LEGISLATIVE DECREE 58 OF 24 FEBRUARY 1998 Consolidated law on financial intermediation pursuant to Articles 8 and 21 of Law 52 of 6 February 1996

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LEGISLATIVE DECREE 58 OF 24 FEBRUARY 1998

Consolidated law on financial intermediation

pursuant to Articles 8 and 21 of Law 52 of 6 February 1996

THE PRESIDENT OF THE REPUBLIC

Having regard to Articles 76 and 87 of the Constitution;

Having regard to Articles 1, 8 and 21 of Law 52 of 6 February 1996 delegating the Government to implement Directive 93/22/EEC of 10 May 1993 on investment services in the securities field and Directive 93/6/EEC of 15 May 1993 on the capital adequacy of investment firms and credit institutions;

Having regard to the preliminary resolution adopted by the Council of Ministers at its meeting of 19 December 1997;

Having obtained the opinions of the competent parliamentary committees of the Chamber of Deputies and the Senate of the Italian Republic;

Having regard to the resolution adopted by the Council of Ministers at its meeting of 20

February 1998;

Acting on the proposal from the President of the Council of Ministers, the Minister of the Treasury and the Minister of Justice, in concert with the Minister for Foreign Affairs and the Minister of Industry;

ISSUES

the following Legislative Decree:

PART 1

COMMON PROVISIONS

Article 1

Definitions

1. In this Legislative Decree:

a) "Bankruptcy Law" shall mean Royal Decree 267 of 16 March 1942 and subsequent amendments;

b) "Banking Law" shall mean Legislative Decree 385 of 1 September 1993 and subsequent amendments;

c) "Consob" shall mean Commissione nazionale per le società e la borsa;

d) "Isvap" shall mean Istituto per la vigilanza sulle assicurazioni private e di interesse collettivo;

e) "società di intermediazione mobiliare" (SIM) shall mean an undertaking, other than a bank or a financial intermediary entered in the register referred to in Article 107 of the Banking Law, authorized to provide investment services having its registered office and head office in Italy;

f) "EU investment firm" shall mean an undertaking, other than a bank, authorized to provide investment services having its registered office and head office in the same member state of the European Union, other than Italy;

g) "non-EU investment firm" shall mean an undertaking, other than a bank, authorized to provide investment services having its registered office in a state that is not a member of the European Union;

h) "investment firms" shall mean SIMs and EU and non-EU investment firms;

i) "Società di investimento a capitale variabile" (SICAV) shall mean an open-end investment company having its registered office and head office in Italy and the exclusive purpose of collective investment of the capital raised by offering its shares to the public;

j) "mutual find" shall mean an independent pool of assets, divided into units, pertaining to a plurality of participants and managed on a collective basis;

k) "open-end find" shall mean a mutual find whose participants have the right to request, at any time, to redeem units in accordance with the procedures established by the rules of the find;

1) "closed-end find" shall mean a mutual find in which the right to redeem units may be exercised by participants only at predetermined maturities;

m) "collective investment undertakings" shall mean mutual finds and SICAVs;

n) "collective portfolio management" shall mean the service that is performed through:

1) the promotion, establishment and organization of mutual finds and the administration of participants' accounts;

2) the management of the assets of own or third-party collective investment undertakings by means of investment in financial instruments, claims and other movable or immovable assets;

o) "asset management company" *(società di gestione del risparmio)* shall mean a *società per azioni* having its registered office and head office in Italy authorized to provide the service of collective portfolio management;

p) "promoter" shall mean an asset management company that performs the activity indicated in subparagraph n), point 1);

q) "manager" shall mean an asset management company that performs the activity indicated in subparagraph n), point 2);

r) "authorized persons" shall mean investment firms, asset management companies, SICAVs and financial intermediaries entered in the register referred to in Article 107 of the Banking Law and banks authorized to engage in investment services;

s) "services subject to mutual recognition" shall mean the services listed in sections A and C of the table annexed to this decree, authorized in the home member state;

t) "public offering" shall mean every offer, invitation to offer or promotional message, in whatsoever form addressed to the public, whose objective is the sale or subscription of financial products; the taking of bank or postal deposits without the issue of financial instruments shall not constitute a public offering; |:

u) "financial products" shall mean financial instruments and every other form of investment of a financial nature;

v) "public offer to buy or exchange" shall mean every offer, invitation to offer or promotional message, in whatsoever form effected, whose objective is the purchase or exchange of financial products, addressed to a number of persons exceeding that indicated in the regulation referred to in Article 100 and for a total amount exceeding that indicated in the same regulation;

w) "listed issuers" shall mean Italian or foreign issuers of financial instruments listed on

Italian regulated markets.

2. "Financial instruments" shall mean:

a) shares and other securities representing equity capital negotiable on the capital market;

b) bonds, government securities and other debt securities negotiable on the capital market;

c) units in mutual funds;

d) securities normally dealt in on the money market;

e) any other security normally dealt in giving the right to acquire the instruments referred to in the preceding subparagraphs and the related indices;

f) futures contracts on financial instruments, interest rates, foreign currencies, commodities and related indices, including contracts where execution involves the payment of differential amounts in cash;

g) swaps on interest rates, foreign currencies, commodities and stock indices (equity swaps), including contracts where execution involves the payment of differential amounts in cash;

h) forward contracts relating to financial instruments, interest rates, foreign currencies and commodities, including contracts where execution involves the payment of differential amounts in cash;

i) options to acquire or dispose of instruments referred to in the preceding subparagraphs and related indices, as well as options on foreign currencies, interest rates, commodities and related indices, including contracts where execution involves the payment of differential amounts in cash;

j) combinations of the contracts and securities referred to in the preceding subparagraphs.

3. "Derivatives" shall mean the financial instruments specified in paragraph 2, subparagraphs f), g), h), i) and j).

4. Instruments of payment shall not be considered financial instruments.

5. "Investment services" shall mean the following activities where they concern financial instruments:

a) dealing for own account;

b) dealing for customer account;

c) placement, with or without firm commitment underwriting or standby commitments to issuers; j

d) management on a client-by-client basis of investment portfolios;

e) reception and transmission of orders and bringing together two or more investors.

6. "Non-core services" shall mean the following:

a) safekeeping and administration of financial instruments;

b) safe custody services;

c) lending to investors to enable them to carry out transactions in financial instruments where the lender is involved in the transaction;

d) advice to undertakings on capital structure, industrial strategy and related matters and advice and services relating to mergers and the purchase of undertakings;

e) services related to the issue or placement of financial instruments, including the organization and constitution of underwriting and placement syndicates;

f) investment advice concerning financial instruments;

g) foreign exchange trading where this is connected with the provision of investment services.

Article 2

Relationship to Community law

1. The Ministry of the Treasury, the Bank of Italy and Consob shall exercise the powers conferred on them in harmony with the provisions of Community law, apply the regulations and decisions of the European Union and act on recommendations concerning matters governed by this decree.

Article 3

Administrative measures

1. The ministerial regulations referred to in this decree shall be adopted under Article 17(3) of Law 400 of 23 August 1998.

2. The Bank of Italy and Consob shall establish the time limits and procedures for the adoption of the measures falling within the scope of their respective authority.

3. The regulations and measures of general application adopted by the Bank of Italy and Consob shall be published in the *Gazzetta Ufficiale.* Other important measures concerning persons subject to supervision shall be published by the Bank of Italy and Consob in their

respective Bulletins.

