina	29.09.1998	25.0	1,335	—
Autostrade	Iri	Edizione Holding spa, Fond. Cassa Risp. Torino, Autopistas Conc. Espanola sa, Ina, Unicredit, Brisa Autostrade de Portugal sa	09.03.2000	30.0	2,516	—
Aeroporti di Roma	Iri	Consorzio Leonardo (Gemina, Falck, Italpetroli, Impregilo)	31.07.2000	51.2	1,327	25.09.2000
Beni Stabili [9]	Min. Economy	Banca Imi	June 2001	0.3	2	—
S. Paolo Imi [9]	Min. Economy	Banca Imi	June 2001	0.3	80	—
Bnl [9]	Min. Economy	Banca Imi	27.12.2001	1.3	77	—
Generali [9, 10]	Min. Economy	Banca Imi	April 2002	1.1[11]	76	—
Enel [9]	Min. Economy	Morgan Stanley & Co. Int. Ltd.	30.10.2003	6.6	2,173	—
Snam Rete Gas [9]	Eni	Mediobanca	30.03.2004	9.1	651	—

Sources: Consob and the Ministry for the Economy and Finance. See the Methodological Notes. [1] As a percentage of the ordinary share capital. [2] Date tender offer started. [3] The sale included 0.8 per cent of the capital in the form of savings shares. [4] Transaction effected by means of a competitive auction. [5] The date refers to the signing of the agreement. The figures refer to the *noyeau dur*. [6] Shareholders not part of the *noyeau dur*. [7] The figure does not include the sale of 1.2 per cent of the ordinary shares to AT&T and Unisource, subject to the conclusion of strategic alliances with Telecom. [8] The figure does not include the sale of €172 million of convertible bonds. [9] Transactions carried out by means of the sale of the holding to an intermediary, which then gradually placed the shares with institutional investors. [10] Includes the proceeds of the sale of a tranche of INA shares in the period May-June 2001. [11] The figure refers to the Treasury Ministry's holding in the capital of INA before the latter's merger into Generali s.p.a., with effect from 1 December 2001.

Table aI.4

Ownership structure of companies admitted to listing on the Stock Exchange (MTA) and the Expandi Market
(percentages of the voting share capital)

	Before IPO		After IPO	
	Controlling shareholder	Shareholders with more than 2 %	Controlling shareholder	Shareholders with more than 2 %
Average 1995	79.0	96.3	55.6	63.3
Average 1996	78.3	94.7	52.8	61.2
Average 1997	81.2	90.8	55.6	61.3
Average 1998	89.7	98.6	57.8	60.1
Average 1999	91.9	98.5	57.8	59.9
Average 2000	80.3	94.9	56.7	66.0
Average 2001	87.7	97.8	58.8	63.0
Average 2002	83.3	98.9	57.8	67.3
Average 2003	87.0	90.8	54.5	58.2
2004				
Azimut Holding	64.8	100.0	12.5	34.2
DMT	65.0	95.0	41.8	59.6
Geox	100.0	100.0	71.1	71.1
Greenvision Ambiente	77.0	100.0	55.0	69.7
Panariagroup	95.0	100.0	64.8	64.8
Procomac	83.5	98.8	66.5	74.0
RGI	99.8	99.5	87.3	87.0
Terna	100.0	100.0	50.0	50.0
Average 2004	*85.6*	*99.2*	*56.1*	*63.8*

See the Methodological Notes.

Table aI.5

Companies admitted to listing: results of IPOs [1]

	Proportion of shares allotted				Ratio of demand to supply [2]	
	Individuals	Italian institutional investors	Foreign institutional investors	Other investors [3]	Public offerings	Institutional offerings
Stock Exchange (MTA) and Expandi Market						
1995	42.3	16.3	41.4	—	3.2	6.8
1996	40.5	24.3	35.2	—	6.3	9.4
1997	31.4	24.5	44.1	—	10.8	12.2
1998	44.4	27.3	28.3	—	7.7	13.9
1999	44.6	23.6	31.8	..	11.1	9.8
2000	48.7	26.4	24.8	0.1	2.2	4.5
2001	29.0	36.1	34.5	0.4	1.2	2.3
2002	27.7	50.4	20.3	1.6	1.1	1.1
2003[4]	39.8	45.0	14.5	0.6	1.8	1.6
2004	20.9	26.2	52.9	..	2.0	3.1
Nuovo Mercato						
1999	27.3	32.5	40.2	..	38.1	16.6
2000	27.2	25.7	44.9	2.0	27.1	13.3
2001	25.0	58.5	14.4	2.1	1.0	1.4
2002	--	--	--	--	--	--
2003	--	--	--	--	--	--
2004	--	--	--	--	--	--

See the Methodological Notes. [1] Averages weighted according to the values of the offerings; percentages. Rounding may cause discrepancies in the last figure. The figures for the Italian Stock Exchange do not include ENI in 1995, Enel in 1999, Snam Rete Gas in 2001 or Terna in 2004. [2] The averages of the ratio of demand to supply are calculated with reference only to offers for which the part reserved to the general public and that reserved to institutional investors are known. [3] Persons indicated by name to whom a certain quantity of shares is reserved. [4] The remaining part (0.1 per cent) was taken up by the underwriting syndicate for the public offering in connection with the placement of Trevisan shares. [5] The remaining part (0.2 per cent) was taken up by the underwriting syndicate for the public offering in connection with the placement of Cairo Communication shares.

Table aI.6

Role of placers in IPOs: market concentration [1]
(amounts in millions of euros)

	Global coordinators [2, 3]					*Lead managers* [4, 5]				
	Top ranking [6]	Top three [6]	Top five [6]	Number of transactions	Value of transactions	Top ranking [6]	Top three [6]	Top five [6]	Number of transactions	Value of transactions
1995	27.7	72.3	91.5	11	3,671	43.1	77.4	96.9	11	1,264
1996	64.3	88.9	93.9	12	1,666	69.0	90.2	94.2	12	675
1997	36.8	71.0	89.0	10	833	57.0	79.0	91.4	10	261
1998	20.6	59.6	74.4	16	1,845	58.3	87.3	92.2	16	818
1999	25.9	71.7	81.2	26	5,032	45.9	74.2	84.5	26	2,196
2000	18.1	45.0	59.7	43	6,728	33.7	65.0	79.7	44	2,418
2001	16.3	42.9	62.5	17	1,732	23.6	59.9	83.5	17	497
2002	30.0	65.0	83.1	6	1,062	32.7	84.7	100.0	6	294
2003	29.2	81.8	100.0	4	550	45.1	95.5	100.0	4	219
2004	42.0	87.1	94.7	7	951	55.4	84.3	99.0	7	199

Source: Based on listing prospectuses. See the Methodological Notes. [1] The indicators of concentration refer to the value of the offerings on the Stock Exchange, the Expandi Market and the Nuovo Mercato. The figures for the Stock Exchange do not include the Eni offering in 1995, the Enel offering in 1999, Snam Rete Gas in 2001 or Terna in 2004. [2] The figures refer to global offerings. [3] One transaction in 2000 has been excluded because it consisted only of a public offering in Italy. [4] The figures refer only to public offerings in Italy. [5] The public offerings in 2003 were handled by only four banks. [6] Percentages.

Table aI.7

Placement of unlisted securities by means of public offerings [1]
(amounts in millions of euros)

	Sale	Subscription	*Total*
Number of transactions			
1998	2	4	*6*
1999	--	4	*4*
2000	--	3	*3*
2001	1	1	*2*
2002	--	3	*3*
2003	1	1	*2*
2004	1	3	*4*
Value			
1998	90	19	*109*
1999	--	62	*62*
2000	--	97	*97*
2001	4	28	*32*
2002	--	138	*138*
2003	24	11	*35*
2004	18	35	*53*

[1] Offerings by companies not having securities listed on a regulated market.

Table aI.8

Cash and exchange tender offers for securities of listed companies [1]
(amounts in millions of euros)

	Voluntary		Takeover bids [2]		Incremental [3]		Mandatory		Residual		For own shares		*Total*	
	Number of transactions	Value	Number of transactions	Value	Number of transactions	Value	Number of transactions	Value	Number of transactions	Value	Number of transactions	Value	*Number of transactions*	*Value*
1992	5	611	--	--	--	--	2	11	--	--	--	--	*7*	*622*
1993	2	850	2	543	--	--	3	12	5	7	--	--	*12*	*1,412*
1994	2	72	1	1,947	--	--	11	832	6	23	--	--	*20*	*2,874*
1995	4	75	--	--	--	--	8	975	9	24	--	--	*21*	*1,074*
1996	6	264	2	213	1	53	9	161	10	14	--	--	*28*	*705*
1997	5	378	2	234	1	4	7	376	8	27	--	--	*23*	*1,019*
1998	2	96	2	1,658	1	126	6	102	3	23	--	--	*14*	*2,005*
1999	4	631	8	53,292	—	—	8	640	2	5	--	--	*22*	*54,568*
2000	7	4,299	8	4,878	—	—	6	2,734	7	218	--	--	*28*	*12,129*
2001	4	171	2	726	—	—	7	5,573	11	196	--	--	*24*	*6,666*
2002	10	3,724	4	809	—	—	4	26	5	44	1	709	*24*	*5,312*
2003	8	5,837	4	7,359	—	—	6	174	8	356	--	--	*26*	*13,726*
2004	5	144	--	--	—	—	10	293	3	79	--	--	18	516

Sources: Consob archive of offer documents and Borsa Italiana s.p.a. notices. [1] Securities offered in exchange are valued at the market prices of the day preceding the announcement of the transaction. Rounding may cause discrepancies in the last figure. [2] The number of transactions includes competitive bids. [3] Type of bid provided for in Law 149/1992 but not envisaged by the Consolidated Law on Finance.

