



CONSOB

COMMISSIONE NAZIONALE
PER LE SOCIETÀ E LA BORSA

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COMMISSIONE NAZIONALE
PER LE SOCIETÀ E LA BORSA

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ANNUAL REPORT 2008

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***SPEECH BY THE CHAIRMAN
TO THE FINANCIAL MARKET***

MILAN, 13 JULY 2009

Mister President, Minister, Excellences, Ladies and Gentlemen,

on behalf of Consob I would first of all like to warmly thank the President of the Republic whose presence honours and lends particular prestige to this annual meeting once again held in Milan.

The Commission also extends its sincere thanks to the Members of Parliament, the Government Officials, the civil and military authorities, the members of the Church and to all those attending who, by their presence here today, confirm their insight and interest in the life of the market and its problems, now appearing much tougher than they were at our previous meetings.

Allow me to greet and express a special thank you to the Minister of the Economy, whose active and profitable cooperation in these times has intensified in the search for appropriate systems to combat the global crisis which, with the speed of a cyclone, has turned countries, continents and the entire world upside down.

This meeting – in addition to the support received from Parliament and the Government, and the ongoing collaboration with the legal authorities, the Bank of Italy, other regulatory bodies and the Guardia di Finanza – gives Consob the opportunity to report on its operations, explain the work undertaken, the problems encountered, its results and the guidelines it intends to follow.

The Commission renews its heartfelt thanks to its host city, Milan, where Consob is proud to have its offices in the prestigious Palazzo Carmagnola, and to the city's Mayor, who has put into operation the procedures necessary to allow us more space to expand our operations.

Lastly, I wish to thank Borsa Italiana for its customary, noble hospitality.

1. The financial crisis and the supervisory structure

Around this time a year ago there were two frequently-heard expressions: financial disruption and uncertain outlook. Nobody talked about “economic crisis”. It was hoped that signs of negative effects on the system, already seen in summer 2008, would not develop to such an extent as to force the global systems and economies into a crisis the likes of which had never been seen before. In both instances, we trusted in a preconception of banking system stability.

In 2008 the financial crisis, beginning in the United States subprime mortgage sector, infected the major financial operators and all the world markets.

The decision of the US authorities to allow Lehman Brothers to collapse, announced to the market on 15 September, was thought by many to be a hasty move, intensifying and fuelling the emergence of the crisis, undermining the confidence of operators and investors by adding to the climate of formidable market tension, uncertainty and, at certain times, panic.

Fears for the soundness of the merchant banks spread rapidly. The inadequate level of transparency in financial positions made every forecast dubious. The sudden increase in counterparty risk led to a drastic reduction in interbank market liquidity and an increase in short-term rates, despite the central banks’ immediate and consistent cash injections. Other crises cropped up in the financial sector, and not only among banks, in Europe and the United States.

It is in this phase that awareness of the systemic nature of the crisis spread to the entire world, reflected in the unanticipated extent of the collapse of the equity markets, particularly in financial sector securities.

The shortcomings in the banking system’s own funds and the difficulties in raising funds on the capital markets gradually put even the balance of companies in the non-financial world under strong pressure. And so the international recession spiralled.

Today the outlook is still tinged with profound uncertainty. The weaker elements in both the business world and among investors are subject to the greatest risks.

Only the larger companies manage to raise funds on the capital market and place bonds without too much difficulty or at a cost not sufficient to be considered excessive.

Most of the small to medium-sized companies, the fundamental weave of the Italian business fabric, find it difficult and could risk financial suffocation. A business restructuring process that had begun in the last few years and had started to show encouraging results in terms of productivity and international competitiveness, is coming to a halt.

The Italian stock exchange, more than other markets, has felt the effects of the crisis, also due to the heavy weight of banking sector securities listed.

In 2008 the drop in Italian share indices was close to 50%, higher than that of the other leading international markets⁽¹⁾. In the first half of 2009, indices on the Italian market returned almost to levels recorded at the end of 2008, in the last four months recovering most of the further considerable drop recorded in January and February⁽²⁾.

Market performance accentuated the weaker elements of the Italian equity market structure in terms of both absolute dimensions and the number of companies listed. The capitalisation-GDP ratio has gone back to mid-1990s levels. There have been only 9 new listings in the last 18 months, compared to 23 delistings. Borsa Italiana's multilateral trading facilities set up to encourage the listing of small and medium-sized enterprises are still in their initial stages⁽³⁾.

The Borsa Italiana-London Stock Exchange integration process faces stronger competition from the alternative trading systems and intermediaries' internal systems, which often benefit from regulatory imbalance.