4. By 31 January of each year the Ministry of the Treasury shall publish all the regulations and measures of general application issued under this decree as well as the rules governing the markets in a single compendium, which may be in electronic form, where even one such document has been amended during the preceding year.

Article 4

Cooperation between authorities and professional secrecy

1. The Bank of Italy, Consob, the Commissione di vigilanza sui fondi pensioni, Isvap and the Ufficio Italiano Cambi shall cooperate by exchanging information and otherwise for the purpose of facilitating their respective functions. Said authorities may not invoke professional secrecy in their mutual relations.

2. The Bank of Italy and Consob shall cooperate by exchanging information and otherwise with the competent authorities of the European Union and individual EU states for the purpose of facilitating their respective functions.

3. For the same purpose, the Bank of Italy and Consob may cooperate by exchanging information and otherwise with the competent authorities of non-EU states.

4. Information received by the Bank of Italy and Consob pursuant to paragraphs 2 and 3 may not be transmitted to other Italian authorities or to third parties without the consent of the authority that supplied it.

5. The Bank of Italy and Consob may exchange information:

a) with administrative and judicial authorities in connection with winding-up or bankruptcy proceedings in Italy or abroad involving authorized persons;

b) with bodies responsible for the administration of compensation systems;

c) with bodies responsible for the clearing and settlement of market transactions; d) with market management companies, for the purpose of ensuring the regular operation of the markets they manage.

6. The information referred to in paragraph 5, subparagraphs b), c) and d), may be disclosed to third parties with the consent of the person who supplied it. Such consent shall not be necessary where the information has been provided in compliance with domestic and international cooperation obligations.

7. The Bank of Italy and Consob may also exercise the powers conferred on them by law for the purpose of cooperating with other authorities and at the request thereof.

8. For any other purpose the provisions governing professional secrecy in respect of information and data in the possession of the Bank of Italy shall be unaffected.

9. The Bank of Italy may reach agreements with the supervisory authorities of other EU states on methods of collaboration, including the division of the tasks of each authority,

for carrying out supervision on a consolidated basis of groups operating in more than one country.

10. All the information and data possessed by the Bank of Italy by virtue of its supervisory activity shall be covered by professional secrecy, with respect to governmental authorities as well, except for the Minister of the Treasury. The cases in which the law provides for investigations of violations subject to criminal sanction shall be unaffected.

11. In the performance of their supervisory functions employees of Consob shall be public officials and required to report any irregularities which they may discover exclusively to Consob, even where such irregularities appear to be criminal offences.

12. Employees of Consob and consultants and experts engaged by Consob shall be bound by professional secrecy.

13. Governmental authorities and public entities shall provide the information, documents and every further form of cooperation requested by Consob in accordance with the laws governing each authority or entity.

PART II

REGULATION OF INTERMEDIARIES

TITLE I

GENERAL PROVISIONS

CHAPTER I

SUPERVISION

Article 5

Purpose and scope

1. The purpose of supervision shall be to ensure transparent and proper conduct and the sound and prudent management of authorized persons, having regard to the protection of investors and the stability, competitiveness and proper functioning of the financial system.

2. The Bank of Italy shall have authority for matters regarding the limitation of risk and financial stability.

3. Consob shall have authority for matters regarding transparent and proper conduct.

4. The Bank of Italy and Consob shall exercise powers of supervision on authorized persons; each authority shall check compliance with the provisions governing the matters within the scope of its authority.

5. The Bank of Italy and Consob shall operate in a coordinated manner, *inter alia* with a view to minimizing the costs incurred by authorized persons, and shall notify each other of the measures adopted and the irregularities discovered in carrying out their supervisory activity.

Article 6

Regulatory powers

1. The Bank of Italy, after consulting Consob, shall issue a regulation on:

a) capital adequacy, the limitation of risk in its various forms, permissible shareholdings, administrative and accounting procedures and internal control mechanisms;

b) the manner of depositing and subdepositing financial instruments and funds belonging to customers;

c) the rules applicable to collective investment undertakings concerning:

1) the criteria and prohibitions relating to investment activity, having regard, *inter alia*, to group relationships;

2) the prudential rules for limiting and spreading risk;

3) the standard formats and procedures to be used for drawing up the accounting statements that asset management companies and SICAVs must prepare periodically;

4) the methods of calculating the value of units or shares of collective investment undertakings;

5) the methods and procedures to be adopted to value goods and securities in which assets are invested and the frequency of valuation. For the valuation of goods not traded in regulated markets, the Bank of Italy may prescribe recourse to independent experts and may also require their intervention when managers buy and sell goods.

2. Consob, after consulting the Bank of Italy and taking into account the different needs of investors in relation to their nature and professional experience, shall issue a regulation on:

a) the procedures, including internal control mechanisms, involved in providing services and keeping records of orders and transactions;

b) the conduct to be observed in dealings with investors, taking into account the need to minimize the risk of conflicts of interest and ensure that asset management on a client-by-client basis is performed in a manner consistent with the specific needs of individual investors and that asset management on a collective basis is performed in conformity with the collective investment undertaking's investment objectives;

c) the information requirements relative to the provision of services; the flows of information between the various sectors of the company, taking into account the need to avoid interference between the performance of asset management on a client-by-client basis and the other services governed by this part.

Article 7

Supervisory powers

1. The Bank of Italy and Consob, within the scope of their respective authority, may take the following actions with respect to authorized persons:

a. convene the directors, members of the board of auditors and managers;
b. order the convening of the governing bodies and set the agenda for the meeting;
c. proceed directly to convene the governing bodies where the competent bodies have not complied with an order issued under subparagraph b);

2. In the interest of stability, the Bank of Italy may issue specific rules concerning the matters regulated by Article 6 (1a).

3. In the public interest or in the interest of participants, the Bank of Italy and Consob, within the scope of their respective authority, may order the suspension or temporary limitation of the issue or redemption of units or shares of collective investment undertakings.

Article 8

Reporting requirements

1. The Bank of Italy and Consob, within the scope of their respective authority, may require authorized persons to communicate data and information and to transmit documents and records in the manner and within the time limits they establish.

2. The powers provided for in paragraph 1 may also be exercised in respect of the firm appointed to audit the accounts.

3. The board of auditors shall inform the Bank of Italy and Consob without delay of all the acts or facts it finds in the performance of its duties that may constitute a management irregularity or a violation of the provisions governing the activity of SIMs, asset management companies and SICAVs.

4. Firms engaged to audit the accounts of SIMs, asset management companies and SICAVs shall notify the Bank of Italy and Consob without delay of the acts or facts found in the performance of the engagement that may constitute a serious violation of the provisions governing the activity of the audited companies, jeopardize the continued existence of the undertaking or result in an adverse opinion or a qualified opinion on the annual accounts or interim statements of collective investment undertakings or a

disclaimer.

5. Paragraphs 3 and 4 shall also apply to the boards of auditors and the firms appointed to audit the accounts of companies that control or are controlled by SIMs, asset management companies or SICAVs as defined in Article 23 of the Banking Law.

6. Paragraphs 3, 4 and 5 shall apply to banks only with regard to the provision of investment services.

Article 9

Financial audits

1. Part IV, Title III, Chapter II, Section Vl shall apply to SIMs, asset management companies and SICAVs, except for Articles 157, 158 and 165.

1. In the case of asset management companies, the firm engaged to audit the accounts shall also render an opinion, in accordance with Article 156, on the mutual fund's statement of operations.

Article 10

Inspections

1. The Bank of Italy and Consob, within the scope of their respective authority, may carry out inspections of authorized persons and require the exhibition of documents and the adoption of measures deemed necessary, in harmony with the provisions of Community law.