Table aI.9

Types of shareholders' agreements involving listed companies
(at 31 December)

	Type of agreement											
	Blocking			Voting			Global [3]			*Total*		
	Number of agreements	Share capital covered [1]	Number of companies [2]	Number of agreements	Share capital covered [1]	Number of companies [2]	Number of agreements	Share capital covered [1]	Number of companies [2]	*Number of agreements*	*Share capital covered [1]*	*Number of companies [2]*
Stock Exchange												
2002	7	31.5	7	8	39.7	8	32	47.6	30	*47*	*43.9*	*41*
2003	8	39.0	8	11	41.9	9	36	46.9	34	*55*	*44.8*	*47*
2004	7	50.8	7	10	40.8	8	39	47.8	37	*56*	*46.9*	*49*
Nuovo Mercato												
2002	6	38.9	6	3	62.9	3	15	49.1	13	*24*	*48.3*	*18*
2003	6	30.7	6	--	--	--	4	44.8	4	*10*	*36.3*	*9*
2004	4	29.5	4	--	--	--	7	41.9	6	*11*	*37.4*	*9*

Source: Disclosures pursuant to Article 122 of the Consolidated Law on Finance. See the Methodological Notes. [1] As a percentage of the total ordinary share capital. Averages. [2] The total does not coincide with the sum of the individual figures because in some cases more than one shareholders' agreement concerned the same company. [2] Agreements containing both blocking and voting clauses.

Table aI.10

Listed companies with shareholders' agreements
(at 31 December 2004)

Company	Type of agreement	Expiration	Share of voting rights [1]	Number of participants
Acegas – aps	Global	22.12.2006	67.9	2
Actelios	Blocking	17.09.2006	75.9	2
Alerion Industries	Global	19.03.2006	57.1	22
Assicurazioni Generali	Voting	13.09.2005	8.3	3
Azimut	Global	07.07.2007	23.4	765
Banca Antoniana Popolare Veneta	Voting	15.04.2005	30.8	62
Banca Intesa	Global	15.04.2005	40.8	26
Banca Lombarda e Piemontese	Global	31.12.2007	47.9	295
Banca Nazionale del Lavoro	Global	24.12.2005	7.8	2
	Global	09.09.2007	28.4	3
	Global	20.07.2007	23.4	16
Banca Popolare di Spoleto	Global	09.07.2007	77.0	3
Banco di Sardegna	Global	30.03.2007	100.0	2
Bipielle Investimenti	Voting	Indeterminate	87.2	4
	Voting	31.07.2005	88.6	2
	Global	01.04.2007	88.9	2
Bulgari	Global	17.07.2006	56.0	3
Buongiorno Vitaminic	Blocking	16.07.2005	18.6	6
Capitalia	Global	22.10.2006	29.5	18
Cassa di Risparmio di Firenze	Global	30.04.2005	41.3	3
Cit	Global	Indeterminate	58.0	3
	Global	06.09.2005	43.0	3
Csp	Global	15.06.2007	50.2	7
Dada	Global	05.02.2005	22.6	3
	Blocking	Indeterminate	15.4	2
Digital Bros	Global	17.10.2005	55.7	3
Dmail Group	Global	30.06.2007	48.5	4
El.En.	Global	10.12.2006	52.0	8
Enertad	Global	10.08.2007	69.1	3
E.planet	Blocking	Indeterminate	41.6	35
Esprinet	Blocking	26.04.2006	42.5	4
Euphon	Global	10.01.2007	51.1	3
	Global	24.03.2007	41.0	3
Fiat	Voting	18.06.2005	16.9	4
Filatura di Pollone	Global	2005 AGM	50.2	16
Gabetti Holding	Blocking	25.07.2006	27.9	2
Gemina	Global	2007 AGM	43.4	11
Gim	Global	31.12.2006	48.1	22
Hera	Blocking	26.06.2006	51.1	131
	Voting	26.06.2006	55.4	131
	Voting	06.11.2006	7.6	5
I Viaggi del Ventaglio	Blocking	29.12.2007	15.5	2
I.m.a.	Blocking	Indeterminate	61.0	3
Interpump Group	Global	2005 AGM	14.8	9
Ipi	Global	15.03.2006	10.0	2
La Doria	Global	30.06.2006	70.0	7

--- Cont. ---

--- Table aI.10 cont.---

Company	Type of agreement	Expiration	Share of voting rights [1]	Number of participants
La Gaiana	Global	2006 AGM	75.6	4
Linificio e Canapificio Nazionale	Global	01.11.2006	67.8	2
Marcolin	Global	16.12.2007	53.6	8
Marzotto	Global	31.05.2006	27.0	16
	Global	14.06.2007	27.9	8
Mediobanca	Global	01.07.2007	55.1	50
Mediolanum	Global	14.09.2007	51.1	6
Necchi	Voting	04.12.2007	23.2	8
Permasteelisa	Global	30.08.2005	29.9	5
Pirelli & c.	Global	15.04.2007	42.7	9
Premuda	Global	31.12.2007	45.0	3
Procomac	Blocking	30.06.2005	74.2	4
Rcs Mediagroup	Global	30.06.2007	57.5	17
Reti Bancarie Holding	Global	20.05.2007	73.6	2
Rgi	Global	30.04.2007	87.3	10
Richard-Ginori 1735	Global	15.07.2007	55.0	2
Sanpaolo Imi	Voting	2007 AGM	27.4	5
Seat Pagine Gialle	Voting	20.09.2006	62.6	3
	Global	08.08.2006	62.5	32
Smi	Blocking	31.12.2007	50.1	2
Socotherm	Global	11.12.2005	75.0	4
Trevisan Cometal	Global	2007 AGM	16.8	3

See the Methodological Notes. [1] As a percentage of the ordinary share capital.

Table aI.11

Shareholders' agreements involving companies controlling listed companies
(at 31 December 2004)

Listed company	Controlling company covered by the agreement	Type of agreement	Expiration	Share of voting rights [1]	Number of participants
A.S. Roma	Compagnia Italpetroli	Voting	29.03.2007	50.8	3
	Compagnia Italpetroli	Global	21.06.2007	100.0	6
Autostrade	Schemaventotto	Global	31.01.2005	100.0	5
Credito Emiliano	Credito Emiliano Holding	Blocking	20.07.2007	72.6	227
Datalogic	Hydra	Global	03.03.2007	100.0	4
Ducati Motor Holding [2]	TPG Advisors	Global	Indeterminate	100.0	4
Edison	Italenergia Bis	Global	25.07.2006	37.4	3
Grandi Navi Veloci	Barla Sarl	Global	12.10.2007	100.0	8
Gruppo Coin	Finanziaria Coin	Global	31.12.2005	100.0	6
Immsi [3]	Omniapartecipazioni	Global	14.11.2005	100.0	3
	Omniainvest	Voting	06.11.2005	100.0	4
Intek	Quattroduedue holding	Voting	30.06.2007	100.0	4
Isagro [4]	Holdisa	Global	30.06.2005	100.0	8
	Manisa	Global	02.12.2007	100.0	12
Mariella Burani F.G. [5]	Burani Designer Holding	Global	22.07.2006	100.0	5
Navigazione Montanari	G. & A. Montanari & co.	Global	26.05.2006	98.2	10
Reply	Alika	Global	09.11.2007	51.0	4
Sabaf	Giuseppe Saleri	Global	20.10.2006	96.0	3
Sirti[6]	Wiretel International	Global	30.05.2006	100.0	9
	Technology systems holding	Global	16.12.2007	100.0	3
	Albrida	Global	14.09.2007	100.0	2
	Global technology systems	Global	16.12.2007	100.0	2
	Technology systems holding	Global	16.12.2007	60.0	2
Snai	Snai Servizi	Global	30.06.2007	29.3	68
Snia – Sorin	Bios	Global	28.07.2005	100.0	13
Telecom Italia	Olimpia [7,8]	Global	04.10.2007	67.2	2
		Global	05.10.2006	67.2	3
		Global	08.05.2006	100.0	6
Trevi Fin. Industriale	Trevi Holding	Voting	31.12.2007	8.0	2
Unipol	Finse	Global	06.02.2006	90.0	2
Vemer Siber Group	Hopa [8]	Global	01.09.2007	54.4	15

See the Methodological Notes. [1] As a percentage of the ordinary share capital. [2] Even though Tgp Advisors does not hold a controlling interest (33.5 per cent), it exercises a dominant influence over the listed company. [3] Control over the company is held by Roberto Colaninno, via Omniaholding, which controls Omniainvest, which in turn controls Omniapartecipazioni. [4] Control over the company is held by Giorgio Basile, via Manisa, which controls Holdisa. [5] Control over the company is held by Walter Burani, with a direct holding and via Burani Designer Holding. [6] The agreements refer to companies belonging to the group of the controlling company. [7] The agreement expiring on 8 May 2006 also contains agreements concerning the listed companies of the Telecom Italia Group. [8] Agreements notified pursuant to Article 122 of the Consolidated Law on Finance even though at the time of the notification the company did not consider it controlled the listed company.