The strategic response to competitive challenges should be to safeguard the role and development prospects of the Italian financial market for which Consob, even here, has on a number of occasions pointed out the risks of impoverishment.

The gradually reducing impact of Italian intermediaries on group ownership structures considerably weakens the options for improving the role and systems of the Italian market.

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The regulatory framework in the main financial markets has proved to be unprepared in preventing and overcoming the tension created by the crisis and of managing the collapse of transnational finance companies.

Differences between legal systems have given the edge to financial markets characterised by "kid gloves" supervisory practices and regulatory policies based on principles that are not always accompanied by precise, standardised implementing measures.

Now, even in these systems, there is a growing awareness of the central nature of the principle of investor protection. The plan announced recently by the US President heads in this direction, including major institutional reform on investor protection and a strengthening of market transparency, as do the recommendations of the Turner Report in the United Kingdom.

So the crisis has turned the spotlight on the entire supervisory architecture, the role of international organisations and regulatory standards.

The new global rules currently debated should in fact apply to all financial market operators, allowing us to overcome the problems caused by the development of “shadow” banking systems and the snowballing of off-market transactions.

The need to call for greater involvement from emerging countries was also recognised. IOSCO, the International Organization of Securities Commissions, has co-opted the Brazilian, Indian and Chinese authorities to its Technical Committee. Together with the French, Spanish and Portuguese authorities, Consob has launched a Mediterranean partnership to encourage the sharing of European regulatory and supervisory standards in certain North African countries (Morocco, Tunisia, Algeria and Egypt).

The recommendations adopted last spring by the G20 indicated certain guidelines for the international bodies responsible for preparing regulatory standards. The transformation of the Financial Stability Forum into the Financial Stability Board has also contributed to ensuring better coordination of the technical plan at global level.

Under the Italian presidency, the G8 countries agreed on a common strategy to guarantee that coordination efforts meet a global legal standard. The aim is to create a single, shared regulatory framework on matters of systemic importance such as corporate governance, market integrity and financial market regulation and supervision.

The domain of international accounting standards is an important test of the capacity of global reform initiatives.

In effect, the crisis has imposed a strong need to rethink the terms of application of the accounting standard concerning fair value measurement of financial instruments.

The intrinsic validity of the standard, whose application has brought to light the risks of high-level exposure in financial instruments, must not be doubted.

The use of financial statement results to calculate regulatory capital has nevertheless amplified the negative impact of the difficult position of the markets, forcing many financial institutions to dispose of their investments so as to meet capital requirements.

The pro-cyclic nature of this effect therefore led to the United States and European governments and authorities’ request for a review of the fair value application methods so as to reduce the effect on volatility.

This matter should be reconsidered at global level, guaranteeing consistency with the American and international standards.

The crisis is forcing the European Union to come to grips with the incompleteness of the integration model implemented so far, despite the more recent standardisation attempts.

The definition of an institutional system capable of overcoming national fragmentation of rules, supervisory standards and sanctioning procedures simply does not match up to the expanding integration of the European financial markets.

Cooperation between authorities from different countries does not always offer effective supranational handling of crises and strongly feels the impact of the different dimensions of the markets and economies.

The European institutions are attempting to translate the guidelines formulated by the De Larosière group into a new framework of supervisory rules and institutional organisations. On 19 June the European Council recommended the setting-up of a European system of financial supervisory authorities to coordinate the supervision of transnational groups and to define a single European “rule book” applying to all operators.

Consob hopes that this reinforcement of the European institutions is effective and not subject to compromises and one-sided logic. The time has come to show a new approach by EU member states in giving due priority to safeguarding overriding collective interests at European level, in a transfer process that is gradual yet consistent with the sovereign issues of rules, supervision and sanctions. To do this we need strong, compatible political backing.

The Italian law assigned the supervisory tasks according to the model of financial regulation by objectives, envisaging a number of significant exceptions for the insurance and pensions sector which – bringing into play the opinions already expressed – ought to be removed.

The Committee for the safeguarding of financial stability⁽⁴⁾, which has met several times in this difficult period, is looking into the complementary goals of stability and transparency to which the law attributes equal value in protecting investors.

No transparency and fairness means no trust; and no trust means no stability.

Institutional cooperation has found that agreements signed between the Bank of Italy and ISVAP and in the Agreement with the Guardia di Finanza have provided stable and efficient operating methods for conducting inspections, the content of which may be expanded.

An important coordinating role is also played by the Financial Security Committee. In periods of strong market disruption and cash crises, funds deriving from criminal activity could find market access channels to be less watertight.