2. Each authority shall notify the inspections it undertakes to the other, which may request it to carry out on the-spot verifications of matters within the scope of its authority.

3. The Bank of Italy and Consob may request the competent authorities of an EU state to carry out on-the spot verifications of branches of SIMs and banks established within the territory of such state or agree on other methods of verification.

4. The competent authorities of an EU state, after notifying the Bank of Italy and Consob, may, directly or by way of persons engaged by them, inspect the branches established in Italy of EU investment firms and banks which they have authorized. Where the competent authorities of an EU state so request, the Bank of Italy and Consob, within the scope of their respective authority, may carry out on-the-spot verifications directly or agree on other methods of verification.

5. The Bank of Italy and Consob, within the scope of their respective authority, may conclude agreements with the competent authorities of non-EU states on procedures for

the inspection of branches of investment firms and banks established in their respective territories.

Article 11

Composition of groups

1. The Bank of Italy, after consulting Consob:

a) shall determine the notion of group relevant for the purpose of verifying the requirements provided for in Articles l9(1h) and 34(1f).

b) may issue rules for identifying the set of persons to be subjected to group supervision from among those providing investment services and collective portfolio management services as well as related and instrumental activities or other financial activities, as defined in Article 59(1b) of the Banking Law. Such persons shall be identified from among those not subject to consolidated supervision under the Banking Law that:

1. are directly or indirectly controlled by a SIM or an asset management company;
2. directly or indirectly control a SIM or an asset management company;
3. are directly or indirectly controlled by the same persons that control a SIM or an asset management company;
4. are at least 20 per cent owned by one of the persons referred to in points 1), 2) and 3), the SIM or the asset management company.

Article 12

Supervision of groups

1. The Bank of Italy may issue rules to the SIM, asset management company or financial company heading the group identified in accordance with Article 11(lb) referring to all the persons identified under the same article and regarding the matters referred to in Article 6(1a). Where reasons of stability require, the Bank of Italy may issue specific rules regarding the same matters.

2. The SIM, asset management company or financial company that is the group's parent undertaking, in performing its activity of management and coordination, shall issue rules to the components of the group identified in accordance with Article 11(lb) for carrying out instructions issued by the Bank of Italy. The directors of the companies belonging to the group shall supply all the data and information needed for the issue of such rules and shall cooperate in complying with the provisions on consolidated supervision.

3. The Bank of Italy and Consob, within the scope of their respective authority, may require persons identified in accordance with Article 11(lc) to transmit reports, data and any other relevant information on a periodic or other basis. Information needed to carry out supervision may also be required of persons that, while not engaging in investment services, collective portfolio management services, related and instrumental activities or

other financial activities, are linked to the SIM or the asset management company by the shareholding relationships specified in Article 11(lb).

4. The Bank of Italy may subject members of the group to Part IV, Title III, Chapter II, Section VI.

5. The Bank of Italy and Consob, within the scope of their respective authority, may carry out inspections of persons identified under Article 11(lb). The Bank of Italy and Consob may also, exclusively for the purpose of verifying the exactness of the data and information provided, carry out inspections of persons that, while not engaging in investment services, collective portfolio management services, related and instrumental activities or other financial activities, are linked to the SIM or the asset management company by the shareholding relationships specified in Article 11(lb).

CHAPTER II

CORPORATE OFFICERS AND SHAREHOLDERS

Article 13

Experience and integrity requirements for corporate officers

1. Persons performing administrative, managerial or control functions in SIMs, asset management companies or SICAVs shall fulfil the experience and integrity requirements established by the Minister of the Treasury in a regulation adopted after consulting the Bank of Italy and Consob.

2. Failure to fulfil the requirements shall result in disqualification from office. The disqualification shall be declared by the board of directors within thirty days of the appointment or of its learning of subsequent failure.

1) are directly or indirectly controlled by a SIM or an asset management company;

2) directly or indirectly control a SIM or an asset management company;

3) are directly or indirectly controlled by the same persons that control a SIM or an asset management company;

4) are at least 20 per cent owned by one of the persons referred to in points 1), 2) and 3), the SIM or the asset management company.

3. In the event of inaction by the board of directors the disqualification shall be declared by the Bank of Italy or Consob.

4. The regulation referred to in paragraph 1 shall establish the grounds for temporary suspension from office and its duration. The suspension shall be declared in the manner established in paragraphs 2 and 3.

Article 14

Integrity requirements for shareholders

1. The Minister of the Treasury shall establish the integrity requirements for shareholders of SIMs, asset management companies and SICAVs in a regulation adopted after consulting the Bank of Italy and Consob. |

2. In such regulation the Minister of the Treasury shall establish the percentage of capital which must be held for paragraph 1 to apply. In the case of SICAVs, only registered shares shall be considered and the regulation shall provide for the situations in which, for the purpose of attributing voting rights, such shares shall be treated as bearer shares, with regard to the date of acquisition.

3. For the purposes of paragraph 2 shares held through subsidiary companies, trust companies or nominees shall also be considered, as well as cases where voting rights are exercisable by or attributed to a person other than the shareholder or agreements exist concerning the exercise of voting rights.

4. Where the requirements are not fulfilled, the voting rights attaching to the shares exceeding the limit established under paragraph 2 may not be exercised.

5. In the event of non-compliance with paragraph 4, resolutions may be challenged under Article 2377 of the Civil Code where the required majority would not have been reached without the votes attaching to the aforementioned shares. The shares for which voting rights may not be exercised shall be counted for the purpose of establishing the due constitution of the shareholders' meeting.

6. The challenge may also be initiated by Consob or the Bank of Italy within six months of the date of the resolution or, where the resolution is subject to entry in the Company Register, within six months of the date of such entry.

Article 15

Holdings of capital

1. Any person, in whatever capacity, who intends, directly or indirectly, to acquire or dispose of a qualifying shareholding in a SIM, an asset management company or a SICAV represented by voting shares shall give prior notice to the Bank of Italy. Prior notice shall also be required where the increase or decrease in a shareholding arising from acquisitions or disposals would result in the crossing of a threshold established pursuant to paragraph 5 or in the acquisition or loss of control of the company.

2. The Bank of Italy, within ninety days of receipt of the notice, may prohibit the acquisition of the shareholding where it considers that the potential acquirer is not likely to ensure the sound and prudent management of the company or permit its effective supervision. The Bank of Italy may establish a time limit for the acquisition and give notice, even before such time limit expires, that there is no impediment to the operation.

3. Acquisitions and disposals referred to in paragraph 1 shall be notified upon completion

to the Bank of Italy, Consob and the company. Notice shall also be required where the increase or decrease in a shareholding arising from acquisitions or disposals would result in the crossing of a threshold established pursuant to paragraph 5 or in the acquisition or loss of control of the company.

4. Holdings are considered to be acquired or disposed of indirectly where the acquisition or the disposal is effected through subsidiary companies, trust companies or nominees. Control shall exist in the cases defined in Article 23 of the Banking Law.

5. The Bank of Italy shall establish in a regulation:

a) the size of qualifying shareholdings and the thresholds for shareholdings;

b) the persons required to give notice where voting rights are exercisable by or attributed to a person other than the shareholder and where agreements exist concerning the exercise of voting rights; c) the procedures and time limits for giving notice.

Article 16

Suspension of voting rights

1. Voting rights attaching to shares acquired may not be exercised where the notices referred to in Articles 15(1) and 15(3) have not been given, where the Bank of Italy has prohibited the acquisition or the time limit within which the Bank of Italy may prohibit the acquisition has not expired or where the time limit established under Article 15(2), if any, has expired.

