CONSOB

COMMISSIONE NAZIONALE PER LE SOCIETÀ E LA BORSA

ANNUAL MEETING WITH THE FINANCIAL MARKET

SPEECH BY THE CHAIRMAN, LAMBERTO CARDIA

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Mister President, Authorities, Ladies and Gentlemen,

On behalf of the Consob, I first of all wish to warmly thank the President of the Republic, whose presence honours and lends particular prestige to this annual meeting, which today, in its tenth edition, is once again held in Milan.

It is the right occasion, Mr. President, for renewing our most ardent wishes for an enlightened and abundantly successful term in office.

The Commission also expresses its most sincere thanks to all Parliamentary members, government representatives, the civil, military and religious authorities and to all the participants whose presence bears witness to the proximity and attention paid to the life and problems of the market, as well as to all those who work within the same.

We are also grateful and express our esteem to the Minister of the Economy and Finance, formerly the Chairman of the Commission, whose fortuitous intuition led to the venture launched in 1997 for an "encounter" with the market in the Milan financial district, which has since become an annual event.

During this occasion for discussion, which joins the channels of institutional dialogue with Parliament and the Government and of collaboration with the judicial authorities, the Commission submits the guidelines and the results of the activities performed for the markets' appraisal and provides an account of its operations, in continuity with the Annual Report which is forwarded to Parliament via the Minister of the Economy on 31 March each year.

The Commission – which with the appointment of the fifth Commissioner starts to operate with a legally compliant structure - thanks Borsa Italiana for the renewed hospitality offered in a venue which is a source of reference, symbolic and otherwise, of the history and growth potential of the Italian economy.

Finally, thanks also go to the City of Milan and its Mayor whose concession ensured the Commission the prestigious venue of Palazzo Carmagnola in Via del Broletto.

A year of profound changes concerning reforms and market events

During 2005 and up to the present moment, exceptional events have taken place.

Particularly complex corporate events and wide-sweeping and innovative legislative reforms have led to a deep change in the institutional set-ups of the market. A process of transformation was triggered, whose effects will fully unveil in the years to come.

Changes took place in the governance of the Bank of Italy, transformed with regards to management and certain regulations and institutions.

The markets experienced a period packed with important transactions. A number of the leading industrial and financial groups were affected by ventures or events which transformed the corporate aspects and the industrial strategies. The Fiat Group repositioned itself competitively within the international scenario and saw its ownership structures redefined. Telecom Italia continued to rationalize its group structure, absorbing Tim. Enel concentrated its activities on the energy sector, selling off its telephone business. Unicredit achieved the first great banking merger in Europe with one of the leading groups in Central Europe.

In all the above cases, the market's correct disclosure required constant attention and the active presence of Consob.

However, there remains no doubt that the corporate events which had the greatest impact are linked to the takeovers on Banca Antonveneta and Banca Nazionale del Lavoro and to the contest which ensued between European parties and Italian competitors. The

Italian financial system, together with the supervisory authorities, has undergone a new and exacting test. Violations of market regulations and alleged offences have emerged which also involved directors and executives at the very forefront of important listed companies, and which fuelled highly critical assessments internationally as well, already sensitive due to previous events – specifically those concerning Cirio and Parmalat – which are still widely covered in the press and discussed.

From the very first, Consob, aware of its independence, neutrally and resolutely exercised its powers, setting the observance of the rules by all the players as the sole objective, irrespective of the nationality of the contenders.

The outcome of this endeavour is well-known. On 10 May 2005, the Commission ascertained the presence of a secret shareholders' agreement between Banca Popolare Italiana and the other shareholders, for the exercise of dominant influence over Antonveneta. This was the first indication of a sharp and tangible reaction to a transaction which presented many irregularities. On this basis, the judicial authorities then intervened and carried out further investigations. Verification of the secret agreement meant that Banca Popolare Italiana was obliged to launch a full takeover bid in cash, which required a substantial cash commitment. The irregularities revealed subsequently led Consob to prevent the takeover bid and the Bank of Italy to deem the transaction incompatible with sound and prudent management criteria, as also emerged from the analysis of the supervisory divisions included in the Bank of Italy's Annual Report.

On 12 May, two days after the secret pact was uncovered, legislation came into force for transposing the Market Abuse Directive (Italian Law No. 62/2005). This brought about a considerable enhancement of the mutual collaboration between Consob and the judicial authorities. Such collaboration, which immediately came into effect, revealed itself to be as exacting as it was profitable. In fact, on 22 July 2005, the Commission was able to ascertain the existence of a secret shareholders' agreement between Magiste International and Banca Popolare Italiana, as well as purchases of Antonveneta securities made by said bank via third parties. The consequences were: a revision upwards of the takeover bid price; suspension and subsequent declaration of foreclosure of both the voluntary takeover bids originally launched by Banca Popolare Italiana and the compulsory one. The Dutch bank Abn Amro, after the first voluntary takeover bid had been abandoned, launched a second bid at a more advantageous price for the shareholders, via which it finally acquired control of Antonveneta.

Observance of the regulations was the main benchmark for Consob in the Bnl takeover bid as well. The takeover bid launched by Banco de Bilbao was unsuccessful. In the meantime, Unipol had acquired a shareholding suitable for forcing the takeover bid, together with other parties. Consob's investigations, also carried out in collaboration with foreign authorities, required long timescales, due to the numerousness of the assessed profiles, and subsequently led to agreements signed between the insurance company and Deutsche Bank being qualified as an undeclared pact. Once again, the effect was a rise in the takeover price, which, albeit slight, was obligatory to

make. The transaction was not subsequently carried out since the Bank of Italy failed to grant authorization. The French bank BNP Paribas took over and, after having acquired the shareholdings held by Unipol and by the other associated parties, launched a full compulsory takeover bid on Bnl, which concluded satisfactorily.

Current legislation on takeover bids was sorely put to the test by the concurrence of sector regulations and general rules which was mirrored by an extension of the timescales for the definition of the events.

Banking events partly intersected with tensions in the ownership structures of Rizzoli - Corriere della Sera.