Table aI.12

Major holdings in companies listed on the Stock Exchange and the Nuovo Mercato [1]
(at 31 December)

	Declarant								
	Foreign resident	Insurance company	Bank	Foundation	Institutional investor	Other company	State or local authority	Individual	*Total*
Stock Exchange									
1996	4.5	1.9	4.3	3.8	0.8	8.2	32.5	5.5	*61.5*
1997	5.0	2.2	5.1	3.1	0.1	14.4	12.1	4.8	*46.8*
1998	5.9	2.5	4.8	5.2	0.1	12.6	8.8	3.8	*43.6*
1999	6.2	1.5	5.3	4.5	0.2	19.4	10.6	4.5	*52.2*
2000	6.5	3.2	5.9	5.0	0.3	17.2	10.2	4.9	*53.1*
2001	5.6	1.8	4.4	4.9	0.1	18.2	11.1	5.0	*51.1*
2002	4.9	1.1	3.4	4.5	0.7	16.8	12.3	5.1	*48.8*
2003	6.7	1.2	3.9	3.6	--	12.3	11.2	6.2	*45.1*
2004	7.3	1.4	3.5	3.3	0.1	13.7	10.7	5.7	*45.7*
Nuovo Mercato									
2000	14.2	--	0.7	--	1.1	4.2	--	50.4	*70.7*
2001	16.7	--	0.6	0.1	0.5	4.8	--	42.7	*65.5*
2002	12.1	--	0.3	0.2	0.8	4.8	--	43.6	*61.8*
2003	7.7	--	1.0	--	0.2	4.8	--	41.7	*55.6*
2004	5.9	0.2	0.3	--	0.3	8.0	0.1	40.0	*54.8*

Source: Consob's ownership transparency database. See the Methodological Notes. [1] Holdings of more than 2 per cent of the voting capital. Percentage ratio of the market value of the major holdings calculated with reference to ordinary share capital to the market value of the ordinary share capital of all the companies listed on the Italian Stock Exchange and the Nuovo Mercato. Rounding may cause discrepancies in the last figure.

Table aII.1

Indicators of the equity markets operated by Borsa Italiana s.p.a.
(amounts in billions of euros)

	Stock Exchange (MTA)									Expandi Market			Nuovo Mercato			
	Market capitalization [1]	Market capitalization (as a % of GDP)	Volume of trading in shares	Number of Italian listed companies	Number of Italian newly listed companies	Number of Italian listed companies delisted	Change in the Mib historical index [2]	Dividend/price ratio [2]	Earnings/price ratio [2]	Market capitalization [1]	Volume of trading in shares	Number of Italian listed companies	Market capitalization [1]	Volume of trading in shares	Number of Italian listed companies	Change in the NM index [2]
1996	199	20.3	81	213	14	18	13.1	2.1	6.9	3	..	31	—	—	—	—
1997	310	30.2	174	209	14	18	58.2	1.7	4.6	5	1	26	—	—	—	—
1998	484	44.8	423	219	25	15	41.0	1.6	3.9	4	2	20	—	—	—	—
1999	714	64.4	503	241	28	6	22.3	1.5	3.4	5	1	17	7	4	6	536[3]
2000	790	67.8	839	237	16	20	5.4	2.1	4.5	6	1	15	22	30	39	-25.5
2001	575	47.3	637	232	13	18	-25.1	2.8	6.0	5	..	12	13	21	44	-45.6
2002	447	35.7	562	231	11	12	-23.7	3.8	5.9	5	..	13	6	10	44	-50.1
2003	475	36.6	567	219	9	21	14.9	3.4	6.4	5	..	11	8	14	41	27.3
2004	569	42.2	641	219	7	7	17.5	3.4	6.0	5	..	13	7	19	37	-17.5

Sources: Borsa Italiana s.p.a., Consob, Thomson Financial. [1] The figure for market capitalization refers to Italian companies. [2] Year-end percentages. [3] From 17 June 1999 to 30 December 1999.

Table aII.2

Volume of trading in fixed-income securities on Italian regulated markets [1]
(billions of euros)

	MTS	Bondvision	Wholesale market for bonds other than government securities	MOT	EuroMOT	TLX [2]	*Total*
2000	2,020	—	..	154	..	—	*2,174*
2001	2,324	18	12	136	1	—	*2,491*
2002	2,205	100	24	159	2	—	*2,490*
2003	2,160	176	23	142	4	2	*2,507*
2004	1,949	339	31	147	4	8	*2,478*

Sources: Based on MTS s.p.a., Borsa Italiana s.p.a. and TLX s.p.a. data. [1] Rounding may cause discrepancies in the last figure. [2] Market began operations on 20 October 2003.

Table aII.3

Number and value of issues of ABSs pursuant to Law 130/1999 by type of underlying credit
(amounts in millions of euros)

	Bad debts	Performing loans	Other credits and bonds	Credits of public-sector entities	Leasing instalments	Consumer credit	Other	*Total*
Number								
1999	3	1	1	1	--	--	--	*6*
2000	5	3	5	1	6	2	2	*24*
2001	17	16	3	4	7	7	3	*57*
2002	3	12	2	5	12	4	3	*41*
2003	3	15	2	8	6	4	2	*40*
2004	--	10	5	8	7	6	3	*39*
Total	*31*	*57*	*18*	*27*	*38*	*23*	*13*	*207*
Value [1]								
1999	3,235	275	360	4,650	--	--	--	*8,521*
2000	2,880	1,510	2,514	1,350	2,055	672	1,025	*12,006*
2001	7,088	8,138	835	7,505	4,303	3,398	1,694	*32,961*
2002	1,301	6,578	2,682	10,135	6,927	1,606	1,379	*30,608*
2003	978	8,871	1,297	12,941	3,225	2,129	699	*30,141*
2004	--	7,427	3,035	12,091	8,766	2,556	1,161	*35,038*
Total	*15,483*	*32,802*	*10,723*	*48,672*	*25,276*	*10,361*	*5,958*	*149,275*

Source: Based on Securitisation.it data. [1] Rounding may cause discrepancies in the last figure.

Table aIII.1

Assets managed by mutual funds in selected EU countries and the United States [1]
(percentages)

	Austria	Belgium	Denmark	Finland	France	Germany	Greece	Ireland	Italy	Luxembourg	Netherlands [2]	Portugal	United Kingdom	Spain	Sweden	*Total*	Assets under management EU [3]	Assets under management USA [3]
2000	1.8	2.2	1.0	0.4	22.4	7.4	0.9	4.3	13.2	23.2	2.9	0.5	12.2	5.4	2.4	*100.0*	3,419	7,390
2001	1.8	2.2	1.1	0.4	23.2	7.0	0.8	6.2	11.7	24.7	2.6	0.5	10.4	5.2	2.1	*100.0*	3,444	7,824
2002	2.0	2.2	1.0	0.5	25.3	6.3	0.8	7.5	11.3	24.1	2.5	0.6	8.7	5.4	1.7	*100.0*	3,179	6,482
2003	2.2	2.3	1.1	0.6	25.0	6.2	0.8	7.8	10.6	24.0	2.0	0.6	9.1	5.6	1.9	*100.0*	3,637	5,870
2004 [4]	2.2	2.3	1.1	0.7	25.0	5.8	0.8	8.4	9.5	25.0	1.8	0.6	9.2	5.6	2.0	*100.0*	3,925	6,204

Source: Fefsi. [1] Percentages of the total assets under management in Europe. Rounding may cause discrepancies in the last figure. [2] With reference to the year preceding the reference year. [3] Billions of euros. [4] At 30 September.