2. The Bank of Italy, acting on its own initiative or on a proposal from Consob, may suspend the voting rights attaching to a qualifying shareholding in a SIM, an asset management company or a SICAV where the influence exercised by the person entitled to exercise such voting rights is likely to be prejudicial to the sound and prudent management of the SIM, asset management company or SICAV or its effective supervision.

3. In the event of non-compliance with prohibitions referred to in the preceding paragraphs, Articles 14(5) and 14(6) shall apply.

Article 17

Requests for information on shareholdings

1. The Bank of Italy and Consob, specifying the time limit for the response, may require:

a) SIMs, asset management companies and SICAVs to provide the names of their shareholders on the basis of the register of shareholders, notifications received or other information available to them;

b) companies and entities of whatsoever nature which hold capital in the companies referred to in subparagraph a) to provide the names of their shareholders on the basis of the register of shareholders, notifications received or other information available to them;

c) the directors of companies and entities which hold capital in SIMs, asset management companies or SICAVs to provide the names of their controllers;

d) trust companies which hold capital in companies referred to in subparagraph c) to provide the names and particulars of the beneficiaries.

TITLE II

INVESTMENT SERVICES

CHAPTER I

PERSONS AND AUTHORIZATION

Article 18

Persons

1. The provision of investment services to the public on a professional basis shall be reserved to investment firms and banks.

2. Asset management companies may provide the service referred to in Article 1(5d) to the public on a professional basis.

3. Financial intermediaries entered in the register referred to in Article 107 of the Banking Law may provide the services referred to in Article 1(5a), exclusively for derivative financial instruments, and in Article 1(5c) to the public on a professional basis in the circumstances and subject to the conditions established by the Bank of Italy after consulting Consob.

4. SIMs may provide non-core services and other financial activities as well as related and instrumental activities to the public on a professional basis. Reservations of such activities established by law shall be unaffected.

5. The Minister of the Treasury, in a regulation adopted after consulting the Bank of Italy and Consob:

a) may, in order to take into account developments in financial markets and the rules of adaptation established by the Community authorities, identify new categories of financial instrument, new investment services and new non-core services, specifying the persons subject to forms of prudential supervision who may provide the new services;

b) shall adopt the rules implementing and integrating the reservations of activities provided for in this article, in compliance with the provisions of Community law.

Article 19

Authorization

1. Consob, after consulting the Bank of Italy, shall authorize SIMs to provide investment services where the following conditions are fulfilled:

a) the legal form adopted is that of a *società per azioni;*

b) the name of the company contains the words *"società di intermediazione mobiliare"; c*

c) the registered office and the head office of the company are in Italy;

d) the paid-up capital is not less than that established on a general basis by the Bank of Italy; **ll**

e) a programme of initial operations and a description of the organizational structure have been submitted together with the instrument of incorporation and bylaws;

f) the persons performing administrative, managerial or control functions fulfil the experience and integrity requirements referred to in Article 13;

g) the shareholders fulfil the integrity requirements referred to in Article 14;

h) the structure of the group of which the company is part is not prejudicial to the effective supervision of the company and at least the information required pursuant to Article 15(5) is provided.

2. Authorization shall be refused where verification of the conditions indicated in paragraph 1 shows that sound and prudent management is not ensured.

3. Consob, after consulting the Bank of Italy, shall regulate the authorization procedure and the cases in which authorization shall lapse where the SIM does not start or has interrupted the provision of the services authorized.

4. The Bank of Italy shall authorize the provision of investment services by banks authorized in Italy and the provision of services referred to in Article 18(3) by financial intermediaries entered in the register referred to in Article 107 of the Banking Law.

Article 20

Register

1. Consob shall enter SIMs and non-EU investment firms in a special register. EU investment firms shall be entered in a special list annexed to the register.

2. Consob shall communicate entries in the register to the Bank of Italy.

3. The persons referred to in paragraph 1 shall indicate the details of the entry in the register or list in their documents and correspondence.

CHAPTER II

PERFORMANCE OF SERVICES

Article 21

General criteria

1. In providing investment and non-core services, authorized persons must:

a. act diligently, correctly and transparently in the interests of customers and the integrity of the market;
b. acquire the necessary information from customers and operate in such a way that they are always adequately informed;
c. organize themselves in such a way as to minimize the risk of conflicts of interest and, where such conflicts arise, act in such a way as to ensure transparency and the fair treatment of customers,
d. have resources and procedures, including internal control mechanisms, likely to ensure the efficient provision of services;
e. conduct an independent, sound and prudent management and make appropriate arrangements for safeguarding the rights of customers in respect of the assets entrusted to them.

2. In performing services, investment firms, banks and asset management companies may, subject to their obtaining customers' consent in writing, act in their own names and on behalf of their customers.

Article 22

Separation of assets

1. In providing investment and non-core services, the financial instruments and funds of individual customers held in whatever capacity by an investment firm, asset management company or financial intermediary entered in the register provided for in Article 107 of the Banking Law and the financial instruments of individual customers held in whatever capacity by a bank shall be separate assets for all intents and purposes from those of the intermediary and from those of other customers. Actions in respect of such assets may not be brought by creditors of the intermediary or on behalf of such creditors, nor by creditors of the depositary or subdepositary, if any, or on behalf of such creditors. Creditors of individual customers may bring actions up to the amount of the assets owned

by such customers.

2.Legal and court-ordered set-off shall not apply to accounts referring to financial instruments or funds deposited with third parties and agreements may not be made for their set-off against claims of the depositary or the subdepositary on the intermediary or the depositary.

3. Unless customers have agreed in writing, an investment firm, asset management company or financial intermediary entered in the register provided for in Article 107 of the Banking Law or a bank may not use, on its own behalf or on behalf of third parties, financial instruments belonging to customers which it holds in any capacity. Nor may an investment firm, asset management company or financial intermediary entered in the register provided for in Article 107 of the Banking Law use, on its own behalf or on behalf of third parties, liquid balances belonging to customers which it holds in any capacity.

Article 23

Contracts

1. Contracts for the provision of investment services or non-core services shall be reduced to writing and a copy given to customers. Consob, after consulting the Bank of Italy, may establish in a regulation that, for justified technical reasons or in relation to the professional nature of the contracting parties, certain types of contract may or must be concluded in a different form. Failure to comply with the prescribed form shall render the contract null and void.

2. Any clause which refers to usage for the determination of the fee payable by customers or any other amount charged to them shall be null. In such cases, nothing shall be payable.

3. In cases referred to in paragraphs 1 and 2, nullity may be enforced only by the customer.

4. Title IV, Chapter I, of the Banking Law, shall not apply to investment services or to the service provided for in Article 1(6f).

5. Within the scope of the provision of investment services, Article 1933 of the Civil Code shall not apply to derivative financial instruments or to similar instruments specified pursuant to Article 18(5a).

6. In actions for damages in respect of injury caused to the customer in the performance of investment services or non-core services, the burden of proof of having acted with the due diligence required shall be on the authorized persons.