Violations of the disclosure obligations and alleged offences concerning market abuse emerged. The results of Consob's investigations were forwarded to the judicial authorities; investigations are still pending.

Uncertainties were also established with regards to the evolution of Fiat's ownership set-ups, during the months prior to the maturity of the loan under conversion. Following the anomalous performance of the stock, Consob intervened requesting the companies involved to provide the market with information. The preliminary investigation into the correct nature of this information was concluded, meeting the requests of the judicial authorities with indication of facts with a possibly criminal significance. The administrative procedure for the sanctioning provisions launched by Consob is underway.

An undertaking of no less importance was dedicated to other minor events, which were by no means less worthy of attention for the

protection of the investors. Briefly, one can recall the Finpart crisis and its repercussions on Banca Popolare di Intra.

Sanctioning activities relating to the Cirio, Parmalat, Argentine Republic and Banca 121 cases, which concerned hundred of banking system representatives, were consequently hard work for Consob offices at the legal venues, as a result of the generalized challenging of the provisions. To-date, all the appeals which have been decided before the competent Courts have been rejected; the sanctioning system was fully confirmed.

On conclusion of the investigations into the anomalies which affected the Government securities' market, due to the dysfunctional operations of a leading international bank, a report was made to the judicial authorities. The case also concerned various European countries, and has already been resolved in certain ones.

The scandal which concerned football circles highlighted critical aspects of the listing of the clubs. The listing conditions were created as a result of the wishes of the Legislator who, in 1996, permitted their transformation into profit-making companies (Italian Law No. 586/96). The structural problems which characterize the football businesses came to the surface: the legislative specificities of the sector – tax concessions and unusual exceptions to the accounting standards – did not encourage convergence towards the disclosure standards of the markets; the heralded evolution of the activities towards set-ups suitable for reducing the dependence of the profits on the uncertainty of the sporting results did not come about.

The delisting of these companies required a full takeover bid. The possible forecast, with regards legislation, of alternative methods

should take due account of the requirements for protecting the minority shareholders.

Finally, the proposed merger of the company Autostrade with the Spanish company Abertis created market tensions. In as far as it was responsible, Consob took steps to acquire the necessary information, through the responsibles for the companies and the bodies concerned, with the aim of providing transparency on the effects of the operation on the ownership structure of the listed Italian company which holds a public service concession. Supervisory activities continue.

With regards to legislation and regulatory matters, 2005 was no less intense. As a result of the transposition of the Market Abuse Directive, Consob was significantly enhanced with regards to its powers and the possibility of increasing human resources. The legislator corrected a number of weaknesses, starting off with the derisive nature of the sanctions. Consob reorganized structures and procedures so as to introduce the principle of separation between investigative and decision-making functions regarding sanction measures. An agreement was signed which disciplines co-operation with the Guardia di Finanza (Economic and Financial Police). The problematic recruitment of staff endowed with adequate qualifications was started up, and will result in the workforce numbering more than 600 individuals.

2005 was also the year that the new International Accounting Standards / International Financial Reporting Standards (Ias/Ifrs)

came into force. Consob accompanied such progress, establishing the implementing regulations and timescale.

At year end, Parliament approved the reform on savings (Italian Law No. 262/2005). The law contains significant innovations, which for some time Consob itself has pressed for, and key points, the most essential of which are illustrated below. Consob is currently working to issue the implementing regulations in as many as 20 different subject areas by the end of January 2007.

The innovations of the law included the possibility of listing for the market management companies. Consob has always favourably endorsed such hypothesis, on condition that Parliament makes the appropriate legislative amendments. This condition has now occurred.

Recently, new scenarios involving the international merger of the stock markets stood out. Consob, which observes such progress with due attention, has also furthered prompt consultations with the Government and with the Bank of Italy. In observance of the various responsibilities, the problems associated with the existing alternatives will have to be looked at in-depth, within a framework which takes into account all the interests involved and not just those of an exclusively financial significance.

In any event, Consob is faced with the entirely new question of supervision on a regulated market whose set-ups and structures go beyond the national sphere, with the involvement of authorities and legislation from different countries.

The Italian companies have shown rediscovered interest for the stock market. Over the last 18 months, 31 new companies have been listed. In the majority of the cases, these were medium sized businesses operating in the industrial sector which do not belong to groups already listed. They are signs of growth and a re-balance of the composition of the Italian Stock Exchange list, which until now has been overly dependent on large companies operating in the financial and public utilities sectors. This trend should be considered favourably. Hopefully it will consolidate. But it is also desirable that the listing decision is not occasional, uprooted from a growth course of the company, even less aimed at dealing with financial and economic imbalances. The return of Parmalat to the stock market under conditions of rediscovered industrial soundness is a good sign.

The increased volatility of share prices over the last two months may hinder the positive evolution underway, having interrupted the favourable trend seen over the last three years.[1] The intensity with which certain macro-economic scenario tensions may reflect on the market has not yet clearly emerged, in the presence of favourable growth and profitability prospects for the leading economies.

The growth of the bond market remains limited by the scant propensity of non-financial businesses to resort to the capital market. Compared internationally, gross issues made by Italian groups are clearly inferior to those made by the companies of the main European countries. The negative experiences which have hit Italian savers over the last few years influence the development prospects. Expectations of a rise in interests' rates currently risk penalizing smaller issuers with higher risk profiles above all others.

Evolution of the legislative framework: savings reform

Confidence and sure and balanced rules underlie the credibility and growth prospects of the Italian financial marketplace.

The search for balances between an elevated level of protection and a sustainable system of rules for the operators finds a delicate occasion for application in the new legislative framework outlined by the savings reform.

At a distance of more than two years since the Parmalat scandal, the approval of the savings reform represented an important sign, awaited for too long, of the will to intervene in-depth on the problems which have emerged.

The internal auditing systems of the companies and the accounting transparency have been enhanced. The role of the share minorities has been valorised. Measures have been introduced for preventing conflicts of interest during the auditing of the accounts. Improved transparency of foreign companies belonging to listed groups located in so-called “tax havens” is envisaged.