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The performance of the financial markets, particularly after the Lehman Brothers crash, called for extraordinary commitment from Consob at both domestic and international levels.

In line with similar action taken in the major European countries, since September 2008 the Authority has so far issued six restrictive orders on short selling, each to a different degree in accordance with market developments.

Consob is aware of the need to define a stable and coordinated regulatory strategy on short selling at international level and, in more general terms, on the phenomenon of short positions on securities, aiming to safeguard market integrity without jeopardising cash flow and pricing mechanisms.

At the end of May the Commission launched a consultation – due to end in the near future – to gather thoughts and experience from the Italian market, also in support of its commitment in ongoing international and European convergence initiatives.

On 19 June, in fact, IOSCO approved the general principles for the regulation of such matters and continues to promote standardised implementation. On 7 July the Committee of European Securities Regulators (CESR) approved a consultation paper proposing European transparency standards for short positions on securities.

By 31 July, on expiry of the measure currently in force in Italy, Consob's decision will also be based on experience and opinions emerging from developments in this topic in the other major countries.

Other action has been taken to guarantee adequate levels of transparency in the market and in relations between intermediaries and investors during the crisis.

In September, following the announcement of the Lehman Brothers bankruptcy, action was taken immediately to estimate potential risk to the Italian system, particularly with regard to the exposure of listed issuers and in the asset management and administered savings sector. An investigation was also launched at the Italian branch of Lehman Brothers, which merely acts as promoter of investment products and services for the main office in London.

Coordination and further study by the CESR offered a reconstruction of the impact of this affair on European investors and the preparation of recommendations for improved application of fairness principles by intermediaries. By the end of this year the CESR will publish a report on the "suitability" of investments proposed to customers by intermediaries, also in the light of problems emerging from the Lehman affair.

Consob has carried out joint surveys and inspections with the Guardia di Finanza to ascertain any manipulative manoeuvres on bank securities and observance of the restriction on short sales.

International cooperation has been called upon a number of times (a total of approximately 60 requests) to obtain information on non-Italian intermediaries that had executed short sales for significant amounts on Italian bank and insurance securities.

Following these investigations, at the beginning of October an urgent measure was adopted, ordering an Italian intermediary not to allow trading access on bank and insurance securities to two foreign subjects.

Again in October, so as to monitor the situation regarding shareholding structures in the leading Italian companies and the origin of heavy sales flows, shareholders of companies listed on the S&P/MIB index with investments exceeding 2% were asked to report their exact current holdings and any subsequent changes by more than 0.5 per cent. The results showed no significant developments.

In December 2008, as part of supervision regarding the Madoff scam it was discovered that investors operating through Italian intermediaries were affected only marginally. In the case of one asset management company, who instead reported a high asset exposure, Consob ordered suspension of the administrative bodies and appointed a commissioner to take over administration after an investigation discovered irregularities. The Ministry of the Economy later placed the company under special administration.

At the beginning of 2009, for the approval of 2008 financial statements, issuers were asked to take special care in information provided in their statements on going concern assumptions, financial risks, asset impairment testing and uncertainties regarding the use of estimates in application of international accounting standards⁽⁵⁾. A similar request was submitted to the independent auditors.

During the crisis the work of the international organisations has intensified in all the critical areas.

Specific studies also covered the commodities markets, affected by serious disruption. At the express request of certain authorities, including Consob, IOSCO produced a series of principles to improve the identification of cases of manipulation on these markets.

Specific initiatives were adopted by IOSCO on non-regulated entities, markets and products. In this context, on a proposal submitted by a task force co-chaired by Consob and the British Financial Services Authority (FSA), on 22 June the Organisation issued regulation principles on hedge funds, with recommendations to increase the information legacy available to authorities and investors. The decision was in line with the planned approval of a European directive on non-harmonised funds and is an important step towards the sharing of new standards in a sector of the industry that, by its very nature, is global and not regulated.

The rating agencies, whose operations are increasingly subject to strong criticism, were also covered in new regulatory initiatives from IOSCO⁽⁶⁾ and at European level. The European Regulation due for publication in the near future assigns an important role to the CESR in the procedures of authorisation and supervision of these agencies.

Harmonised collective management is also subject to an in-depth review at European level, proving necessary now that the principle of manager passports has become fully operative.

On 8 July, implementing recommendations submitted by the group of experts on asset management chaired by Consob, the CESR launched a consultation on the regulatory proposals regarding organisation, risk assessment, conflict of interest, rules of conduct and information for investors.