Article 24

Management of investment portfolios

1. The following rules shall apply to the management of investment portfolios:

a) contracts shall be reduced to writing;

b) customers may give binding instructions concerning the operations to be carried out,

c) investment firm, asset management companies and banks may not, except in the case of specific written instructions, enter into obligations on behalf of customers that commit them for amounts greater than the assets under management;

d) customers may withdraw from contracts at any time, without prejudice to the right of withdrawal of the investment firm, asset management company or bank under Article 1727 of the Civil Code;

e) the power to exercise voting rights attaching to financial instruments under management may be conferred on an investment firm, bank or asset management company by way of a proxy granted for each shareholders' meeting in compliance with the limits and procedures established in a regulation adopted by the Minister of the Treasury after consulting the Bank of Italy and Consob;

f) execution of the engagement may be delegated for the entire portfolio or parts thereof to persons authorized to provide investment portfolio management services, subject to written authorization of the customer.

2. Agreements in conflict with the provisions of this article shall be null and void, nullity may be enforced only by the customer.

Article 25

Trading on regulated markets

1. SIMs and Italian banks authorized to provide the services of dealing for own account and for customer account may operate in Italian regulated markets, in EU markets and in non-EU markets recognized by Consob pursuant to Article 67. EU and non-EU investment firms and EU and non-EU banks authorized to provide such services may operate in Italian regulated markets.

2. Consob may establish in a regulation the cases where transactions involving financial instruments traded in Italian regulated markets must be carried out in regulated markets; in such cases, pursuant to Community law, Consob shall establish the conditions in which the obligation shall not apply.

3. Paragraph 2 shall not apply to transactions involving government or government-guaranteed securities.

CHAPTER III

CROSS-BORDER OPERATIONS

Article 26

Branches of SIMs and freedom to provide services

1. SIMs may operate:

a) in an EU state, *inter alia* without establishing branches there, in compliance with the regulation referred to in paragraph 2;

b) in a non-EU state, also without establishing branches there, subject to authorization by the Bank of Italy.

2. The Bank of Italy, after consulting Consob, shall issue a regulation establishing:

a) the rules implementing the Community provisions concerning the conditions and procedures to be complied with for SIMs to provide services subject to mutual recognition in other EU states by the establishment of branches or under the freedom to provide services;

b) the conditions and procedures for granting authorization to SIMs to provide services not subject to mutual recognition in other EU states and services in non-EU states.

3. The existence of cooperation agreements between the Bank of Italy and Consob and the competent authorities of the host country and the opinion of Consob shall in all cases be conditions for the granting of authorization.

Article 27

EU investment firms

1. For the purpose of providing services subject to mutual recognition, EU investment firms may establish branches in Italy. The establishment of the first branch shall be subject to prior notification to the Bank of Italy and Consob by the competent authority of the home country; the branch shall commence business two months after the notification.

2. EU investment firms may provide services subject to mutual recognition in Italy without establishing branches there provided the Bank of Italy and Consob have been informed by the competent authority of the host country.

3. Consob, after consulting the Bank of Italy, shall establish in a regulation the conditions and procedures to be complied with for EU investment firms to provide services subject to mutual recognition in Italy by the establishment of branches or under the freedom to

provide services.

4. Consob, after consulting the Bank of Italy, shall establish in a regulation the rules for the authorization of the pursuit of activities not subject to mutual recognition by EU investment firms in Italy, however carried on.

Article 28

Non-EU investment firms

1. The establishment in Italy of the first branch of a non-EU investment firm shall be authorized by Consob after consulting the Bank of Italy. The authorization shall be subject to:

a) satisfaction by the branch of requirements corresponding to those provided for by Articles l9(1d), l9(1e) and 19(1f);

b) authorization and actual provision in the home country of the investment services and non-core services which the non-EU investment firm intends to provide in Italy; ,

c) the existence in the home country of provisions concerning authorization, organizational arrangements and supervision equivalent to those applying to SIMs in Italy;

d) the existence of cooperation agreements between the Bank of Italy and Consob and the competent authorities of the host country;

e) the fulfilment of conditions of reciprocity in the home country within the limits permitted by international agreements.

2. Consob, after consulting the Bank of Italy, shall authorize non-EU investment firms to provide investment services and non-core services without establishing branches, provided the conditions referred to in paragraph 1 (b-e), are fulfilled and a programme of the activities to be carried on in Italy is submitted.

3. Consob, after consulting the Bank of Italy, may adopt general rules specifying the services non-EU investment firms may not provide in Italy without establishing branches.

Article 29

Banks

1. Title II, Chapter II, of the Banking Law shall apply to the supply by Italian banks of investment services and non-core services in foreign countries and to the supply by EU and non-EU banks of such services in Italy.

CHAPTER IV

DOOR-TO-DOOR SELLING

Article 30

Door-to-door selling

1.Door-to-door selling shall mean the promotion and placement with the public of:

a. financial instruments in a place other than the registered office or the establishments of the issuer, the offeror or the person appointed to carry out the promotion or placement;
b. investment services in a place other than the registered office or the establishments of the provider, promoter or seller of the service.

2. Such activities shall not constitute door-to-door selling where they involve professional investors as defined in a regulation issued by Consob after consulting the Bank of Italy.

3. Door-to-door selling of financial instruments may be carried on by:

a) persons authorized to perform the service referred to in Article 1(5c);

b) asset management companies and SICAVs, exclusively for units and shares of collective investment undertakings.

4. Investment firms, banks, financial intermediaries entered in the special register provided for in Article 107 of the Banking Law and asset management companies may engage in door-to-door selling of their own investment services. Where such selling involves senices provided by other intermediaries, investment firms and banks must be authorized to perform the service referred to in Article l(5c).

5. Investment firms and banks may engage in door-to-door selling of products, other than financial instruments and investment services, the characteristics of which shall be established in a regulation issued by Consob after consulting the Bank of Italy.

6. The enforceability of contracts for the placement of financial instruments or the management of individual portfolios concluded outside the registered office or sold via telemarketing pursuant to Article 32 shall be suspended for a period of seven days beginning on the date of subscription by the investor. Within that period the investor may notify his withdrawal from the contract at no expense and without any compensation for the financial salesman or the authorized person. This possibility shall be mentioned in the forms given to the investor. The same rules shall apply to contract proposals effected outside the registered office or via telemarketing pursuant to Article 32.

7. Failure to indicate the right of withdrawal in forms shall result in the nullity of the related contracts, which may be enforced only by the customer.

8. Paragraph 6 shall not apply to public offerings of shares with voting rights or other

financial instruments permitting such shares to be acquired or subscribed for, provided the shares or financial instruments are traded in regulated markets in Italy or other EU countries.

9. This article shall also apply to financial products different from financial instruments and the products referred to in Article 100(1f).

Article 31

Financial salesmen

1. Authorized persons shall use financial salesmen for door-to-door selling.

2. A financial salesman is any natural person who, as employee, agent or mandatary, performs door-to-door selling on a professional basis. The activity of financial salesman shall be exercised on the behalf of only one person.

3. The authorized person who gives the charge shall be jointly and severally liable for losses caused to third parties by a financial salesman, including cases where such losses are the consequence of a criminal offence which has resulted in conviction.

4. A single national register of financial salesmen shall be instituted at Consob. To keep the register, Consob may avail itself of the collaboration of a body identified by the professional associations of financial salesmen and authorized persons.

5. The Minister of the Treasury shall establish the integrity and experience requirements for entry in the register referred to in paragraph 4 in a regulation adopted after consulting Consob. The experience requirements for entry in the register shall be verified on the basis of rigorous evaluation criteria which take account of validly documented previous professional experience or on the basis of examinations held by Consob.