Investor protection benefits from new rules on conflicts of interest, the conduct of the intermediaries and the transparency of the solicitation and their extension to the financial products issued by banks and insurance companies.

The sanction system has been made more effective, its dissuasive power having been strengthened with regards to the entity of the sanctions and the imposition procedures. It has been flanked by settlement and arbitration procedures, entrusted to Consob.

The reform affects the institutional set-up of the controlling authorities and the structure of the respective functions.

The necessary coherence and consistency of the reform scheme is not always ensured, partly as a result of the failure to co-ordinate with other recent legislative measures, and specifically with the Consolidation Code on insurance and that on supplementary pensions. In this connection, in the interests of the market it appears a priority to define - using appropriate institutional instruments - the breakdown of the responsibilities among authorities with regards to the offer documentation relating to open-end pension funds.

Pursuit of the supervisory functional model, despite being strengthened by the savings reform, continues to present margins of incompleteness and overlapping risks.

An area of growing importance due to allocation of savings, such as the supply of insurance products and services and asset management, supervision of the transparency and fairness profiles remains entrusted to bodies which the protection of the stability of the parties should exclusively belong to.[2]

The continuance of different sectorial regulations in the supervision of multi-functional intermediaries may lead to a differentiated handling of products and services which are essentially similar, thereby reducing the efficacy of the protection norms and encumbering the operators with unjustified costs.

The intention expressed by the Government to proceed with the rationalization of the functions of the independent authorities goes in the direction of surmounting these elements of discord.

The organization of the system of controls according to the functional model makes it possible to contribute specific and complementary expertise more fully protecting the savers. This however requires co-ordination and active co-operation among the authorities.

The law on savings once again refers the definition of the co-ordination formalities to the authorities and mentions the memorandums of understanding and the establishment of co-ordination committees merely by way of example.

Consob has always provided, and intends to continue to offer and request, the maximum collaboration of all the authorities currently involved in the supervision of the financial market. Working together may be aided by simple forms of co-ordination, so as to share experience and expertise and define, in observance of the autonomy of each party, common lines of policy for more incisive regulatory and supervisory action.

More formal instruments could by contrast subsist where the collaboration between the authorities requires the definition of procedural formalities and specific fulfilments. A good example are the initiatives, currently being concluded, for adopting – implementing the law on savings – a memorandum of agreement between Consob and the Bank of Italy on the subject of approval of the prospectuses for bank bond issues. The definition of the technical and IT aspects is also close to conclusion, elements necessary for permitting Consob direct access to the data of the Central Credit Register run by the Bank of Italy.

The savings reform appears to have been affected by an essentially symptomatic approach.

Certain legislative choices are not completely consistent with the most recent EU stances. For example, with regards to conflicts of interest in the management and provision of investment services, strict investment limits not contemplated by European regulations are set.

A number of new provisions could indirectly compromise the efficacy of the supervision. The use of voting by secret ballot for election to corporate offices in listed companies without doubt does not make control of the transparency of the shareholdings and the existence of shareholders' agreements easy. The lack of the right to vote, for the purposes of contesting the shareholders' meeting resolutions, could become difficult to ascertain.

In some cases, the regulations reach an excessive level of detail, imposing elevated operating liabilities, what is more of reduced tangible utility for the supervisory objectives. Consider, for example, the assignment to Consob of the task of checking all the resolutions adopted by the shareholders' meeting for granting and revoking appointments to independent auditing firms.

With regards to other aspects, the occasion was not seized for going ahead with the improvements which would render the supervisory and sanctioning activities more efficient. The ascribing of administrative responsibility to corporate bodies could, for example, contribute towards the simplification and acceleration of the proceedings.

Greater co-ordination between the savings reform and the regulations on market abuse is hoped for. The overlapping of the

tightening up measures on the entity of the pecuniary sanctions, which take the minimum amounts to extremely high levels, reduces the system's flexibility. Ambiguities also present themselves in the identification of the competent venues for the challenging of the provisions.[3]

Conditions of certainty regarding the system of regulations, which Consob contributes towards by means of impressive regulatory activities, makes prompt and durable corrective intervention necessary. Consob has indicated this need on several occasions. The process was recently launched with the competent Government venues.

The financial integration process in Europe and international co-ordination

A single financial services market is the ambitious objective which the EU countries have set themselves for supporting and encouraging growth. The European Financial Services Action Plan achieved intense harmonization of the regulations.[4]

The European Commission's control over the transposition of the regulations within the Italian legal system is already underway and envisages an in-depth and accurate assessment of the implementing measures.

The political bodies, the supervisory authorities, the operators and the savers must contribute towards the process for adaptation to

the standards set at European levels – each one within the sphere of their own responsibilities – favouring a shared strategic vision of the growth prospects of our financial system and adequate protection of the invested savings.

Delays in the transposition of the sector directives reflect negatively on the financial services industry, creating legislative uncertainties and altering the competitive conditions.

The expiry of the deadlines for the transposition of the directive concerning prospectuses (Directive 2003/71/EC) required substitute intervention by Consob which, via the amendment of its regulations, permitted the efficacy of the European passport for the issuers, despite lacking changes to the primary legislation, which we hope will be adopted swiftly.

Particularly wide margins of discretion characterize the process for the transposition of the directive on takeover bids (Directive 2004/25/EC), whose terms recently expired.[5] Political compromises at European level led to a low level of harmonization on aspects of primary importance concerning the regulations.

When exercising the options permitted by the directive, the Italian Legislator will have to take into account differing, and at times opposing, requirements.

The current regulations, heavily oriented towards the protection of the investors and the contestability of the listed companies, have contributed towards rendering the Italian market more dynamic and open to changes in control.

Within a positive line of continuity, the choice of maintaining both the obligatory nature of general meeting approval for the adoption of defensive instruments and the possibility of withdrawal *ad nutum* from the shareholders' agreements in the event of tender offers, would be posed.

The possible introduction of the principle of reciprocity regarding defensive measures[6] permitted by the directive, while reflecting the lack of legislative consistency within the continental area, could lead to a reduction in the protection of the interests of the minority shareholders, for whose purpose the contestability of the offering party is not significant.