Table aIII.2

Structure of the mutual funds industry in Italy: Italian operators [1]
(amounts in billions of euros)

	1996	1997	1998	1999	2000	2001	2002	2003	2004
Number of funds in operation [2]									
Equity	235	277	321	356	438	495	519	478	446
Balanced	57	53	57	61	83	86	89	87	84
Bond	239	296	325	344	392	406	392	370	353
Liquidity	—	—	—	33	35	36	38	39	38
Flexible	—	—	—	29	34	50	50	56	67
Total	*531*	*626*	*703*	*823*	*982*	*1,073*	*1,088*	*1,030*	*988*
Net inflows									
Equity	-2	15	24	32	40	-19	-9	-5	-6
Balanced	-1	3	12	16	17	-16	-10	-5	-3
Bond	33	55	125	4	-70	-7	-20	2	-13
Liquidity	—	—	—	7	1	22	27	13	-9
Flexible	—	—	—	3	5	-1	-1	1	2
Total	*30*	*74*	*162*	*61*	*-7*	*-21*	*-12*	*7*	*-30*
Assets under management [2]									
Equity	18	40	74	140	156	111	73	75	73
Balanced	7	11	29	51	73	52	37	33	32
Bond	77	138	269	257	194	191	175	173	168
Liquidity	—	—	—	21	22	47	76	96	83
Flexible	—	—	—	5	8	6	4	6	8
Total	*102*	*190*	*372*	*475*	*453*	*407*	*364*	*383*	*363*
No. of management companies	54	53	59	55	55	61	57	54	54

Source: Assogestioni. See the Methodological Notes. [1] The figures refer to mutual funds and Sicavs. Rounding may cause discrepancies in the last figure. [2] End-of-period data.

Table aIII.3

Collective investment undertakings distributed in Italy by foreign operators [1]
(at 31 December 2004)

	Registered office								Funds/sub-funds distributed in Italy
	Luxembourg	Ireland	France	Germany	Austria	United Kingdom	Belgium	*Total*	
1996	53	1	9	1	--	--	--	*64*	446
1997	65	1	9	1	--	--	2	*78*	603
1998	86	4	9	1	--	--	2	*102*	833
1999	104	5	10	1	1	--	2	*123*	1,134
2000	105	7	8	1	1	--	2	*124*	1,534
2001	127	12	7	1	1	1	--	*149*	2,132
2002	159	15	7	2	1	2	--	*186*	2,730
2003	158	31	8	1	1	1	1	*201*	2,791
2004	155	19	8	2	1	3	--	*188*	2,818

Sources: Consob archive of prospectuses and Luxor-FI.DATA archive. [1] Companies that offer units/shares of collective investment undertakings subject to the Community directives to the public in Italy.

Table aIII.4

Italian investment firms: cancellations from the register [1]

	Reasons								
	Crisis of the intermediary [2]	Mergers and spin-offs	Voluntary liquidation – Change in activity	Transformation into a bank	Transformation into an asset management co.	Transformation from a trust company into an Italian investment firm	Non-operational [6]	Failure to provide authorized services	Total
1992-1997	37	29	100	5	—	2	38	--	*211*
1998	2	7	16	4	--	--	—	1	*30*
1999	1	9[3]	4	--	4	2	—	--	*20*
2000	1	3	11	3	7	1	—	1	*27*
2001	1	3	6	10[4]	3[5]	--	—	--	*23*
2002	--	3	5	4	--	1	—	2	*15*
2003	2	21	8	1	1	--	—	--	*33*
2004	--	10	8	2	--	1	—	--	*21*

[1] The figures refer to the total number of resolutions deleting a firm from the register, including those deleting trust companies from the special section of the register. [2] Includes Ministry for the Economy and Finance decrees, measures adopted by Consob, bankruptcies and firms placed in compulsory administrative liquidation. [3] Includes an investment firm that transferred the business to another company belonging to the same group. [4] In 3 cases the investment firm was merged into a bank. [5] In all 3 cases the investment firm was merged into an asset management company. [6] At the entry into force of Legislative Decree 415/1996 (Article 60).

Table aIII.5

Asset allocation in individually-managed portfolios [1]
(percentages)

	1997	1998	1999	2000	2001	2002	2003	2004[2]
Banks								
Government securities	58.7	43.7	30.0	20.0	22.4	26.2	26.0	27.1
Italian bonds	5.4	3.0	2.2	2.2	2.0	2.4	3.3	3.4
Foreign bonds	5.7	5.9	5.9	5.7	6.8	9.8	11.8	12.7
Italian shares	4.3	4.4	4.7	4.1	3.6	2.1	2.5	2.6
Foreign shares	0.2	0.5	2.1	2.1	1.7	2.0	2.1	2.3
Units/shares of CIUs	18.4	36.2	50.0	61.4	58.9	53.1	49.7	48.3
Liquidity and other securities	7.2	6.3	5.1	4.4	4.7	4.4	4.6	3.7
Total	*100.0*	*100.0*	*100.0*	*100.0*	*100.0*	*100.0*	*100.0*	*100.0*
Italian investment firms [3]								
Government securities	47.0	39.7	22.6	20.9	16.8	19.4	17.5	16.9
Italian bonds	6.9	5.0	3.3	2.5	1.8	2.4	4.1	4.2
Foreign bonds	10.4	8.6	6.0	6.6	6.1	13.4	29.9	33.4
Italian shares	8.4	5.8	6.6	5.6	3.6	2.7	4.6	4.4
Foreign shares	4.6	4.1	5.2	3.1	2.5	2.1	4.3	4.3
Units/shares of CIUs	17.0	33.4	52.1	57.5	65.2	55.5	34.0	32.8
Liquidity and other securities	5.6	3.4	4.1	3.8	4.1	4.5	5.6	4.1
Total	*100.0*	*100.0*	*100.0*	*100.0*	*100.0*	*100.0*	*100.0*	*100.0*
Asset management companies [4]								
Government securities	—	....	34.5	33.6	40.8	46.4	36.8	34.6
Italian bonds	—	....	8.5	11.0	15.6	16.7	18.8	18.6
Foreign bonds	—	....	5.8	3.0	1.7	1.4	1.1	1.6
Italian shares	—	....	7.7	7.9	7.0	4.1	3.6	4.1
Foreign shares	—	....	3.1	2.9	2.0	1.0	0.8	0.7
Units/shares of CIUs	—	....	36.0	37.4	30.4	26.8	35.2	36.8
Liquidity and other securities	—	....	4.5	4.1	2.5	3.1	3.7	3.6
Total	*—*	*....*	*100.0*	*100.0*	*100.0*	*100.0*	*100.0*	*100.0*

Source: Based on Bank of Italy data. [1] Rounding may cause discrepancies in the last figure. [2] Data refer to the end of the first half of the year. [3] Includes trust companies. [4] The division between Italian and foreign securities is between those denominated in euros and those denominated in other currencies.

Table aIV.1

Supervision of corporate disclosures, ownership structures and research reports

	Requests for information under Articles 115.1 and 115.2 of Leg. Decree 58/1998	Requests for information under Article 115.3 of Leg. Decree 58/1998 (names of shareholders)	Inspections	Requests to publish data and information under Article 114.3 of Leg. Decree 58/1998	Requests to publish research reports on listed companies	Reports to the courts under Article 2409 of the Civil Code	Written reprimands	Challenges of the annual accounts
2000	89	68	--	17	–	2	12	1
2001	397	52	4	40	–	–	5	1
2002	211	31	2	109	3	1	3	--
2003	489	33	4	75	10	--	3	4
2004	126	39	2	124	3	--	--	4

Table aIV.2

Distribution of research reports by type of recommendation
(percentages)

	Recommendation				Total number of reports
	Buy	Hold	Important news	Sell	
1998	59.1	25.5	9.9	5.5	2,288
1999	57.5	26.7	9.1	6.6	2,260
2000	58.2	26.1	9.6	6.1	2,368
2001	48.3	33.6	9.0	9.1	5,912
2002	46.7	29.2	11.7	12.4	5,351
2003	51.1	36.2	3.9	8.8	5,141
2004	55.0	36.3	4.5	6.2	5,326

Source: Consob.

Table aIV.3

Distribution of companies covered by research reports by number of reports

	Number of companies covered by research reports [1]	Distribution of companies by number of reports produced [2]					
		≥ 51	25 - 50	13 - 24	5 – 12	≤ 4	*Total*
1998	179	4.5	10.1	21.2	25.1	39.1	*100.0*
1999	146	4.9	8.9	16.4	27.4	42.4	*100.0*
2000	261	9.9	9.3	15.6	27.4	37.8	*100.0*
2001	217	7.8	17.5	14.7	24.4	35.6	*100.0*
2002	198	9.4	19.1	20.8	22.6	28.1	*100.0*
2003	255	8.4	15.5	17.7	23.9	34.5	*100.0*
2004	259	8.9	16.2	18.4	23.3	33.2	*100.0*

Source: Consob. [1] Companies listed on the regulated markets operated by Borsa Italiana s.p.a. [2] Percentages.

Table aIV.4

Notifications of major holdings under Article 12 of the Consolidated Law on Finance

	Exceeding the 2% threshold	Change in previously held major holding	Falling below the 2% threshold	*Total*
1999	397	353	248	*998*
2000	398	404	379	*1,181*
2001	337	403	313	*1,053*
2002	303	502	308	*1,113*
2003	309	464	257	*1,030*
2004	319	506	275	*1,100*

Table aIV.5

Results of the external audits of the unconsolidated and consolidated accounts of companies listed on Italian regulated markets

	Type of opinion						
	Opinions with emphasis of matter paragraphs	Opinions qualified for:			Adverse opinions and disclaimers:		
		Disagreement with accounting treatments	Limitations on the audit	Uncertainty	Adverse opinions	Disclaimers for serious limitations on the audit	Disclaimers owing to uncertainty
1996	328	8	4	--	1	1	2
1997	197	6	3	3	--	--	1
1998	197	1	2	--	1	1	--
1999	217	--	2	--	--	1	1
2000	207	2	2	--	--	--	--
2001	192	5	--	1	--	--	5
2002	159	9	3	2	--	--	10
2003	143	7	7	1	--	--	11

See the Methodological Notes.