6 Consob shall issue one more regulations on:

a) the institution and functioning of local committees for the register of financial salesmen. The committees shall avail themselves, for their own functioning, of the structures of chambers of commerce, industry, and craft industry. The committees shall approve the inclusion in the local lists of the persons entered in the register referred to in paragraph 4, update such lists, perform tasks of a disciplinary nature and discharge the other functions entrusted to them.

b) the procedures for compiling the register referred to in paragraph 4 and the methods for publicizing it;

c) the tasks of the body referred to in paragraph 4 and the obligations to which it is subject;

d) the activities incompatible with that of financial salesman;

e) the arrangements for entry in the register referred to in paragraph 4 of persons who, at the date of entry into force of this decree, are entered in the register referred to in Article 23 (4) of Legislative Decree 415 of 23 July 1996;

f) the rules of presentation and conduct which financial salesmen must comply with in their dealings with customers;

g) the manner of keeping records of the activity performed;

h) the violations for which the sanctions referred to in Article 196(1) shall apply.

7. Consob may require financial salesmen and the persons who use financial salesmen to communicate data and information and to transmit documents and records and establish the related time limits. It may also carry out inspections and require the exhibition of documents and the adoption of measures it deems necessary.

Article 32

Telemarketing of investment services and financial instruments

1. Telemarketing techniques shall mean techniques of contacting customers, other than advertising, which do not involve the simultaneous physical presence of the customer and the offeror or a person appointed by the offeror.

2. Consob, after consulting the Bank of Italy, may issue a regulation, in conformity with the principles established in Article 30, on the telemarketing of financial instruments other than those specified in Article 100(1f), specifying also the cases in which authorized persons must use financial salesmen.

TITLE III

COLLECTIVE PORTFOLIO MANAGEMENT

CHAPTER I

AUTHORIZED PERSONS

Article 33

Eligible activities

1. The provision of the service of collective portfolio management shall be reserved to asset management companies and SICAVs.

2. Asset management companies may:

a) provide the service of management on a client-by-client basis of investment portfolios;

b) set up and manage pension funds;

c) perform the related and instrumental activities established by the Bank of Italy after consulting Consob.

3. Fund managers may entrust specific investment choices to intermediaries authorized to provide asset management services within the framework of asset allocation criteria laid down from time to time by the managers.

CHAPTER II

MUTUAL FUNDS

Article 34

Authorization of asset management companies

1. The Bank of Italy, after consulting Consob, shall authorize the provision of the service of collective portfolio management and the service of management on a client-by-client basis of investment portfolios by asset management companies where the following conditions are fulfilled: a) the legal form adopted is that of a *società per azioni;*

b) the registered office and the head office of the company are in Italy;

c) the paid-up capital is not less than that established on a general basis by the Bank of Italy;

d) the persons performing administrative, managerial or control functions fulfil the integrity and experience requirements referred to in Article 13;

e) the shareholders fulfil the integrity requirements referred to in Article 14;

f) the structure of the group of which the company is part is not prejudicial to the effective supervision of the company and at least the information required pursuant to Article 15(5) is provided;

g) a programme of initial operations and a description of the organizational structure have been submitted together with the instrument of incorporation and bylaws;

h) the name of the company contains the words *"società di gestione del risparmio".*

2. Authorization shall be denied where verification of the conditions indicated in paragraph 1 shows that sound and prudent management is not ensured.

3. The Bank of Italy, after consulting Consob, shall regulate the authorization procedure and the cases in which authorization shall lapse where the asset management company does not start or has interrupted the provision of the services authorized.

4. The Bank of Italy, after consulting Consob, shall authorize the merger or division of asset management companies.

Article 35

Register

1. Asset management companies authorized in Italy shall be entered in a special register kept by the Bank of Italy.

2. The Bank of Italy shall communicate entries in the register of asset management companies to Consob.

3. The persons referred to in paragraph 1 shall indicate the details of the entry in the register in their documents and correspondence.

Article 36

Mutual funds

1. Mutual funds shall be managed by the asset management companies that set them up or by other asset management companies. The latter may manage both funds they set up themselves and funds set up by other companies.

2. Custody of the financial instruments and cash of mutual funds shall be entrusted to a depositary bank.

3. Participation in a mutual fund shall be regulated by the rules of the fund. The Bank of Italy, after consulting Consob, shall establish the general criteria for the drawing up of fund rules and their minimum content, in addition to what is provided for in Article 39.

4. In performing their respective functions, the promoter, the manager and the depositary bank shall act independently and in the interests of the unit-holders.

5. The promoter and the manager shall jointly and severally assume the obligations and responsibilities of agent vis-a-vis the unit-holders.

6. Each mutual fund and each sub-fund shall constitute an independent pool of assets, separate for all intents and purposes from the assets of the asset management company and from those of each unit-holder, as well as from any other assets managed by the same company. Such assets may not be admitted in legal actions brought by creditors of the asset management company or in its interest or in actions brought by creditors of the depositary or the subdepositary or in their interest. Actions brought by the creditors of individual investors shall be admitted only with respect to the latter's units. In no case may the asset management company use the assets belonging to the funds it manages in its own interest or in the interest of third parties.

7. The Bank of Italy, after consulting Consob, shall issue a regulation on the procedures for mergers of mutual funds.

8. Mutual fund units, all having the same value and rights, shall be represented by registered or bearer certificates, at the choice of the investor. The Bank of Italy, after consulting Consob, may establish on a general basis the characteristics of certificates and the initial face value of units.

Article 37

Structure of mutual funds

1. The Minister of the Treasury shall establish, in a regulation adopted after consulting the Bank of Italy and Consob, the general criteria mutual funds must observe as regards:

a. the object of the investment;
b. the categories of investor targeted,
c. the manner of participating in open- and closed-end funds, with special reference to the frequency of the issue and redemption of units, the minimum subscription, if any, and the procedures to be followed;
d. the minimum or maximum duration, if any.

2. The regulation referred to in paragraph 1 shall also establish:

a) the circumstances in which funds must be of the closed-end type;

b) the cases in which it is possible to disapply the prudential rules for limiting and spreading risk established by the Bank of Italy, having regard, *inter alia*, to the nature and professional experience of the investors;

c) the accounting records, the report on operations and the periodic statements that asset management companies are required to prepare, in addition to what is prescribed for commercial undertakings, and the obligations concerning the diffusion of the report on operations and the periodic statements;

d) the circumstances in which an asset management company must apply for the admission to trading in a regulated market of the certificates representing fund units; e) the requirements and fees for the independent experts referred to in point 5 of Article 6(1c).

Article 38

Depositary bank

1. In performing its functions, a depositary bank shall:

a) verify the legitimacy of the operations of issuing and redeeming units, the calculation of their value and the application of fund income;

b) verify that in transactions involving a fund's assets any consideration is remitted to it within the customary time limits;

c) carry out the instructions of the asset management company unless they conflict with the law, the fund rules or the prescriptions of the supervisory authorities.

2. The depositary bank shall be liable to the asset management company and unit-holders for any loss suffered by them as a result of its failure to perform its obligations.

3. The Bank of Italy, after consulting Consob, shall establish the conditions for accepting appointment as depositary bank and the procedures for subdepositing fund assets.

4. The directors and members of the board of auditors of the depositary bank shall promptly inform the Bank of Italy and Consob, within the scope of their respective authority, of irregularities they discover in the management of the asset management company and in the management of mutual funds.

Article 39

Fund rules

1. The rules of each mutual fund shall specify the characteristics of the fund, regulate its operation, indicate the promoter, the manager, if different from the promoter, and the depositary bank, specify the division of tasks between such persons, and regulate the relationships between such persons and unit-holders.