Elements of fragmentation within the European market of corporate control also derive from the presence of specific authorizing procedures for the corporate acquisitions subject to prudent supervisory checks.

The initiatives undertaken by the EU institutions appear that they can be shared, being ventures aimed at narrowing the scope of discretion when exercising the authorizing power and at reducing the consequent uncertainty regarding the outcome of the operations. The announcement made by the Governor of the Bank of Italy in relation to abolishing the obligation to inform the supervisory body of the projects for the acquisition of a controlling interest in a bank, even before it has been proposed to the board of directors, heads in the same direction.

The transposition of the directive on takeover bids might also be an occasion for introducing forms of legislative and procedural co-ordination within the Italian legal system, which encourage the

synchrony and the promptness of the measures of the various authorities involved.

Next are the terms of transposition of the directives on issuers' transparency (Transparency Directive 2004/109/EC) and on the financial instruments markets (MiFID Directive 2004/39/EC). The directives introduce significant changes, especially with regards to the regulation of intermediaries and markets, making the objective of accompanying the harmonization of the regulations with an endeavour to converge the supervisory standards particularly important.

With a view to the protection of the investors, it is only right to ensure that the regulations are implemented with equal intensity and according to the same methods.

It is desirable that the supervisory authorities, via the Committee of European Securities Regulators (Cesr), ensure the maximum consistency of the operating procedures, undertaking to observe the guidelines drawn up at this venue.

The needs for supervisory co-ordination and strengthening of the co-operation go beyond the European sphere. International co-operation has been decisive for the investigations carried out by Consob into the most significant events over the last few years, despite initial difficulties by no means negligible.

In this connection, the activities of the International Organization of Securities Commissions (Iosco) in which Consob actively participates, were particularly significant.

Last June, Consob was once again elected as one of the members of the Organization's Executive Committee and took over the Chairmanship of the Implementation Task Force, a permanent working group tasked with establishing the criteria for checking implementation of the Iosco standards.

The International Monetary Fund, appropriately using the standards drawn up by the Iosco, recently assessed the Italian system, expressing appreciation for its complete compliance with the international regulatory and supervisory standards.[7]

The financial intermediation industry

The asset management and investment sector in Italy is conditioned by the structure of the banking industry. The provision of investment services remains hinged on the universal bank model.

The dimensional profile continues to be an element of the structural weakness of the Italian banking system. The average size of the leading groups is greatly inferior to that of the European competitors.

Strategies limited to the national dimension, concentrated on the traditional credit intermediation, do not appear in line with those of the leading European banking groups, targeted at the development of services for businesses, advisory and asset management activities.

The progressive consolidation of the financial services industry corresponds with the opportunity of extending the field of activities to new geographic areas and to innovative services and products, which

require considerable investments in fixed and human capital. The European legislative framework, featuring strong elements of deregulation, consolidates the trend underway.

The current set-ups of the Italian financial services industry are currently influencing the growth of the asset management sector, an important area due to the investment opportunities for savers and the economy of the country. In Italy, the ratio of asset management to financial assets of households is lower than that of the other leading industrialized countries.

Initially, the vertical integration between production and distribution had permitted the Italian asset management industry to grow at elevated rates, partly thanks to the favourable business cycle situation during the second half of the 1990s. Subsequently, a long recessionary phase cropped up.[8] A number of important operators succeeded in moving significant phases of the management activities abroad.

The affiliation of the Italian asset management companies to banking groups influences the organizational, production and commercial choices.

The incentives to promote the supply of asset management products do not appear to be much considered in the strategies of the Italian banking groups, by contrast favouring direct investment savings products.

The predominant use of the group's distribution networks also reduced the competitive pressure, negatively reflecting on the dimensional growth and financial innovation capacity of the managers.[9]

The operating independence of the management companies becomes a requisite for competitiveness today.

The rationalization of the legislative and tax aspects might contribute towards increasing the efficiency and competitiveness of the sector.

The international openness of the market structure takes on strategic importance for the development of the Italian financial market place, both with regards to the trading activities and the clearing and settlement activities.

Despite the growing harmonization of the regulations on stock markets and the progressive integration of the cash flows, in Europe market structures have remained fragmented and operate mainly on a domestic scale.

The current set-up determines an elevated cost for cross-border trades, which is predominantly affected by the settlement phase. This phenomenon hinders an efficient international diversification of the portfolios and limits the fruition of the benefits deriving from the introduction of the Euro.

Despite the fact that the legislative trend favours the competition, the companies which manage the market structures tendentially operate under a natural monopoly system, involving the consequent spontaneous trend towards the concentration of trading, which has already shown itself at national level.

However the scenario is rapidly changing. Numerous alliance, merger and agreement attempts are witnessed. The processes seem to be swifter for the trading platforms, and the federation model at

European level for these platforms appears endowed with greater merger possibilities and capacity.

In light of the merger process, the steps towards this model should be supported, a model which falls within a system of regulations and supervision already fully consistent.

The agreements between stock markets, unless they are accompanied by parallel integration of the clearing and settlement structures, nevertheless do not generate substantial benefits with regards to the overall costs borne by the end investors, nor do they seem sufficient for fully supporting the requirements of a single European market.

The supervisory authorities cannot remain indifferent to the developments of the sector: the supply of efficient services at competitive prices is a requirement for the liquidity and integrity of the markets, as well as for reducing the risks of contamination and systemic instability to a minimum.

The achievement of co-operative ventures by the market forces may be encouraged by a greater harmonization of the conditions and the regulations at European level and by a renewed effort for co-ordination between the supervisory authorities.

The prospects for the integration of the market structures intermingle with the listing possibilities of the same management companies. Listing can and must represent an occasion for improving the governance structure, aligning it to the best practices of the listed companies. However, it is opportune that listing is achieved, ensuring adequate supervision protecting general interests and within the sphere of the project which favours medium/long-term strategic choices.

Ownership transparency and corporate governance

Ownership transparency is decisive for ensuring the market complete and effective information, particularly in the presence of control models based on alliances or one individual minority shareholding.