Table aIV.6

Controls on auditing firms

	Check for initial registration	Inspection and on-site controls	Written reprimand	Suspension of a partner	Ban on new engagements	Administrative sanction	Deletion from the special register	Report to the judicial authorities
1997	--	7	4	5	--	2	--	6
1998	--	5	--	1	1	2	--	--
1999	2	2	--	--	--	--	2	--
2000	--	2	--	1	--	--	--	--
2001	1	1	--	--	--	--	--	--
2002	1	5	--	3	--	--	--	--
2003	2	7	1	1	--	--	5	--
2004	1	5	--	4	--	--	1	--

Table aV.1

Requests for information in connection with insider trading and market manipulation investigations

	Requests addressed to:					
	Authorized intermediaries [1]	Listed companies, their controllers and subsidiaries	Individuals	Government departments	Foreign authorities	*Total*
1997	220	37	49	22	11	*339*
1998	324	14	50	10	17	*415*
1999	416	22	48	--	21	*507*
2000	492	33	11	4	30	*570*
2001	247	30	93[2]	10	33	*413*[4]
2002	154	28	52[3]	1	24	*259*[5]
2003	185	15	55[6]	3	27	*285*[7]
2004	146	13	23[8]	2	11	*195*[9]

[1] Banks, investment firms, asset management companies and stockbrokers. [2] Includes 7 hearings. [3] Includes 19 hearings. [4] Of which 156 on behalf of foreign authorities. [5] Of which 36 on behalf of foreign authorities. [6] Includes 29 hearings. [4] Of which 38 on behalf of foreign authorities. [6] Includes 7 hearings. [4] Of which 101 on behalf of foreign authorities.

Table aV.2

Market participants reported to the judicial authorities on suspicion of insider trading or market manipulation

	Authorized intermediaries [1]	Institutional insiders [2]	Others [3]	Foreign residents	*Total*
Insider trading					
1997	11	12	41	17	*81*
1998	17	31	34	32	*114*
1999	21	26	56	48	*151*
2000	24	11	149	34	*218*
2001	20	6	53	30	*109*
2002	14	1	69	21	*105*
2003	2	12	35	20	*69*
2004	--	8	7	4	*19*
Market manipulation					
1997	3	21	--	--	*24*
1998	7	2	--	2	*11*
1999	10	5	34	2	*51*
2000	1	2	1	1	*5*
2001	4	1	1	2	*8*
2002	18	2	--	4	*24*
2003	6	--	1	--	*7*
2004	4	2	6	1	*13*

[1] Banks, investment firms, asset management companies and stockbrokers. [2] Shareholders, directors and managers of listed companies. [3] So-called secondary insiders and tippees (under Article 180.2 of Legislative Decree 58/1998).

Table aVI.1

Inspections at intermediaries and listed companies

	Inspections			*Inspections started at:*							*Inspections concluded at:*						
	Approved	Started	Concluded	Investment firms [1]	Banks	Asset management cos \Sicavs	Stockbrokers	Financial salesmen	Listed companies	*Total*	Investment firms [1]	Banks	Asset management cos \Sicavs	Stockbrokers	Financial salesmen	Listed companies	*Total*
1997	16	25	31	12[3]	5	1	6	1	--	*25*	17	9	--	4	1	--	*31*
1998	24	20	22	6	9[4]	--	3	--	2[5]	*20*	9[3]	8[4]	--	3	--	2[5]	*22*
1999	21	23	24	8	--	--	3	11	1	*23*	8	2	--	2	11	1	*24*
2000	18	19	18	5	1	6	6	1	--	*19*	5	2	1	9	1	--	*18*
2001	8	9	13[2]	2	2	2	3	--	--	*9*	4[6]	1[7]	5	3	--	--	*13*
2002	9	13	12	5	2	3	1	--	2[8]	*13*	4	3	4	1	--	--	*12*
2003	14	14	18	1	9	--	--	--	4	*14*	5	8	1	--	--	4	*18*
2004	3	4	7	--	2	1	--	--	1	*4*	--	5	1	--	--	1	*7*

[1] Includes trust companies. [2] Of which two suspended. [3] Of which one at an EU investment firm. [4] Of which six under Article 8 of Law 157/1991. [5] Of which one under Article 8 of Law 157/1991 and one under Article 185 of Legislative Decree 58/1998. [6] Of which one suspended. [7] Suspended. [8] Of which one at a company that made a tender offer for shares of a listed company.

Table aVI.2

Register of Italian investment firms: entries and exits [1]
(1991-2004)

	Registered investment firms	Entries	Exits
1991	255	255	—
1992	356	110	9
1993	326	19	49
1994	289	12	49
1995	284	20	25
1996	236	4	52
1997	212	3	27
1998	191	9	30
1999	183	12	20
2000	171	15	27
2001	162	15	24
2002	158	11	15
2003	131	6	33
2004	115	5	21

[1] Includes trust companies.

Table aVI.3

Interventions by the National Investor Compensation Fund
(at 31 December 2004; amounts in thousands of euros)

	Bankruptcies [1]		
	Investment firms	Stockbrokers	*Total*
1997	4	1	*5*
1998	2	3	*5*
1999	1	1	*2*
2000	1	--	*1*
2001	1	--	*1*
2002	--	2	*2*
2003	2	1	*3*
2004	--	--	--
Total insolvencies	*11*	*8*	*19*
of which: with statement of liabilities filed	*11*	*8*	*19*
Number of creditors admitted	**1,146**	**870**	***2,016***
Amount of claims admitted [2]	**29,469**	**37,858**	***67,327***
Interventions by the Fund [3]	**7,878**	**10,909**	***18,787***

Source: Based on National Investor Compensation Fund data. [1] For which the statement of liabilities was filed after 1 February 1998. [2] Net of partial allotments made by the bodies responsible for the bankruptcy proceedings. [3] Interventions for claims entered in the statement of liabilities, of which around €90,000 set aside for claims that have been challenged.

Table aVI.4

Register of financial salesmen: entries and exits

	Registered financial salesmen [1]	Entries [2]	Exits [2]	Turnover [3]
1995	25,902	4,512	1,344	14.8
1996	27,105	3,236	1,443	6.9
1997	27,994	2,922	1,961	3.5
1998	33,063	6,358	1,402	17.7
1999	42,810	10,383[4]	1,278	27.5
2000	49,856	8,774	1,085	18.0
2001	59,610	11,001[5]	1,182	19.7
2002	66,743	9,300	2,201	11.9
2003	66,554	4,530	4,735	-0.3
2004	64,894	2,982	4,644	-2.4

[1] At 31 December. [2] The figures do not include the measures revoking earlier entry or striking-off resolutions. [3] Percentage ratio of entries net of exits to the total number of registered financial salesmen in the previous year. [4] Of which 1,800 were entered *de jure* under Article 3 of Ministerial Decree 322/1997. [5] Of which 2,100 were entered *de jure* under Article 3 of Ministerial Decree 472/1998.

Table aVII.1

Measures concerning financial salesmen and reports to the judicial authorities

	Type of measure						
	Disciplinary measures					Preventive measures	Reports to the judicial authorities
	Reprimand	Striking off the register	Suspension from the register for a given period	Fine	*Total*	Suspension from activity for a given period [1]	
1997	8	39	5	--	*52*	64	58
1998	11	86	73	--	*170*	76	137
1999	2	70	51	4	*127*	74	106
2000	21	49	73	26	*169*	39	134
2001	29	36	48	15	*128*	50	72
2002	33	58	37	6	*134*	31	72
2003	1	56	47	5	*109*	26	77
2004	3	68	46	7	*125*	35	78

[1] The figures for 1997 and 1998 include measures adopted under Article 45.4 of Legislative Decree 415/1996 and, from 1 July 1998 onwards, under Article 55.2 of the Consolidated Law on Finance.

Table aVII.2

Internet supervision and enforcement

	Number of sites inspected on the basis of:				Enforcement actions	Reports to other authorities						
	Web spidering	Press cuttings	Reports to Consob operational offices	*Total*	Disciplinary and preventive measures [1]	Judicial authorities	Finance police	Bank of Italy	UIC	Isvap	Foreign authorities	*Total*
2000	105	1	1	*107*	9	5	1	2	1	--	4	*13*
2001	32	--	3	*35*	4	6	2	3	3	--	4	*18*
2002	21	2	26	*49*	4	20	2	0	10	--	2	*34*
2003	27	1	42	*70*	12	6	3	1	2	2	2	*16*
2004	297	2	18	*317*	97	42	30	35	30	1	11	*149*

[1] From 2004 onwards, this item includes measures providing for the shutdown of Internet sites under Legislative Decree 70/2003.