It should be mentioned that certain guidelines now subject to scrutiny by the international bodies have for some time been covered by Italian law and by Consob's regulatory and supervisory principles, particularly with regard to the conduct of intermediaries and market transparency. Sadly, in the past Consob's efforts to disseminate these principles beyond Italy have seen widespread hostility, especially from a number of major countries in which the financial services industry plays a predominant role.

2. The crisis and investor protection

The effects of the global crisis on the Italian economy are severe, affecting the employment, businesses, income and savings of Italian citizens. Signs of relaxation in financial market tension, though uncertainty and instability remain, contradict the negative figures for the real economy. The current forecasts suggest a long, obstacle-strewn path to recovering pre-crisis levels. The prospects of returning to a long-term growth process are even more problematic.

In this situation, economic policy has played and continues to play a crucial role in limiting the social consequences of the crisis and in introducing the catalysts necessary for recovery. Government action providing guarantees for depositors and in support of bank deposits was important in avoiding the risk of worsening the effects of the crisis at its most critical stage, preventing unjustified waves of panic that have led governments in other countries to make decisions that any other time would be unthinkable.

We all have to work together to recreate the stable conditions for trust.

In Italy the success of the financial system presumes that structural weaknesses in asset intermediation will be overcome - weaknesses heightened by the crisis that generate inefficiency in the allocation of financial resources and, above all, risks and fears for investors.

Attention has been drawn to the imbalance between administered savings and asset management, to the benefit of the first, especially as a result of offering policies to overcome the cash flow crisis by placing proprietary bonds.

Consob has for some time focused on the distribution to customers of complex products, i.e. characterised by limited liquidity. The aim is to strengthen the protection of small investors, avoiding opportunist conduct by intermediaries as a result of placement costs that tend to incorporate consistent commissions of benefit to the entire distribution chain.

On the placement of illiquid financial products, including bank bonds that represent over one third of Italian household portfolios, Consob intends to implement dedicated initiatives to verify the correct observance of MiFID-related measures.

The interests of the customer have to represent the basic principle in the provision of investment services. By standing our ground on this principle we can launch the process to rebuild investors' trust in the system, the baseline for any chance of recovery.

As part of its supervision of disclosures by the major Italian banking groups, Consob has found a general slowness in the transition towards a business approach, placing customer service at the real core of corporate strategies. The mere format of the regulations is not sufficient; the relationship with investors has to be reworked to reduce the growing diffidence towards the entire sector.

So last June a series of investigations on five large groups was launched to verify whether the principles of fair conduct were correctly implemented.

Intermediaries have to demonstrate a renewed ability to balance sales policy with the needs of their customers, define neutral incentive mechanisms for personnel in contact with the public and promote consulting as a strategic, highly professional service.

Even a separate consulting price list, linked to services rendered rather than to the product sold, would be more in line with the interests of the customers.

Another problem to be overcome is the outflow of resources from asset management. A weak asset management sector distances investors from long-term horizons, makes it difficult to search for higher yields through diversified, transparent portfolios and creates obstacles to the use of savings for pension purposes, the widespread lack of which is now a strong risk.

If rules on transparency and conduct in the issue and distribution of practical products now seem to be converging, the unjustified differences in tax regimes remain, to the detriment of Italian open-end mutual funds. Such penalisation could be mitigated if tax

incentives were offered on long-term mutual investment funds involving pension schemes, with restrictions on withholdings and adequate diversification.

Feasibility studies on the dematerialisation of units of funds, to improve distribution efficiency and allow full and rapid transferability, are close to completion.

* * *

The scenarios of extreme tension brought about by the crisis on the secondary share and bond markets have led to a phase of great change in secondary market architecture and operations.

The fragmentation of cross-platform trading and trading methods, and the consequent disintegration of information available to the markets, could be the reason for decreased efficiency of the pricing mechanisms.

In Europe, the full entry into force of new regulations on financial instrument markets⁽⁷⁾ has opened up competition from trading platforms that are not subject to the same restrictions and protection as regulated markets. The central role of the “stock exchanges” no longer exists, to the benefit of multilateral trading facilities and, to a lesser extent, of systematic internalisers, so far without any significant reduction in costs for the end investors.

The task of the intermediaries is to guarantee improved terms for the execution of customer orders.

This principle is difficult to apply to bonds, especially bank bonds, which make up a significant portion of Italian household portfolios.

In fact, these securities are normally handled at regulated trading venues⁽⁸⁾ and therefore do not have the benefit of adequate liquidity and price transparency conditions.