Consob's vigilance over the observance of the ownership transparency performed a significant function in the events linked to changes in the control structures. The assessments, focused on the existence and evolution of shareholders' agreements, required an intense use of the powers of investigation. Inspections, personal examinations, the request for data and information were resorted to and co-operation with foreign supervisory bodies was activated, having shown itself to be increasingly profitable over time.

The need to reduce market uncertainty also led Consob to make numerous requests for the dissemination of information to the public as soon as initial evidence of anomalies on the market emerged.

Another critical factor, which emerged with force in recent events, is represented by the shortfalls shown, once again, by the corporate governance systems in presenting and in promptly highlighting conduct contrary to corporate interests.

The need to enhance the internal control instruments takes on increasing relevance within the current context of the ownership structures.

Signs of a considerable evolution are highlighted, albeit not unequivocal and consistent, towards the predominant set-ups in

continental European countries. The ownership concentration, still elevated in the international context, is decreasing. Corporate control is mainly achieved through coalitions. The role of the pyramidal groups tends to decrease.[10] Despite the significant growth in Italian institutional investors, the presence of international investors has increased considerably, showing a stronger propensity towards corporate activism. The degree of integration between banks and non-financial business increases, the related value having nearly tripled between 1998 and 2005.[11]

A number of peculiarities, partly deriving from needs historically based on protection of a system undergoing sharp developments, raise specific problems and may represent an obstacle to the international integration of the Italian companies. These include: the persistent importance of public shareholders in the ownership structures; the presence of limits to the contestability of corporate control deriving from legislative provisions; the nature of the proprietary integration between bank and industry which, in contrast to the other European countries, sees a clear predominance of the participation of non-financial businesses in the share capital of the banks.[12]

Account also needs to be taken of these peculiarities in the configuration of the regulations and in the effective application of the principles of corporate governance, with a view to enhancing the functions for the control and valorisation of the roles of the minority shareholders.

A significant contribution to the improvement of the corporate dialectic is expected from the presence of members elected by the

minorities, as imposed by the savings reform in the management and internal control bodies. Within the ample spaces of statutory autonomy previously available, the market had only partially undertaken this direction of its own accord.

The adoption of the "list voting" procedure encourages a corporate body composition which reflects the widespread presence of minority shareholders holding significant equity interests in listed Italian companies.[13] Why this measure is efficient is because the effective independence of the various lists of candidates is ensured, which must not be an expression of the same groups of interest.

A tangible commitment is required of the Italian institutional investors when exercising active participation, surmounting the traditional indifference, confirmed by modest rates of participation in general meetings.

The recent review of the self-regulatory code for listed companies, carried out by the corporate governance Committee set up within Borsa Italiana, rendered the principles consistent with the developments of the Italian, EU and international legal system.[14]

The quality of a self-regulatory code however depends not only on the validity of the principles but also on the ability to exercise an effective deterrent function toward opportunist conduct.[15]

The difficulty which emerged, not only in Italy, in ensuring effective surveillance of essential compliance with the guiding principles led the Italian Legislator to introduce a public form of control, entrusted to Consob, which supplements the self-regulation of the issuers.

It is Consob's task to check the quality of the information provided by the companies, encouraging the widest participation of the operators in the adoption and evaluation of good corporate governance principles.

Within the listed companies, greater responsibility is assigned to the internal auditing bodies, which avail of the necessary powers and are obliged to endow themselves with instruments suitable for performing the tasks they are assigned. Specific sanctions are envisaged for them, in the event of non-fulfilment.[16]

The new supervisory frontiers

Consob's institutional duties regarding regulation and supervision have been considerably extended in the new legislative framework, with regards to both the nature of the phenomena and the depth of the controls. This is consistent with the market's evolution which determines new needs and increases the complexity of the existing ones.

The supervisory methods will have no alternative but to evolve towards systems which make it possible to promptly indicate areas, phenomena and parties at greatest risk, on which to concentrate resources and activities.

In the asset management and investment sector, besides the extension of the rules of fairness and transparency to the supply of products with a financial content issued by banks and insurance

companies, introduced by the savings reform, the application of the directive on financial instrument markets (MiFID Directive) will have a great impact.

The rules of conduct for intermediaries will emerge as more structured in relation to the type of service requested, reaching minimum levels in the event of provision of the "execution only" service.

Furthermore, the possibility of carrying out transactions on a plurality of trading venues and using different methods, including dealing on own account on a systematic basis, against proprietary capital (so-called internalization), will be achieved.

In some cases, these new conditions will reduce the appraisal of the suitability of the operations for the clients and will change the requirements for supervision of the observance of the best execution principle.

Consob's supervision will therefore have to take account of the risks induced by these transformations, when selecting the participants. The ability of the intermediaries to adapt their organizational structure and capital ratios to the new conditions and to deal with possible additional costs deriving therefrom will be assessed. The intermediaries who are in a position to offer qualified services, also via forms of advice and information to clients, and reduce the commission for low value-added activities will be able to seize the opportunity of remaining within a European market under competitive conditions.

Asset management represents an area of potential growth for Italian intermediaries, since it can still benefit from ample growth

margins. In this sector, the supervisory objective continues to be the verification of conduct potentially representing a conflict of interests, due to the affiliation of the majority of the asset management companies in multi-functional banking groups. Greater independence in the production and commercial strategies and in the mechanisms for the remuneration of the distribution networks is a condition for avoiding distorting conduct toward the investors.

The MiFID directive – inducing the progressive fragmentation of the trading of listed securities on various trading venues – leads to greater range and complexity of the supervision on the integrity of the markets.

The European authorities are involved in the creation of new IT information systems, capable of handling all data and information deriving from a plurality of sources. The reports made by intermediaries on suspicious transactions represent an important source for the activation of adequate warning systems on possible market anomalies.