Table aIX.1

International cooperation
(*requests for cooperation by geographical area*)

		2003		2004	
		From Consob to foreign authorities	From foreign authorities to Consob	From Consob to foreign authorities	From foreign authorities to Consob
Insider trading	EU	7	14	5	16
	USA	1	1	1	1
	Other	3	2	2	1
Market manipulation	EU	3	2	7	3
	USA	1	--	1	--
	Other	--	--	--	--
Unauthorized solicitation and investment services activity	EU	4	3	--	1
	USA	--	--	2	1
	Other	1	1	--	1
Transparency and disclosure	EU	3	--	9	--
	USA	2	--	--	--
	Other	1	--	--	--
Major holdings in listed companies and authorized intermediaries	EU	2	--	--	--
	USA	--	1	--	--
	Other	1	--	1	--
Integrity and experience requirements	EU	20	62	6	34
	USA	--	1	--	2
	Other	1	7	1	8
Violation of rules of conduct	EU	1	--	1	--
	USA	--	--	--	--
	Other	--	--	1	--
Total		***51***	***94***	***37***	***68***

Table aX.1

Appeals to ordinary courts against administrative sanctions proposed or imposed by Consob, 2002-04

Applicant(s)	Number	Court	Type of sanction	Outcome at 31 December 2004	
				First instance	Supreme Court
2002					
Financial salesmen	4	Tribunal (4)	Fine (1)	Dismissed (1)	
			Debarment (2)	Dismissed (2)	
			Disciplinary suspension (1)	Dismissed (1)	
Investment firm	1	Appeal court (1)	Fine (1)	Upheld (1)	Pending (1)
Officers of investment firms	7[1]	Appeal court (7)	Fine (7)	Upheld (5)	Pending (2)
				Dismissed (2)	
Officers of banks	5	Appeal court (5)	Fine (5)	Dismissed (5)	Upheld (1)
					Pending (4)
Stockbrokers	3[2]	Appeal court (3)	Fine (3)	Dismissed (2)	
				Partially accepted (1)	
Stockbroker's employees	1	Appeal court (1)	Fine (1)	Dismissed (1)	
Officers of an ATS	1	Appeal court (1)	Fine (1)	Dismissed (1)	
Officers of listed companies and listed companies	9	Appeal court (9)	Fine (9)	Dismissed (7)	Pending (2)
				Upheld (2)	
Local authority officials and local authority	1	Appeal court (1)	Fine (1)	Partially accepted (1)	Pending (1)
Person responsible for placement	1	Appeal court (1)	Fine (1)	Dismissed (1)	
Officers of unlisted companies and unlisted companies	5	Appeal court (5)	Fine (5)	Dismissed (1)	
				Pending(4)[3]	
Listed company	1	Appeal court (1)	Fine (1)	Subject of appeal ceased to exist (1)	
Shareholders of listed company	1	Appeal court (1)	Fine (1)	Upheld (1)	Pending (1)
Total	*40*				
2003					
Financial salesmen	1	Tribunal (1)	Fine (1)	Dismissed (1)	
Investment firms	2[4]	Appeal court (2)	Fine (2)	Upheld (1)	Pending (1)
				Dismissed (1)	
Officers of investment firms	11[5]	Appeal court (11)	Fine (11)	Upheld (6)	Pending (4)
				Sanction reduced (3)	
				Dismissed (2)	
Banks	1	Appeal court (1)	Fine (1)	Upheld (1)	Pending (1)
Officers of banks	19[6]	Appeal court (19)	Fine (19)	Upheld (15)	Pending (15)
				Partially accepted (2)	
				Dismissed (2)	
Stockbroker	1	Appeal court (1)	Fine (1)	Dismissed (1)	
Asset management company	1	Appeal court (1)	Fine (1)	Dismissed (1)	
Officers of asset management companies	6[7]	Appeal court (6)	Fine (6)	Upheld (4)	Pending (4)
				Partially accepted (2)	
Officers of an ATSs	3[8]	Appeal court (3)	Fine (3)	Dismissed (3)	
Unlisted companies	6	Appeal court (6)	Fine (6)	Dismissed (6)	Pending (1)

--- Cont. ---

--- Table aX.1 cont. ---

Applicant(s)	Number	Court	Type of sanction	Outcome at 31 December 2004	
				First instance	Supreme Court
Shareholders of listed companies	3	Appeal court (3)	Fine (3)	Dismissed (2) Upheld (1)	
Officers of listed companies and listed companies	8[9]	Appeal court (8)	Fine (8)	Upheld (8)	Pending (8)
Total	*62*				
2004					
Financial salesmen	2	Tribunal (2)	Debarment (2)	Stay granted (1) Pending (1)	
Officers of investment firms	1[10]	Appeal court (1)	Fine (1)	Dismissed (1)	
Officers of banks	42[11]	Appeal court (42)	Fine (42)	Upheld (5) Sanction reduced (6) Dismissed (19) Pending (12)	
Stockbrokers	2	Appeal court (2)	Fine (2)	Dismissed (2)	
Stockbrokers' employees	2	Appeal court (2)	Fine (2)	Dismissed (2)	
Officers of asset management companies	7[12]	Appeal court (7)	Fine (7)	Upheld (1) Partially accepted (1) Dismissed (5)	
Officer of company controlling a listed company	1	Appeal court (1)	Fine (1)	Dismissed (1)	Pending (1)
Officers of listed companies	3	Appeal court (3)	Fine (3)	Upheld (3)	
Officers of issuer of widely distributed securities	1	Appeal court (1)	Fine (1)	Upheld (1)	
Total	*61*				

[1] With a total of 31 applicants. One appeal was made by 14 officers of an investment firm and by the firm itself. [2] In one case the appeal was made by 4 stockbrokers sharing an office. [3] Four appeals have recommenced following the Supreme Court's confirmation of the jurisdiction of the Appeal Court. [4] One investment firm also challenged the same measure before a Regional Administrative Tribunal. [5] With a total of 81 applicants. One appeal was made by 29 officers of an investment firm and by the firm itself; three appeals were made by the members of the board of auditors of an investment firm. In two cases an appeal was made separately by the investment firm to which the applicants belonged. In another two cases an appeal was also made to a Regional Administrative Tribunal. [6] With a total of 42 applicants. Three appeals were made by a total of 25 officers of a bank, which took part in all three actions. In another two cases the appeal was submitted jointly by the intermediary to which the applicants belonged. Fifteen appeals were made individually by an equal number of officers of a bank, which also appealed separately. [7] With a total of 27 applicants. In one case the appeal was made jointly by 11 officers and the asset management company they belonged to; another officer appealed separately. Two appeals were made by as many officers of the same asset management company. [8] The three appeals were made by the members of the board of auditors of an intermediary that operated an ATS. [9] In 7 cases an appeal was also lodged with a Regional Administrative Tribunal. [10] The appeal was lodged by 9 officers of an investment firm and the firm itself. [11] With a total of 118 applicants from eight banks; two of them challenged the same sanction measure before two different courts of appeal. In 4 cases the appeal was also lodged by the bank concerned. [12] With a total of 27 applicants. In one case the appeal was made jointly by 11 officers and the asset management company they belonged to; another officer appealed separately. Two appeals were made by as many officers of the same asset management company.

Table aX.2

Appeals to administrative courts against measures adopted by Consob and the Minister for the Economy and Finance acting on a proposal from Consob, 2002-04

Applicant(s)	Number	Subject of appeal	Outcome at 31 December 2004	
			Regional administrative tribunal	Council of State
2002				
Financial salesmen	4[1]	Debarment	Debarment stayed (2) Pending (2)	
Financial salesmen	3	Disciplinary suspension	Stay not granted (1) Pending (2)	
Financial salesmen	2	Precautionary suspension	Stay not granted (2)	
Financial salesmen	2	Striking off the register	Upheld (1) Appeal discontinued (1)	
Financial salesmen	2	Denial of registration	Pending (1) Subject of appeal ceased to exist (1)	
Investment firm	1	Fine	Pending (1)	
Officers of banks	6[2]	Fine	Stay not granted (3) Pending (3)	
Stockbrokers	2	Fine	Stay not granted (1) Dismissed (1)	 Pending (1)
Stockbrokers	3	Precautionary suspension	Stay not granted (1) Pending (2)	Applicant's appeal rejected (1)
ATS	1	Ban on trading	Stay not granted (1)	
Shareholders of a listed company	1	Opinion on tender offer and damages	Partially accepted (1)	Appeal against interested party declared inadmissible (1)
Officers of listed companies and listed companies	4	Fine	Pending (4)	
Officers of unlisted companies and unlisted companies	3	Fine	Stay not granted (2) Pending (1)	
Shareholders' trust	1	Response to complaint re tender offer	Stay not granted (1)	
Auditing firms	3	Order to refrain from using a partner	Pending (3)	
Other	1	No action on a complaint	Pending (1)	
Total	*39*			
Extraordinary appeals to the President of the Republic				
Financial salesmen	1	Debarment	Dismissed (1)	
Limited company	1	Ban on public offering	Dismissed (1)	
Total	*2*			
2003				
Financial salesmen	5	Debarment	Stay not granted (3) Dismissed (2)	
Financial salesmen	2	Disciplinary suspension	Pending (2)	
Financial salesmen	1	Precautionary suspension	Stay granted (1)	
Financial salesmen	1	Striking off the register	Appeal discontinued (1)	
Investment firms	2[3]	Fine	Stay not granted (1) Appeal discontinued (1)	
Officers of investment firms	3[4]	Fine	Stay not granted (1) Appeal discontinued (1) Pending (1)	