2. In particular, the fund rules shall establish:

a) the name and duration of the fund;

b) the manner of participating in the fund, the time limits and procedures for the issue and cancellation of certificates and for the subscription and redemption of units, as well as the procedures for winding up the fund;

c) the bodies responsible for the selection of investments and the criteria for the apportionment of investments;

d) the types of goods, financial instruments and other assets in which the fund's assets may be invested;

e) the methods for determining the fund's operating income and profits and, where appropriate, the manner in which the latter are allocated and distributed;

f) details of the expenses to be borne by the fund and those to be borne by the asset management company;

g) the amount of, or the methods for determining, the commissions due to the asset management company and the charges to be borne by unit-holders;

h) the manner of making public the value of units.

3. The Bank of Italy shall approve the fund rules and amendments thereto, assessing in particular their completeness and compatibility with the general criteria established pursuant to Articles 36 and 37. The rules shall be deemed to be approved where four months elapse from their submission without the Bank of Italy adopting a measure rejecting them.

Article 40

Rules of conduct and voting rights

1. Asset management companies must:

a) operate diligently, correctly and transparently in the interests of the unit-holders;

b) organize themselves in such a way as to minimize the risk of conflicts of interest, including conflicts between the pools of assets under management;

c) adopt measures to protect the rights of the unit-holders.

2. Asset management companies shall exercise, in the interests of the unit-holders, the voting rights attaching to the financial instruments belonging to the funds under management, except as provided for otherwise by law.

3. Where the manager is different from the promoter, the exercise of voting rights provided for in the previous paragraph shall pertain to the manager, unless agreed otherwise.

Article 41

Asset management companies' activity abroad

1. Asset management companies may market mutual fund units and client-by-client portfolio management services abroad.

2. The Bank of Italy, after consulting Consob, shall establish in a regulation the necessary conditions and the procedures to be observed for the marketing abroad of mutual fund units and client-by-client portfolio management services.

3. The regulation referred to in paragraph 2 shall establish the conditions and the procedures for the authorization of asset management companies to perform activities not subject to mutual recognition in the other EU member states and to provide their own services in non-EU countries.

Article 42

The marketing in Italy of the units of harmonized and non-harmonized mutual funds

1. The marketing in Italy of the units of EU mutual funds falling within the scope of the directives on collective investment undertakings must be notified in advance to the Bank of Italy and Consob; marketing may begin after two months have elapsed from the notification.

2. The Bank of Italy, after consulting Consob, shall establish in a regulation:

a) rules implementing the provisions of Community law on the procedures to be observed in the application of paragraph 1;

b) rules on the organizational model to be adopted with a view to ensuring the exercise of unit-holders' property rights in Italy.

3. Consob, after consulting the Bank of Italy, shall establish in a regulation:

a) the information to be provided to the public on the marketing of units in Italy;

b) the manner in which the issue, sale, repurchase or redemption price of units must be made public.

4. The Bank of Italy and Consob may, within the scope of their respective authority, require issuers and the persons who undertake the marketing of the units referred to in paragraph 1 to provide data and information, periodically or otherwise, and to transmit records and documents.

5. The marketing in Italy of the units of mutual funds not falling within the scope of the directives on collective investment undertakings shall be authorized by the Bank of Italy, after consulting Consob, provided the operating arrangements are compatible with those prescribed for Italian undertakings.

6. The Bank of Italy, after consulting Consob, shall establish in a regulation the conditions and procedures for granting the authorization referred to in paragraph 5.

7. The Bank of Italy and Consob shall exercise the powers referred to in Articles 8 and 10 with regard to the activities performed in Italy by the foreign undertakings referred to in paragraph 5.

8. The Bank of Italy and Consob may, within the scope of their respective authority, require the persons who market the units of the undertakings referred to in paragraph 5 to provide data and information, periodically or otherwise, and to transmit records and documents.

CHAPTER III

SICAVs

Article 43

Establishment and eligible activities

1. The Bank of Italy, after consulting Consob, shall authorize the establishment of SICAVs where the following conditions are fulfilled:

a) the legal firm adopted is that of a *società per azioni* in accordance with the provisions of this chapter;

b) the registered office and the head office of the company are in Italy;

c) the paid-up capital is not less than that established on a general basis by the Bank of Italy;

d) the persons performing administrative, managerial or control functions fulfil the experience and integrity requirements established pursuant to Article 13;

e) the shareholders fulfil the integrity requirements established pursuant to Article 14;

f) the instrument of incorporation provides for the object of the company to be exclusively the investment on a collective basis of funds raised through the offer of the company's shares to the public.

2. The Bank of Italy, after consulting Consob, shall regulate:

a) the authorization procedure and the cases in which authorization shall lapse;

b) the documentation that must be submitted by the founder members together with the application for authorization and the content of the proposed instrument of incorporation and bylaws.

3. The Bank of Italy shall verify the conformity of the proposed instrument of incorporation and bylaws with the law, regulatory provisions and the general criteria it has established.

4. The founding members of a SICAV must establish the company and pay in the capital subscribed within thirty days of the date of issue of the authorization. The capital must be fully paid.

5. The name of the company shall contain the words *"società di invesfimento per azioni a capitale variabile SICAV"*. The name must appear on all the company's documents. SICAVs shall not be subject to Articles 2333, 2334, 2335 or 2336 of the Civil Code; capital may not be contributed in kind.

6. SICAVs may engage in the related and instrumental activities established by the Bank of Italy after consulting Consob.

7. SICAVs may delegate powers to manage their assets exclusively to asset management companies.

8. In the case of multi-sector SICAVs, each sector shall constitute an independent pool of assets, separate for all intents and purposes from the assets of the other sectors.

Article 44

Register

1. SICAVs authorized in Italy shall be entered in a special register kept by the Bank of Italy.

2. The Bank of Italy shall communicate entries in the register of SICAVs to Consob.

3. The persons referred to in paragraph 1 shall indicate the details of the entry in the register in their documents and correspondence.

Article 45

Capital and shares

1. The capital of a SICAV shall always be equal to its net assets, determined as provided for in point 5 of Article 6(1c).

2. Articles 2438 and 2447 of the Civil Code shall not apply to SICAVs.

3. The shares representing the capital of a SICAV must be fully paid at the moment they are issued.

4. The shares of a SICAV may be in registered or bearer form, at the choice of the subscriber. Bearer shares carry only one vote per shareholder, irrespective of the number of such shares held.

5. The bylaws of a SICAV shall specify the manner of determining the value of its shares, their issue and redemption prices and the intervals at which the shares may be issued and redeemed.

6. The bylaws of a SICAV may provide for:

a. limits on the issue of registered shares;
b. restrictions on the transfer of registered shares;
c. the existence of more than one investment sector, for each of which a special class of shares may be issued; in such case criteria shall be laid down for allocating overheads among the various sectors

7. Articles 2348, second paragraph, 2349, 2351, 2353, 2354, first paragraph, subparagraphs 3 and 4, 2355, third paragraph, and 2356 of the Civil Code s ,hall not apply to SICAVs.

8. SICAVs may not issue bonds or savings shares or purchase or hold their own shares.

Article 46

Shareholders' meetings

1. SICAVs' ordinary shareholders' meetings and extraordinary meetings at the second call

shall be duly constituted and may adopt resolutions however much capital is represented.