New specific transparency requirements are set for the supervision on the alternative trading systems, in which significant volumes of securities are handled, almost exclusively other than shares: in 2005 alone, nearly 4 million contracts were executed in these systems, relating to around 24,000 different securities. The majority of the trading, around 70 percent, concerns bank bonds, which in many cases present returns linked to market parameters or to complex calculation mechanisms; a non-marginal portion, approximately 13 percent, refers to bonds from non-banking issuers,

whose weight however dropped considerably over the last 2 years, following the recent corporate scandals. As a result of the transposition of the MiFID directive, the discipline of alternative trading will be subject to considerable innovations. The parties authorized to manage the multilateral trading systems or to operate by internalizing trading will be able to extend their activities to the entire range of financial instruments.

Corporate events over the last few years have forced the supervisory authorities to enhance the instruments targeted at the prompt identification of symptoms denoting crisis. This makes it possible to intervene so as to improve the information transparency and, with it, the market's awareness of the emergence and development of potential difficulties.

Analysis of the main risk factors may direct the supervisory activities towards issuers and phenomenon which require in-depth analysis and direct action. New methods for the economic-financial analysis of indicators referring to individual issuers or sectors can support this end. It is important that the authorities and the parties supervised converse with a spirit of collaboration so as to maximize the benefits for the supervision, without prejudice to the need not to burden the market with unjustified additional liabilities.

The issuers – currently 18 – who present clear elements of risk regarding their business continuity will continue to be obliged to provide monthly information, so that the market can follow the evolution of the more delicate corporate situations.

During the periodic surveillance of the independence and technical suitability of the auditing firms, significance and risk criteria will be adopted, including the characteristics of the customer portfolio and the organizational set-ups.

Finally, Consob will have to check the requisites of good standing and professionalism of the corporate auditing bodies. On a more general note, greater transparency and undertaking of responsibility by the members of said bodies must be encouraged. The definition, together with the trade associations, of lines of conduct may contribute positively.

The extension of the supervisory functions induced by the legislative reforms has been accompanied by norms which increase the contribution of the supervised parties to the financing of Consob's activities, on the basis of specific contributions relating to the supervisory costs on each category of parties. The coherence of the funding systems entails the permanence of a portion to the charge of the national budget linked to the relevance of the public functions entrusted to the Institute, whose utility is reflected on the community.

The Commission recently established an organizational restructuring project, useful for the achievement of the new supervisory strategies and a more efficient use of the human resources. The project, submitted to the Trade Union Organizations for the purpose of launching open and constructive discussion, envisages a balanced development of the activities at the two venues in Rome and Milan, according to a model of presence and vicinity to

institutional circles and the market, whose validity has confirmed itself over time.

The project's guidelines are consistent with the aim of enhancing the ability to promptly identify areas and phenomena at greatest risk for the protection of the investors. New and specific functions are envisaged, dedicated to dealings with the consumers and the analysis of the economic impact of the regulation.

The plan for expanding the staff is currently being implemented. During the early months of next year, procedures will be completed for the recruitment of no less than 100 new resources, the majority of which will enter service within the year. A key factor, not easy to achieve, is the search for high levels of professional quality, to integrate with those already existing within Consob, also necessary for dealing with the frequent loss of staff (around 15 in the last 18 months) whose high professional profiles the market has appreciated for some time and increasingly so. Maintaining and improving the skills and professionalism of the resources is decisive for dealing with complex phenomena undergoing continual transformation. Investments in human capital are achieved, and will be increased, by means of training activities suitable for turning to account the abilities and potential of the staff. Discussion and collaboration with the Trade Union Associations, currently underway and yet to be developed, may provide profitable results.

Collaboration with the judicial authorities

Investigation and sanctioning activities put together by Consob during the past year were particularly incisive and saw intense collaboration with the judiciary.

This collaboration which has existed for some time, even if within more limited horizons, has been expressly reinforced by the Legislator. The new rules envisage that the Public Prosecutor, when he is made aware of offences concerning the abuse of inside information or market manipulation, informs the Chairman of Consob without delay; and that the latter, at the latest within the deadline for the assessment of facts relating to the alleged abuse, forwards the Public Prosecutor a reasoned report, in the presence of elements suggesting the existence of an offence. Within this sphere, legislation introduces a prevision of reciprocal collaboration between Consob and the judicial authorities, also via the exchange of information, for the purpose of facilitating the assessment of market abuses, even when they do not represent offences.

The enhancement of the collaboration has permitted a leap in quality when contrasting violations of the sector legislation. Specifically, the exchange of information between Consob and the judicial authorities and the sharing of the experiences gradually achieved in the specific spheres of competence have emerged as key elements for the performance of delicate and complex investigations,

such as those which concerned the most well-known events which emerged with virulence last year.

The complexity and the seriousness of the offences discovered required a particularly intense effort from Consob's structure, having also considered the scarcity of the available resources and the expansion of the duties assigned to the Institute.

Consob has in any event mobilized and multiplied its energy, so as to facilitate the judiciary in its commitment to guarantee fundamental values, experience having shown what risk of compromise may be reached.

The judicial authorities have been provided with data, news and information relating to more than 100 cases, some of which concerning investigations already underway. Executives and the same Chairman of Consob have, in certain circumstances, also been called to give evidence.

In turn, Consob has received acts and information which have permitted the most suitable performance of the contrasting activities falling within its responsibilities.

Over the last 18 months, Consob sued for damages in 14 criminal prosecutions regarding alleged insider trading, market manipulation and hindering of supervisory functions. On a parallel, legal disputes which concerned the Institute increased, originated both by requests for compensation associated with events which involved

considerable losses for savers, and by challenges of administrative sanctions imposed as part of the supervisory activities.

The 27 sentences delivered by the civil courts are important having rejected all the claims formulated toward the Institute, when defining judgements brought against Consob for alleged failure to supervise.

It is again worth remembering how, in all the judgements which involved Consob following the imposition of administrative sanctions toward intermediaries due to irregularities when performing trading activities (as in the “Cirio” and “Argentina” cases), the outcome of the refutation proceedings concluded so far (10 out of 11 pending in total) has always recognized the existence of the violations and fully confirmed the sanctioning system; only in two cases was the entity of the imposed sanctions reduced.