--- Cont. –-

--- Table aX.2 cont. ---

Applicant(s)	Number	Subject of appeal	Outcome at 31 December 2004	
			Regional administrative tribunal	Council of State
Stockbroker	1	Striking off the register	Pending (1)	
Market management company	1[5]	Approval of market rules	Appeal discontinued (1)	
Listed companies	2	Consob resolution on a shareholders' agreement	Pending (2)	
Shareholders listed company	1	Denial of access to records	Pending (1)	
Shareholders listed companies and listed companies	2	Response to a query on exercise of voting rights	Pending (2)	
Shareholders listed companies and listed companies	1	Denial of access to records	Pending (1)	
Officers of listed companies	7[6]	Charges under Article 195 of the Consolidated Law on Finance	Stay not granted (7)	
Unlisted company	1	Ban on public offering	Pending (1)	
Other	1	Cancellation of Fib30 contracts	Pending (1)	
Total	*31*			
2004				
Financial salesmen	4	Debarment	Stay not granted (2) Dismissed (2)	
Financial salesmen	2	Disciplinary suspension	Stay not granted (1) Pending (1)	
Financial salesmen	3	Precautionary suspension	Stay not granted (1) Pending (2)	
Financial salesmen	3	Striking off the register	Stay not granted (2) Pending (1)	
Financial salesman	1	Failure to pass professional exam	Pending (1)	
Officers of an investment firm	1[7]	Dissolution governing bodies	Stay not granted (1)	
Stockbroker's employees	1	Fine	Pending (1)	
Auditing firm and auditor	1	Denial of access to records	Partially accepted (1)	
Auditing firms and auditor	4	Order to refrain from using a partner	Stay not granted (1) Pending (3)	
Auditing firm	1	Striking off the register	Pending (1)	
Listed company	1	Suspension of listing	Pending (1)	
Unlisted company	5	Ban on public offering	Stay not granted (4) Pending (1)	
Issuer of widely distributed securities	1	Inclusion in register of widely distributed securities	Pending (1)	
Other	1	Denial of access to records	Dismissed (1)	
Total	*29*			
Extraordinary appeals to the President of the Republic				
Shareholders of a listed company	1	Clearance of a tender offer	Pending (1)	
Bondholders of an unlisted company	1	Annulment of exchange tender offer	Pending (1)	
Total	*2*			

[1] In 1 case an appeal was also made to a lower court (*Pretore*). [2] Six appeals made by a total of 21 corporate officers of a bank, who also challenged the same sanction measure before the competent Appeal Court. [3] One investment firm also lodged an appeal with the competent Appeal Court under Article 195 of the Consolidated Law on Finance. [4] With a total of 22 applicants. In one case an appeal was also made separately by the investment firm the Applicants belonged to. In two cases an appeal was also made to the competent Appeal Court under Article 195 of the Consolidated Law on Finance. [5] The action was subsequently discontinued after the trial of the case had begun. [6] Seven appeals lodged by 7 corporate officers of a listed company, who also appealed to the competent Appeal Court under Article 195 of the Consolidated Law on Finance. [7] The appeal was lodged jointly by five officers of an investment firm.

Table aX.3

Actions for damages brought against Consob [1]

Applicant(s)	1996	1997	1998	1999	2000[2]	2001	2002	2003[3]	2004	Grounds	Outcome at 31 December 2004
Clients of investment firms	1	1	4	9	1	--	--	29	59	Omission of supervision	Pending; one unfavourable decision – appealed; one favourable decision
	--	1	--	--	--	2	--	--	--	Omission of supervision – under Art. 185.2 of the Criminal Code	Pending [4]
	--	--	--	1	--	--	--	--	--	Omission of supervision – under Art. 185.2 of the Criminal Code	Exclusion of Consob from the criminal proceedings
	--	2	--	--	--	--	--	--	--	Libel	Pending
Liquidator of an investment firm	--	1	--	--	--	--	--	--	--	Omission of supervision	Stayed
Investment firms	--	1	--	--	--	--	--	--	1	Omission of super-vision – under Art. 106 of the Code of Criminal Procedure	Pending
	--	1	--	--	--	--	--	--	--	Denial of extension of authorization	Pending; Damages refused at first instance. Appealed.
	--	--	--	--	--	--	--	--	2	Unlawful conduct in performance of supervision	Pending
Shareholders of listed companies	1	--	--	--	--	--	--	--	--	Illegitimacy of Consob's exoneration from obligation to make a tender offer	Damages refused on appeal
	1	--	--	--	--	2	1	--	1	Omission of supervision	Pending [5]
Clients of a stockbroker	1	--	--	--	--	--	--	--	--	Offence by an employee – under Art. 185.2 of the Criminal Code	Damages refused on appeal – Appealed to the Supreme Court
	--	--	--	3	1	--	--	--	1	Omission of supervision	Pending
Liquidator of a stockbroker	--	--	--	--	--	--	--	1	--		Pending
Clients of a stockbroker and an invest-ment firm	1	--	--	--	--	--	--	--	--	Omission of supervision	Pending
Committee of shareholders	--	--	1	--	--	--	--	--	--	Ban on unauthorized public offering	Pending
Clients of trust companies	--	--	--	2	--	1	--	--	--	Omission of supervision	Pending; 1 claim for damages refused
Clients of financial salesmen	--	--	--	--	--	--	5	--	--	Omission of supervision	Pending; 1 claim for damages refused

--- Cont. ---

--- Table aX.3 cont. ---

Applicant(s)	1996	1997	1998	1999	2000[2]	2001	2002	2003[3]	2004	Grounds	Outcome at 31 December 2004
Financial salesmen	--	--	--	--	--	1	1	--	--	Unlawful striking off the register	Pending; 1 claim for damages dismissed
Advisor to a listed company	--	--	--	--	--	--	--	--	1	Omission of super-vision – under Art. 106 of the Code of Criminal Procedure	Pending
Other	--	--	--	--	--	--	--	--	1	Unlawful conduct in investigation under Art. 185 Consolidated Law on Finance	Pending
Total	*5*	*7*	*5*	*15*	*2*	*6*	*7*	*30*	*66*		

[1] In addition to the actions shown, there is an appeal under Article 700 of the Code of Civil Procedure by an intermediary to block enforcement proceedings initiated by Consob. Appeals were also initiated in 1999 against 3 dismissals of actions for damages brought against Consob in 1994 and 1995 by clients of intermediaries. [2] With reference to an action brought in 2000 before a Regional Administrative Tribunal, the Supreme Court declared that the administrative court in question had no jurisdiction to hear the case, which should have been heard by an ordinary court. [3] In 2003 the Supreme Court rejected an appeal against a decision in Consob's favour adopted in 2000 by the Milan Appeal Court, which had rejected the claim for damages in a dispute initiated in 1994 by a client of an investment firm.. [4] In one case Consob also applied to recover damages as an injured party. [5] Two of the actions brought against Consob in 2002 are not for damages but call on the civil courts to order Consob to adopt certain administrative measures. Again in 2002 appeals were made against two judgements dismissing actions for damages (one brought in 1996 by an intermediary and the other in 1997 by the clients of an intermediary).

Table aXI.1

Contributions to Consob's financing by persons subject to supervision
(millions of euros)

	Categories of contributors										
	Intermediaries		Auditing firms	Financial salesmen	Market entities [3]	Issuers	UCITS [4]	Solicitors of investors	Traders on the MTA and Expandi markets	Other	*Total fees*
	Investment firms and stock-brokers	Banks									
2000[1]	0.5	2.9	2.3	10.3	1.2	8.4	3.0	9.2	5.2	0.0	*43.0*
2001[1]	0.5	2.8	2.1	8.7	1.4	7.9	3.1	3.5	3.6	0.4	*34.0*
2002[1]	1.2	7.5	2.0	6.4	2.8	8.9	5.3	4.9	–	0.9	*39.9*
2003[1]	1.0	7.4	2.5	8.0	3.1	9.0	6.1	3.4	–	1.1	*41.6*
2004[2]	0.9	7.6	2.8	9.6	3.9	8.2	5.6	6.0	–	1.4	*46.0*

[1] Final data. [2] Provisional data. [3] Borsa Italiana s.p.a., MTS s.p.a., Cassa di Compensazione e Garanzia s.p.a. and Monte Titoli s.p.a.. [4] Includes the supervision fees paid by asset management companies for individual portfolio management services.