As a result, the trading terms for small investors are particularly disadvantageous, in terms of lack of information on market prices, their comparability and the wide difference between buy and sell prices actually offered by the intermediary.

Consob is committed to intervening with supervisory and sanctioning mechanisms to ensure that intermediaries implement the principle of best execution of customer orders, by using every means necessary, also of an organisational nature.

It is the duty and in the interests of all operators to promote the development of efficient secondary markets for every class of securities, also in support of stable primary markets with regard to companies' raising of medium/long-term funds.

3. The role of corporate governance in the crisis and the protection of minority shareholders

The spread of the crisis has been helped by the inefficiency of corporate governance mechanisms.

In past years the extraordinary opportunity for growth and profit had steered the corporate strategies of large international finance companies towards short-term results, assuming disproportionate risks.

The role of the shareholders has proved weak, demonstrating little or no wish to exercise their rights or to shoulder the responsibility towards management, administration and control bodies. By limiting their own requirements to short-term results, shareholders have contributed to the anything but farsighted, converging pressure from financial analysts and, in more general terms, from the market.

Improving the corporate governance systems is a strategic objective.

The main international bodies and best market practices agree on the need to strengthen the role of the shareholders' meeting and independent committees in defining management remuneration and incentive policies.

In Europe these principles have been the subject of a European Commission recommendation since 2004. Their scarce application has made it necessary to issue new guidance that calls upon EU member states to implement initiatives before the end of this year.

Certain legislations are already responding to these orders with specific regulatory measures; in others it is the companies themselves - at the request of institutional investors in some cases - that are adopting policies involving more transparency and a systematic shareholders' involvement. These practices can help to enrich corporate rationale and encourage the administration bodies to become more responsible.

In Italy, too, there is a need for greater convergence of rules and practices with EU standards. So as to meet the deadlines set in the European recommendation it is important to quickly define suitable measures to guarantee that pay policies are subject to shareholder vote, at the same time ensuring that their characteristics and justification remain transparent.

The contribution of the shareholders' meeting depends on the active participation of minority shareholders, which in Italy is still limited and fortuitous.

Implementation of the shareholders' rights directive is a chance to improve the timing and quality of pre-meeting disclosures and the methods for attending in person or

by proxy. This would be a way to crush the perception of little opportunity for shareholders' activism in Italian companies, often a cause for complaint by foreign investors.

Encouraging "list voting", which contributes to a better definition of the interests represented by the administration and control bodies, is a step in the same direction.

However, resistance to accepting the role of minorities in the election of corporate officers cannot be denied. Through a special recommendation, Consob has requested extensive reports on the presence of any links between lists, with the aim of identifying and protecting the role of "authentic minority shareholders".

Further action will be considered in the light of the hoped-for progress in self-regulation which, on matters of corporate governance, seems to have lost ground in recent years.

The general review of the Corporate Governance Code announced by Borsa Italiana will be an important opportunity to demonstrate the response capacity to problems emerging from the crisis, and to define stricter principles on central topics such as transparency of director independence requirements.

The efficiency of self-regulation, however, calls for a system to be set up to verify its actual implementation, with suitable forms of at least reputational sanctions.

The difficult situation faced by listed companies draws greater attention to the need for tougher rules on conflict of interest so as to protect minority shareholders.

Some time ago Consob launched a market consultation on a possible means of regulating related party transactions, the approval of which remains a priority.

Dialogue with all market operators has offered better balancing of a number of measures, standing firm on the principles of transparency in such transactions with respect to the market and the role of independent directors in the decision-making process.

The regulatory decisions, which will soon be subject to final consultation, intend to safeguard the flexibility and independence of companies in defining procedures and organisational models, and in ensuring better coordination with other sector rules and with regulations for groups of companies.

It is in this way that we will respond to the need to offer multiple tools and to observe specific operational efficiency requirements of companies, which logically require more well-defined measures.

The financial crisis and action taken by governments to overcome the consequences have affected the corporate governance market, in many cases changing and reforming pre-existing models.

In Italy, changes to the rules on takeovers and significant investments, made during a period of dramatic market instability, have helped block the strong openings for challenging control which – more so than in other European countries – has characterised the regulatory framework. Once the initial teething problems have been solved, time limits should be envisaged for such changes. In the long term, the key principles of the Consolidated Law on Finance remain a firm point of reference.

4. Consob's regulatory and supervisory strategy

The magnitude of the current crisis invites us all to question consolidated conduct models and to adopt new strategies. The entire financial markets supervisory system has to be subjected to a reform without precedent in order to restore investors' trust and to steer the positive strengths of the market towards growth.