The functioning of the market was also subject to exceptional tension, as a result of the importance adopted by the news on the progress of the investigations, with respect to the inherent informative legacy which guides the market’s progress, and as a result of the climate of uncertainty which was created with regards to the propriety of the conduct.

The satisfactory functioning of the market requires that the system aim to recover new conditions of serenity and confidence, on the basis of stable and shared principles, capable of guiding the

conduct of the operators and of the same supervisory authorities. Thus on a consistent basis with the objectives of protecting the fairness and quality of the market, and also its growth and development.

This need is noted with particular intensity with regards to the new regulations on market abuses. Within the legislative process which involved all the measures for the repression of conducts damaging the market, it managed to adopt an absolutely central position, in the face of lesser incisiveness of the rules on corporate offences, including false accounting.

It appears appropriate that the tangible implementation of the rules on market abuse come about with determination, but also with the necessary selectivity and proportion, taking adequate account of the need to safeguard the inherent market dynamics and preserve the effective deterrent powers of the rules. Therefore it is necessary that, via the administrative action, the specific skills of the supervisory authority are turned to account in the tangible identification of the types of abuse, within a logic of complementarity of the criminal and administrative action.

The possession and exercise of adequate technical expertise represent the basis for assigning the independent authorities supervisory functions on interests of constitutional importance, such as the protection of savings, and also represent an asset of the entire system for the definition of an adequate balance between the objectives – both of public interest – of protection of the investors and development and growth of the market.

Mister President, Authorities, Ladies and Gentlemen,

the process for the integration of the European financial systems has reached a stage of maturity.

By the beginning of next year, all the main EU directives which went towards creating the Financial Services Action Plan will have to have been transposed. In January 2007, the deadline for the adaptation of the Consolidated Law on Finance to the provisions of the savings reform will also expire.

The season of further change to the legislative framework will provide the Consolidated Law on Finance with a new aspect. It is necessary that this result be achieved by means of a systematic and co-ordinated legislative measure and that an approach by individual fulfilment imposed by EU or Italian provisions is avoided.

In this way, the systematic coherence which the 1998 Consolidated Law had and which risks being lost as a result of the succession of uncoordinated legislative measures, may be retrieved. Consob has offered and offers its own technical contribution towards the legislative activities and the Government. The expectation that recently undertaken initiatives set themselves ambitious targets is widespread.

The review of the Consolidated Law is an occasion for improving provisions which, in the arduous procedure of the savings reform, have adopted contents which alter the appropriate balance between costs and benefits of the rules.

This review could also be an occasion for fully pursuing the model for the breakdown of the supervisory responsibilities according

to the functional model. The strengthening of the collaboration between the authorities, which Consob guarantees an active contribution in its capacity as independent institution bearing constitutionally recognized interests, can only partly make up for the absence of a harmonious institutional and legislative scheme. Perplexities remain that solely collaboration, even if provided with every willingness, can ensure a drastic reduction in the regulation costs.

The Legislator has tasked Consob with the role of reference point for the savers; it is assigned not only the general functions for the protection of the market's transparency and integrity, but also direct protection instruments, such as settlement and arbitration procedures and the guarantee fund.

The consumers of financial services will also have to be accompanied along a path of maturity of the economic and financial culture, even more necessary after the dramatic experiences suffered over the last few years as a result of the purchase of bonds and other financial products not appropriate for households.

Even the principles introduced by means of the new directives push towards a more open and in some ways less protected market model; a market on which those who invest must be endowed with a high level of awareness of the risks undertaken and the rights acquired. This awareness is ingrained in financial systems based on professional investors which manage retail savings; it is less inherent in the Italian system, where savers still show preference for the direct purchase of financial instruments.

Improving the efficacy of the supervisory activities and reducing the liabilities for the market are objectives which guide the evolution of the institutional activities, for which the Commission requires the collaboration of the operators and shows itself ready to evaluate requests and suggestions.

Consob's commitment is to contribute towards enhancing the ability of the stock market to stimulate and support the economy's growth process, directing its activities according to clear guidelines:

- ensure the central nature of the protection of the savers with effective instruments and supervisory measures and, when necessary, repression measures, but at the same time with more adequate preventive forms of investors' education;
- encourage the adoption of models of conduct consistent with the value of "common good" which the market represents, by means of essential rules, with verifiable benefits and justified costs;
- participate actively, within the limits of its responsibilities, in the development of market structures, so as to safeguard the current levels of efficiency and protection of the investors and the role that the financial marketplace can perform in supporting the growth of the Italian economy within the European scenario.

Recovering trust in the market is necessary and possible.

Trust is supported by means of development processes which are created in observance of the rules. The Italian operators, companies and intermediaries, are obliged to overcome purely conservative logics so as to turn: one, to the capital markets, as an instrument of growth, guaranteeing transparency and fairness; the other, high added value quality services, safeguarding the protection requirements of the savers.

The dimensional and technological development of the Italian companies requires resources and financial skills which only a mature and efficient capital market can offer.

Collaborating with all the judiciaries and availing of the support of the State Legal Office and the Guardia di Finanza – all Institutions which the Commission sincerely thanks – will continue to be fundamental in reducing opportunities for conduct which harms the market and the savers.

Definite and clear rules, whose observance is accurately sanctioned, are the requirement so that each component of the system, issuers, intermediaries, savers, can find space for legitimate aspirations that their talents will be developed, within a context of effective legality.

Definite and clear rules are also essential for the activities of the supervisory authorities, whose independence and serenity of judgement would, as indicated several times, find valid support in a discipline of the limits of responsibility of whoever performs their institutional duties in good faith. It is protection due to those who

provide activities for the safeguarding of general interests, and among these the staff of the Institute, which the Commission sincerely and informally thanks for the great sense of responsibility shown in difficult times and under circumstances which have required exceptional efforts and expertise.

* * *

During previous meetings in this venue, I have maintained Consob's intention to operate willingly as an independently aware authority performing its functions "*nec spe nec metu*".

Today, on conclusion of my speech I wish to once again confirm this intention, expressing a number of additional observations.

It is beyond doubt that Consob's work has not been influenced by the hope of future advantages, nor has it been conditioned by fears or awe, but reflecting closely some hopes and some fears have been present and have been nourished.