Table aXI.2

The staff [1]

	Permanent employees				Fixed-term employees	*Total*
	Managerial	Operational	Other	*Total*		
1990	91	63	16	*170*	67	*237*
1993	134	72	16	*222*	96	*318*
1996	128	152	16	*296*	108	*404*
1997	125	161	21	*307*	96	*403*
1998	122	156	17	*295*	88	*383*
1999	116	205	19	*340*	24	*364*
2000	110	246	20	*376*	13	*389*
2001	110	241	19	*370*	15	*385*
2002	126	250	15	*391*	17	*408*
2003	129	245	15	*389*	19	*408*
2004	131	236	15	*382*	20	*402*

See the Methodological Notes. [1] End-of-year data.

Table aXI.3

Applications for documentation and information on Consob's activities

	Applicants			Subject of applications				
	Market participants / Institutional investors	Individual investors, students et al.	*Total*	Resolutions, communications, prospectuses	Texts of laws and regulations	Data and information	Other	*Total*
1997	673	441	*1.114*	451	367	286	10	*1.114*
1998	597	448	*1.045*	427	300	300	18	*1.045*
1999	540	475	*1.015*	310	290	300	115	*1.015*
2000	1.460	1.158	*2.618*	588	379	1.261	390	*2.618*
2001	782	1.407	*2.189*	365	112	1.259	453	*2.189*
2002	655	922	*1.577*	182	79	1.092	224	*1.577*
2003	365	1.114	*1.479*	149	6	1.007	317	*1.479*
2004	247	1.277	*1.524*	182	48	1.024	270	*1.524*

METHODOLOGICAL NOTES

The symbols used in the tables in the Report and the Appendix have the following meanings:

-- the observed value is nil;

— the phenomenon does not exist;

.... the phenomenon exists but the data are not known;

.. the data are below the significance threshold.

Rounding may cause discrepancies in the last figure.

Sources: unless stated otherwise, the data reported in the tables were obtained by Consob in the performance of its institutional supervisory functions.

LISTED COMPANIES

Tables I.2, I.3, I.4, I.5 and I.6 and Tables aI.1, aI.4, aI.5 and aI.6

The following criteria are adopted in dealing with initial public offerings:

- offerings made by foreign companies are excluded;
- the data on the amounts of offerings refer to the results of placements and include any shares allotted to institutional investors at the close of the offering in the context of an overallotment. Accordingly, the data are independent of the fact that, in connection with stabilization activity undertaken by the placers, the greenshoe option may not be exercised, in whole or in part, in the 30 days following the offering;
- the data on the development of the ownership structure are taken from prospectuses and take account of the results of offerings, including the exercise of greenshoe options; if the number of shares offered for sale is smaller than envisaged in the prospectus, and in the absence of accurate information in this respect, the calculation of each selling shareholder's post-offering quota is based on a pro rata division of the shares sold according to the division specified in the prospectus;
- the determination of the percentage held by the controlling shareholder is based on a substantial criterion which takes into account all the shares held by the members of the same family, of those held by companies owned by the same person and of those not committed to a shareholders' agreement if there is one; in the absence of a controlling shareholder, the leading shareholder is shown under that heading;
- treasury shares are deducted from the share capital of the issuer for the purpose of calculating the percentages held by major shareholders and the market value.

Table I.2 and Table aI.1

The data refer exclusively to offerings of listed securities and securities issued by listed companies and initial public offerings. The time classification of offerings is based on their starting dates.

The sample does not include offerings made for the purpose of restructuring the listed company's debt and reserved to creditor banks, nor increases in capital with contributions in kind. By contrast, it includes increases in capital for the conversion of shares with a cash balance. The data on the part of offerings reserved to the general public include the offerings of unexercised preemption rights on the stock exchange and any amounts reserved to issuers' clients; by contrast, amounts reserved to individually named persons and any amounts taken up by members of the underwriting syndicate are included under "Other". In some public offerings for the sale and subscription of securities

for which the distribution of the sale of existing securities and the subscription of new securities by type of acquirer was not known, the breakdown was made on the basis of the total number of securities allotted to each category.

Table I.5

Includes the credit and equity relationships existing at the offering date between the companies admitted to listing and the persons controlling or controlled by the sponsors or placers that handled the operation.

The credit relationships do not include transactions with commercial banks or those for which it was not possible to determine the portion of credit actually disbursed; only in some particularly important cases was account taken of the figures for credit facilities granted.

The equity relationships do not include options held by the above-mentioned persons for the purchase or subscription of shares.

Tables I.8, I.9 and I.10 and Table aI.12

Consob's ownership transparency archive is based on the notifications referred to in Article 120 of the Consolidated Law on Finance, whereby persons who own more than 2 per cent of the voting capital of an Italian listed company are required to notify the fact in writing to the company and to Consob, which disseminates the information to the market.

Major holdings are defined as holdings of more than 2 per cent of the capital represented by voting shares (Article 120 of the Consolidated Law).

The figures shown in the tables are calculated with reference to holdings of companies' ordinary share capital.

Table I.9

The types of control are defined as follows:

- *majority control*: when a single shareholders holds more than 50% of the shares with voting rights exercisable in the ordinary shareholders' meeting;
- *working control*: when a shareholder who does not have majority control of the company is able to exercise a dominant influence in the ordinary shareholders' meeting;
- *under shareholders' agreements*: when the sum of the voting rights attaching to the shares covered by the agreement is equal to more than 50% of the shares with voting rights exercisable in the ordinary shareholders' meeting or permits working control to be exercised.

Table aI.3

The data refer to listed companies at the time of the sale of the holding. The total value includes only the proceeds of the sale, gross of the related costs; it does not include any financial debts transferred.

Table aI.6

The data refer to financial intermediaries that act as global coordinators and lead managers in initial public offerings.

Where an intermediary took part in more than one IPO, the figure shown in the table is the sum of the offerings in question in relation to the market total (consisting, according to the case, of the total of the global and public offerings made during the year). Moreover, where an offering had more than one global coordinator and/or lead manager, its value was divided by the number of intermediaries, and the market share of each intermediary calculated on the basis of the amounts obtained in this way.

Tables aI.9, aI.10 and aI.11

The information on shareholders' agreements is obtained from the disclosures required by Article 122 of the Consolidated Law on Finance, whereby any agreement that limits or regulates participants' voting rights, creates obligations or gives rights with regard to consultation prior to the exercise of voting rights, imposes conditions on the transfer of shares, or provides for the concerted acquisition of shares must be notified to Consob within five days of its being concluded on pain of nullity.

Only agreements covering more than 5 per cent of the shares are considered.

FINANCIAL SERVICES

Tables III.1, III.2 and III.8 and Table aIII.2

Individual asset management services are those defined in Article 1.5d) of the Consolidated Law on Finance. The figures for funds include Sicavs.

Table III.3

The analysis of management companies' ownership structures not only considered their direct shareholders but also determined the beneficiaries of significant holdings. In classifying controlling companies, reference was made to their "prevalent activity".

In the case of management companies for which there was neither a legal controller nor a shareholders' agreement, an attempt was made to establish whether there existed a "coalition" relationship that, without amounting to a shareholders' agreement, nonetheless allowed control to be attributed to a particular group of investors marked by a high degree of homogeneity as regards their legal nature or form and their activity.

"Joint ventures" are companies whose shares are divided into two parts on a 50-50 basis and held by non-homogeneous investors.

"Non-bank financial intermediaries" is a residual category where control is exercised by an unlisted financial company that does not engage in either banking or insurance and for which it is not possible to identify a natural person as the controller.

Table aIII.2

The categories of funds are based on the Assogestioni classifications in force at the time.

SUPERVISION OF LISTED COMPANIES

Table aIV.5

The types of opinion auditing firms may render are described below.

- Qualified opinion

Auditors are required to express a qualified opinion where they find: significant failures to comply with the rules governing annual accounts; significant disagreements with the directors about accounting policies; errors in the latter's application or inadequate information; significant limitations in performing the audit owing to technical obstacles or restrictions imposed by the directors; a situation of significant uncertainty not adequately described in the report or action taken by the directors which does not appear to be acceptable.

- Adverse opinion

Auditors are required to express an adverse opinion where the effects of the matters they criticize concerning significant failures to comply with the rules governing annual accounts, significant disagreements with the directors about accounting policies, errors in the latter's application or inadequate information are such as to cast doubt on the reliability and informational content of the annual accounts taken as a whole.

- Disclaimer owing to serious limitations

Auditors must issue a disclaimer where the possible effects of the limitations encountered in performing the audit are such as to prevent them from having the elements needed to express an opinion.

- Disclaimer owing to serious uncertainties

Auditors must also issue a disclaimer where they are faced with one or more situations of uncertainty such as to cast doubt on the reliability of the annual accounts taken as a whole or the continued existence of the company and they deem that the action taken or planned by the directors is based on highly questionable assumptions.

CONSOB'S INTERNAL MANAGEMENT AND EXTERNAL RELATIONS

Table XI.2 and Table aXI.2

Senior managers comprise the following grades: Direttore generale, Funzionario generale, Condirettore centrale, Direttore principale, Direttore and Condirettore. Junior managers comprise the following grades: Primo funzionario, Funzionario di 1ª and Funzionario di 2ª. The operational staff comprises the following grades: Coadiutore principale, Coadiutore, Assistente superiore, Assistente and vice Assistente.

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