Consob has launched a strategic planning process to define regulatory and supervisory policies more suited to contrasting the risk factors and to ensure standard levels of investor protection. This process will be opened to market consultation.

A communication extending the principles of transparency, already introduced for financial, insurance and asset management products, to public offerings of bank and corporate bonds has been approved and a consultation will be launched in the near future.

The inclusion of indicators on probable yield scenarios, the degree of risk, costs and recommended investment time horizons in information documents will allow investors to assess and compare investments based on standard criteria.

This is a new approach on the international scene that meets the needs of a market, such as in Italy, where a high capacity for investment tends to privilege direct forms of investment.

The commitment to improving information for investors has its limits, however. The European passport principle allows products subject to less rigid transparency regimes to be marketed in Italy. It is crucial that Europe considers further harmonisation prospects that integrate approaches to transparency more focused on investors' exposure to risk, not a mere description of those risks.

Consob is working with the Ministry of the Economy to develop similar risk representation methods for derivatives subscribed by local authorities.

In this area, in fact, also from surveys completed from 2004 onwards, it has emerged that many local authorities and non-financial companies classified as “professional investors” have assumed risks disproportionate to their real needs, and without the protection envisaged for retail investors. At the meeting with the VI Committee of the Senate on 18 March 2009, Consob emphasised the value of enhancing the public control system with respect to this phenomenon.

On the question of issuers, Consob’s strategic objective is to develop analysis systems, including corporate governance mechanisms, which strengthen the capacity to identify false accounting statements in real economic and financial situations, especially in periods of crisis.

Supervisory plans include increasing the number of issuers subject to more stringent reporting obligations. Consob has decided to request integration of the information provided in quarterly reports from companies whose independent auditors have expressed significant doubts about going concern assumptions. The same additional information will be asked of companies subject to monthly reporting where the declared status is one of operational crisis.

The increase in the number of companies under significant financial stress or declaring a crisis status is reflected in the number of requests for exemption from mandatory takeover regulations after bail-out operations. Exemption was granted (in 4 cases in the first six months of 2009) where the existence of corporate recovery plans was confirmed.

New measures for direct protection of investors are at preparation stage. The Conciliation and Arbitration Chamber is about to become operative, for which Consob has approved the enactment regulations and is in the process of appointing members. Investors will have an out-of-court settlement option for disputes with intermediaries, through rapid, economic and readily-accessible procedures.

The reorganisation and streamlining of Consob regulations is also planned, starting with the Regulation on Issuers, which has already been reviewed several times due to the need to implement EU and national measures. A key objective, though not the only one, will be to reduce compliance commitments, also by differentiating the rules based on dimensional and risk parameters.

This is a difficult task that will be expected to find a balance between the various interests involved and the restrictions imposed under EU law.

Implementation of the European directive on issuers' transparency obligations has posed the problem of identifying the most effective public disclosure channels. The regulatory amendments adopted by Consob on 1 April 2009 envisaged a gradual replacement of the press as a disclosure channel in favour of electronic systems subject to approval and supervision. This decision was appealed against before the Regional Administrative Courts by the Italian newspaper editors association and by a number of publishing companies. At the same time the relevant Committees of Parliament and the Senate, without prejudice to the use of electronic systems, unanimously invited the Government to reintroduce compulsory publication in the daily press. The Government enacted these proposals in a legislative decree approved on 26 June. Consob is therefore expected to re-adapt its regulatory measures, amending the decisions adopted last April.

In addition to defining an efficient, joint regulatory framework, maximum severity is needed to inhibit improper conduct.

Sanctions for financial offences are effective as deterrents and in safeguarding the integrity and trust of the markets, if imposed in a reasonably short time which, in addition to ensuring certainty of the penalty, avoids repetitions and copycat offences. The recent exemplary sentence in the United States against the financier Madoff came after proceedings that lasted only a few months.

Consob applies its own sanctioning powers with determination, within the limits of a regulatory framework that, now more than ever, requires improvement to encourage selectivity and a sense of proportion. A streamlining of the sanctioning system will have to take into account the needs of tendential and gradual standardisation at European level, as also recommended in the De Larosière Report.

Over the last 18 months the Commission has adopted 226 decisions as a result of sanction proceedings. Of these, 196 involved the infliction of penalties. The financial penalties applied totalled 17.4 million euro.

The grounds for the series of accusations were almost always fully reconfirmed by the Courts of Appeal, which in only a limited number of cases re-quantified the penalty.

Relations with the legal authorities were again frequent and intense, particularly in the supervision of market abuse, not only in the repression of criminal cases, but also to ascertain offences of an administrative nature.