Fear is determined by awareness of one's limits and the worry of making mistakes; hope concerns the possibility of receiving appreciation for one's work, founded on observance of the law and aimed at the protection of the interests of the community and, in the first instance, the savers.

NOTES

[1] (page 10) During 2005, the performance of the Italian stock market was positive for the third year running, with growth in the Mib index of 13.9 percent when compared with the end of 2004, which followed the 17.5 percent in 2004 and the 14.9 percent in 2003. The positive performance also continued in the first 4 months of 2006, with a rise in the index of approximately 10 percent, followed by a brusque correction in the following two months, which led to the return to the values seen at the end of 2005.

[2] (page 12) Specifically, this concerns the envisaged exemption of the financial products issued by insurance companies from the discipline of door-to-door selling, and of bank bonds from the legislation on common securities. Furthermore, in the field of asset management Consob has not been entrusted with responsibilities concerning the breakdown of the risks and approval of the management regulations for collective investment undertakings (Oicr), despite the fact these aspects concern profiles of transparency and fairness, as confirmed by similar rules on individually managed portfolios. The envisaged agreement with the Bank of Italy for the exercise, by Consob, of regulatory and sanctioning powers regarding conflicts of interest in asset, insurance and pension fund management arrangements appears to be in contrast with the principles of the Consolidated Law on Finance (Tuf), as does the assignment to the Bank of Italy of principal responsibility regarding conflicts of interest when providing investment services.

[3] (page 15) In the absence of corrective measures, the jurisdiction of the Lazio Regional Administrative Court (Tar) appears to prevail - for the sanction measures concerning market abuses - over that of the Court of Appeal, thereby determining an imbalance with respect to the matters established by Article 195 of the Consolidated Law on Finance (Tuf) which by contrast envisages the refutation before the Court of Appeal of all the categories of sanction measures of the Consob.

[4] (page 15) At the end of 2005, in other words as of the deadline envisaged for the completion of the objectives of the Financial Services Action Plan, 98 percent of the scheduled measures had been achieved.

[5] (page 16) The choices which the directive assigns to the national legislators include the significant thresholds for the takeover bid obligation, the adoption or otherwise of the obligation of general meeting approval for the adoption of defensive measures during the takeover bid, the neutralization of the defensive techniques and the rule of reciprocity, as well as any provision of discretional powers for the competent authority regarding the determination of a fair price.

[6] (page 17) The principle of reciprocity envisages that the member states can exonerate the companies from the application of rules regarding defensive

measures if they are subject to an offer launched by a company which does not apply equivalent measures.

[7] (page 19) *Financial Sector Assessment Program* (*Fsap*).

[8] (page 20) As from 2000, the net inflows of mutual funds was nearly always negative and assets under management fell by nearly 20 percent.

[9] (page 20) The cost level of the product was predominantly affected by the remuneration of the distributors and is not structured in relation to the customer-care service provided to the investors. The excessive fragmentation of the overall supply of mutual funds involves large, medium and small management companies without distinction; cases of failure to achieve optimum size thresholds at individual product level are not infrequent. Where economies of scale are achieved, the benefits are internalized.

[10] (page 24) Over the last ten years, the portion of stock market capitalization represented by floating shares, in other words by holdings not held by major shareholders, rose from 38.9 percent in 1996 to 55.9 percent in 2005. In the same period, the average holding held by the largest shareholder, weighted for stock market capitalization, fell from 50.4 percent to 28.6, while the holding held by all the other major shareholders increased, passing from 10.7 percent to 15.5. The number of companies not controlled by a single shareholder rose from 52 to 68 and their weight in terms of capitalization rose from 21 percent to 46.6.

[11] (page 24) The degree of proprietary integration between banks and non-financial companies is calculated by means of the ratio between the total value, at market prices, of the holdings of banks in listed non-financial companies and of non-financial companies in listed banks and the total value, at market prices, of the listed banks and non-financial companies.

[12] (page 24) The comparison between the ownership structures of the leading listed companies (belonging to the blue-chip indexes) in Italy, France, Germany and Spain indicate that the degree of proprietary integration between banks and companies, gauged by the indicator described in note 11, is essentially similar in the various countries analyzed, with the partial exception of Spain which presents greater integration. Whereas in the other countries the value of the indicator is influenced essentially by the bank holdings in the capital of listed non-financial companies (which represent around 70 percent of the value of the indicator in France and Germany and over 90 percent in Spain), in Italy the weight of holdings of non-financial companies in the capital of listed banks is predominant (which represent around 80 percent of the value of the indicator).

[13] (page 25) At the end of 2005, in the Italian listed companies where a single controlling shareholder was present, on average there were another 3 shareholders with holdings of over 2 percent.

[14] (page 25) The new self-regulatory code, adopted in March 2006, enhances the responsibilities of the Board of Directors, valorises the function of the independent directors and the substantiality of their position, and improves the protection on the quality of the mechanisms for the remuneration of the executive directors. These provisions appear consistent with the recommendations of the European Commission on independent directors (Recommendation 2005/162/EC) and on the remuneration of the directors (Recommendation 2004/913/EC) and with the OECD Principles on corporate governance, amended in 2004 (OECD *Principles of Corporate Governance).*

[15] (page 25) The annual analysis carried out by Assonime on the state of implementation of the self-regulatory code for listed companies indicates how, despite the considerable improvements registered over the last few years, the information provided in the reports on Corporate Governance by the listed companies continues to present certain elements of inconsistency and inexpressiveness: an important aspect specifically concerns the tangible application of the requisites for the qualification of the independence of the directors, especially in companies in the banking and insurance sector where the percentage of directors defined as independent is higher.

[16] (page 26) The savings reform envisaged a specific pecuniary administrative sanction ranging from € 25,000 to 2 and a half million which may be imposed by Consob in the event of irregularities in the fulfilment of the supervisory duties which the internal auditing bodies are tasked with, including the duty to oversee adaptation to the self-regulatory code (Article 193.3, letter a) of the Consolidated Law on Finance - Tuf).