Investigations in affairs with extensive repercussions, including "BNL-Unipol", "Alitalia" and listed football clubs have involved, and still involve, the Commission's offices in intense inquiries and exchange of information with the relevant public prosecutors.

Experience in the listing of football clubs confirms the fears often expressed by Consob regarding the likelihood of guaranteeing regular market operations of in a sector that has a structural interest in spreading rumour and indiscretion, often amplified by rife sensitivity.

With regard to Alitalia, the recent public reimbursement action to meet the well-founded claims of bondholders and the difficulties of shareholders should be noted. The need to take investor protection action was reported a number of times to the relevant authorities. Developments in the Alitalia case were extraordinarily complex and characterised by exceptional measures, including the suspension of market disclosures by law decree⁽⁹⁾, which resulted in the elimination of requirements for regular market trading.

In the last 18 months, Consob has submitted 81 reports to the legal authorities for alleged cases of offences subject to criminal sanctions; 8 involved allegations of market abuse; in 9 new criminal proceedings Consob brought civil action for alleged market manipulation and obstruction of supervisory duties.

In the same period, 11 criminal cases were decided at first instance proceedings, in most cases accepting liability of the accused and ordering payment of compensation for damages to Consob. Lastly, a sentence of particular importance issued by the Court of Milan on 18 December 2008 involved one of the accused in the “Parmalat” case being convicted for market manipulation and obstruction of supervisory authority duties.

The decisions of the court in a number of compensatory cases, instigated in growing numbers against Consob for alleged lack of supervision, were, in most instances, in favour of Consob.

Specifically, 143 decisions were pronounced on investor claims for compensation filed against Consob from purchasers of “Cirio”, “Parmalat” and “Argentina” bonds. All claims for compensation formulated against Consob were rejected.

In 4 sentences involving facts occurring in the 1990s Consob was ordered to pay damages to investors. Appeals were lodged against these decisions.

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Consob is also committed to enhancing supervision through a staffing completion and reorganisation plan – the workforce recently being increased to 715 – in which resources are assigned to the more strategic divisions. Our intention is to complete recruitment of staff with the necessary qualifications in as short a time as possible, compatible with more adequate and operational logistics - currently at definition stage - for the Institute’s offices.

Consob will also need to face a consistent number of voluntary resignations by resources whose experience, even in the current situation, is appreciated and sought after on the employment market, as demonstrated in certain cases regarding highly-specialised executives. This phenomenon is a critical factor, especially during a period of skills expansion and operational complexity given the real difficulty of quickly finding suitable replacements.

The Institute is developing an ambitious training programme and is considering a substantial reform of the personnel assessment and incentives systems to improve performance quality.

The same goal is targeted by the computerisation process in support of investigations, supervisory activities and relations with supervised entities and the public.

Despite expansion of the institutional divisions and the workforce, the 2009 budget has decreased by over 9 million euro compared to the previous year.

Consob performs its duties in this difficult period with the high level commitment of the Director General, the executives and every member of staff, to all of whom I express my heartfelt thanks.

A sincere thank you also goes to the Trade Union Organisations for their contribution in improving the life of the Institute.

The Commission performs its institutional tasks with particular dedication and, even in purely internal matters, pursues its statutory duties in the interests of the market and its operators - first and foremost among these the investors, the weakest members of the system yet the essential core of its driving force.

Mister President, Minister, Excellences, Ladies and Gentlemen,

A year has passed since the Commission, in my speech at that time, reported the need for “a system of clear, precise rules that can be extensively shared and observed by all”.

Today we seek rules and instruments that put us back on the right path towards re-establishing trust.

Our country – though burdened by a public debt that limits its ability to act – has demonstrated the strength of a system that should be considered a comfort, and has proved the prompt response capacity and essential stability of its banks, despite their leading role in certain other tortuous affairs in recent years.

It is important to agree on the core commitment to re-establish correct market operations, in agreements between all European countries and - as far as possible - shared at global level.

Furthermore, a time horizon needs to be set that is not short-term and not conditioned by immediate gain. Negative examples can be found in non-equivalent regulations resulting in conduct that has often sacrificed the interests of investors.

The compromises reached after difficult negotiations to approve important European directives (MiFID and Takeovers) have proved inadequate in a context of increasing economic integration, but have also resulted in strongly innovative and highly fragmented instruments and markets.

The maximum freedom of competition in the trading and intermediation systems has led to problems, reported several times by Consob at European level, linked to the effects of reducing the overall level of transparency in trading and in the application of codes of conduct. Likewise, the minimum standardisation of corporate governance mechanisms in market operations has left too much room for substantial discrepancies in the level of corporate transparency.

The crisis has made these problems evident to everyone. This could be – or rather, must be – the chance to amplify the basis of consent to a review of European regulations, particularly with regard to markets and intermediaries, re-assigning the objective of investor protection to its correct position at the heart of the system.

Consob operated and will continue to do it in the full knowledge that the rules on transparency and the codes of conduct go hand in hand and must be applied across the board, regardless of the legal classification of the products and distribution channels, to guarantee appropriate risk control. The regulatory proposals prepared for the European Commission by the CESR group on collective management, chaired by Consob, meet this objective.

Supervision of the actual implementation of the rules of transparency and conduct will be particularly strict and severe, and will concentrate on phenomena such as offerings of unlisted bonds in which the interests of the investor are at greatest risk.

The strategy for surviving the crisis calls for joint action, also to bridge regulatory and supervisory gaps in sectors that have played a key role in tainting the markets.

European and international regulatory initiatives on rating agencies and hedge funds offer an initial response, after which further joint decisions have to be adopted.

New rules cannot suffice unless they are accompanied by the development of new supervisory models and practices, consistent with the supranational coverage, often global, of the entities concerned.

The reform of supervisory authority organisation at European level, launched on recommendations from the De Larosière group, is acquiring growing consent. Transformation of the CESR into a “European authority” is envisaged, equipped with restrictive powers, and whose institutional status will in the not too distant future, we hope, be recognised by the Treaty on European Union.

The crisis that has shaken the international financial system could be transformed into an opportunity. But the impetus of reform must not slow down as the first signs of recovery appear. A strong, shared political will is needed to avoid a re-emergence of conservative approaches or harmonisation limited to the technical content of rules, which could form an alibi for continuing to pursue biased interests. It is a commitment that has to be adopted for our own benefit and that of future generations. Encouraging signs in this respect have recently come from the Declarations approved by the G8 in L’Aquila.

Putting into practice the political commitments agreed upon by governments of the major countries is fundamental to providing a solid and democratic legal standing, and a framework of soundness and credibility in the reform process and the activities of those administering the rules.

Global rules have to agree on the flow of resources, also of a financial nature, based on principles of fairness and protection of the weaker elements, to contribute to achieving a new balance.

The transparency and fairness of conduct and investor awareness – Consob’s day-to-day operating mission – are of an ethical value by nature, without which the economic sphere loses its baseline function of supporting development of the community.

The legitimate search for individual economic results and well-being cannot and must never be separated from principles of conduct inspired by the superior ethical and social values.

NOTES

- ⁽¹⁾ In the United States in 2008 the Dow Jones index lost 33.84 per cent and NASDAQ 40.54 per cent. In Europe, Milan's S&P MIB index fell by 49.53 per cent, the FTSE 100 in London by 31.33 per cent, the CAC in Paris by 42.68 per cent and Frankfurt's DAX 30 by 40.37 per cent. In Asia the NIKKEI index in Tokyo lost 42.12 per cent, the Hang Seng in Hong Kong fell by 48.27 per cent and the SE A in Shanghai by 65.38 per cent.
- ⁽²⁾ From the beginning of 2009 to 10 July the FTSE MIB and FTSE All Share indices – which from 1 June 2009 had replaced the S&P MIB and Mibtel indices, respectively – fell by 8.34 per cent and 6.61 per cent. From the start of the year to 9 March, the day on which the lowest prices of the last 18 months were recorded, the S&P MIB loss was approximately 35 per cent.
- ⁽³⁾ AIM Italia and MAC – *Mercato Alternativo del Capitale*.
- ⁽⁴⁾ The Board is chaired by the Minister of the Economy, with the Governor of the Bank of Italy and the chairmen of ISVAP and Consob as members.
- ⁽⁵⁾ Joint Consob-Bank of Italy-ISVAP communication of 6 February 2009.
- ⁽⁶⁾ The work of a newly-established IOSCO Standing Committee also began, based on a review of the code of conduct completed in May 2008, and will prepare new supervisory and inter-authority cooperation principles, fundamental in a sector dominated by very few entities that structurally operate on the world market.
- ⁽⁷⁾ MiFID – Market in Financial Instruments Directive, no. 2004/39/EC.
- ⁽⁸⁾ Regulated trading venues include the regulated markets, multilateral trading facilities and systematic internalisers.
- ⁽⁹⁾ Italian Law Decree no. 97 of 3 June 2008.