2. Votes may be cast by post where this is provided for in the bylaws. In such case the notice calling the meeting must contain the full text of the proposed resolutions. Postal votes shall not be counted where the resolution to be put to the vote in the shareholders' meeting does not conform with that contained in the notice calling the meeting, but the shares in question shall be counted for the purpose of establishing the due constitution of the ordinary shareholders' meeting. The Minister of the Treasury shall establish the procedures for casting votes by post in a regulation adopted after consulting the Bank of Italy and Consob.

3. The notice provided for in the second paragraph of Article 2366 of the Civil Code shall also be published in the daily newspapers, specified in the bylaws, in which the value of the company's net assets and the net asset value per share are published; the time limit referred to in Article 2366, second paragraph, shall be thirty days.

Article 47

Amendments to the instrument of incorporation and bylaws

1. The Bank of Italy shall approve amendments to SICAVs' instruments of incorporation and bylaws. They shall be deemed to be approved where four months elapse from their submission without the Bank of Italy adopting a measure rejecting them.

2. Resolutions involving amendments to a SICAV's instruments of incorporation and bylaws may not be filed pursuant to and for the purposes of Article 2436 of the Civil Code if they have not been approved within the time limit and in the manner provided for in Article 1. The resolutions shall be sent to the Bank of Italy within fifteen days from the date of the shareholders' meeting; the filing referred to in Article 2346 of the Civil Code must be effected within fifteen days from the date of the reception of the Bank of Italy's approval. Article 2376 of the Civil Code shall not apply.

Article 48

Dissolution and voluntary liquidation

1. Subparagraph 4 of the first paragraph of Article 2448 of the Civil Code shall not apply to SICAVs. Where the capital of a SICAV falls below the level determined in accordance with Article 43(1c) and remains below that level for sixty days, the company shall be dissolved. The time limit shall be suspended where the procedure for a merger with another SICAV has been initiated.

2. The acts for which publication is provided for in Article 2449, fourth, fifth and sixth paragraphs, must also be published in the daily newspapers specified in the bylaws and transmitted to the Bank of Italy within ten days of their entry in the Company Register. The issue and redemption of shares shall be suspended in the cases referred to in subparagraph 5 of the first paragraph of Article 2448 of the Civil Code from the date the resolution is adopted, in the cases referred to in subparagraphs 1, 2 and 6 of the first

paragraph of Article 2448 of the Civil Code and in paragraph 1 of this article from the date the resolution is adopted by the board of directors, and in the case referred to in subparagraph 3 of the first paragraph of Article 2448 of the Civil Code from the date the decree of the president of the court is filed with the clerk of the court. The resolution adopted by the board of directors shall also be transmitted to Consob within the same time limit.

3. The liquidators shall be appointed, removed and replaced by the extraordinary meeting of shareholders.

4. The Bank of Italy shall be notified in advance of the plan for the disposal of assets and the allotment of the proceeds. The liquidators shall realize the company's assets in accordance with the rules established by the Bank of Italy.

5. The statement of the assets and liabilities of the liquidation shall be submitted to the auditors engaged to audit the accounts for their opinion and shall be published in the daily newspapers specified in the bylaws.

6. The depositary bank shall reimburse, in accordance with the instructions of the liquidators, the shares on the basis of the final statement of the assets and liabilities of the liquidation.

7. For matters not governed by this article, SICAVs shall be subject to Book V, Title V, Chapter V, Section XI, of the Civil Code.

Article 49

Mergers and divisions

1. SICAVs may not transform themselves into undertakings which are not subject to this chapter.

2. Mergers and divisions of SICAVs shall be subject to Articles *2501ff* of the Civil Code insofar as they are compatible.

3. Plans for mergers and divisions referred to in Articles *2501-bis* and *2504-ooties* of the Civil Code, drawn up to comply, *inter alia*, with the requirements of Article *43*, shall be submitted to the Bank of Italy in advance for its approval, which it shall grant after consulting Consob.

4. The resolution to merge or divide a SICAV may not be filed for entry in the Company Register referred to in Article *2502-bis* of the Civil Code unless the approval referred to in paragraph 3 is submitted.

Article 50

Other applicable provisions

1. For matters not governed by this chapter, SICAVs shall be subject to Articles *36(2), 37,38, 40* and *41*.

2. The marketing in Italy of the shares of foreign SICAVs shall be subject to Article *42*.

TITLE IV |

INJUNCTIVE REMEDIES AND CRISES

CHAPTER I

INJUNCTIVE REMEDIES

Article 51

Injunctive remedies vis-a-vis Italian and non-EU intermediaries

1. In the event of violations by SIMs, non-EU investment firms and banks, asset management companies, SICAVs or banks authorized to provide investment services having their registered office in Italy of the provisions applicable to them under this decree, the Bank of Italy or Consob, within the scope of their respective authority, may order them to put an end to such irregularities.

2. The supervisory authority which takes action may also, after consulting the other authority, prohibit the persons referred to in paragraph 1 from engaging in new transactions involving single services or activities, at single branches or establishments of the intermediary or otherwise where:

a) the violations are likely to prejudice interests of a general nature;

b) it is a matter of urgency to protect the interests of investors.

Article 52

Special measures for EU intermediaries

1. In the event of violations by EU investment firms, EU banks or financial companies referred to in Article 18(2) of the Banking Law of the rules applicable to them under this decree, the Bank of Italy or Consob, within the scope of their respective authority, may order them to put an end to such irregularities and shall inform the competent authorities of the member state in which the intermediary has its registered office so that any necessary measures may be taken.

2. The supervisory authority which takes action may, after consulting the other authority, adopt the necessary measures, including the prohibition of new transactions involving

single services or activities, at single branches or establishments or otherwise, and may also order the closure of branches where:

a. the competent authorities of the member state in which the intermediary has its registered office take no measures or measures that prove inadequate;
b. violations of the rules of conduct are found;
c. the irregularities are likely to prejudice interests of a general nature;
d. it is a matter of urgency to protect the interests of investors.

3. The measures provided for in paragraph 2 shall be notified by the authority that has adopted them to the competent authorities of the member state in which the intermediary has its registered office.

Article 53

Suspension of administrative bodies

1. In situations of danger for customers or markets, the Chairman of Consob may suspend the administrative bodies of a SIM as a matter of urgency and appoint a provisional administrator to take over its management where serious administrative irregularities or serious violations of laws, regulations or bylaws are found.

2. The appointment of the provisional administrator shall be for a maximum of sixty days. In the performance of his or her duties, the administrator shall be a public official. The Chairman of Consob may establish special safeguards and limitations on the management of the SIM.

3. The emolument due to the administrator shall be determined by Consob on the basis of criteria it shall establish and charged to the SIM. The last sentence of Article 91(1) of the Banking Law shall apply.

4. Civil actions against the administrator for acts performed in carrying out his official duties shall be brought subject to authorization by Consob.

5. This article shall also apply to the Italian branches of non-EU investment firms. The provisional administrator shall assume the powers of the administrative bodies of the investment firm with regard to such branches.

6. This article shall also apply to asset management companies and SICAVs. The Chairman of Consob shall adopt the suspension measure after consulting the Governor of the Bank of Italy.

Article 54

Suspension of the marketing of units of foreign collective investment undertakings

1. Where there are grounds to believe that a foreign collective investment undertaking has violated the provisions applicable to it under this decree, the Bank of Italy or Consob,

within the scope of their respective authority, may suspend the marketing of its units or shares as a precautionary measure and for a period not longer than sixty days. If the violation is verified, the supervisory authorities, within the scope of the* respective authority, may suspend temporarily or prohibit the marketing of the collective investment undertaking's units or shares.

Article 55

Precautionary measures applicable to financial salesmen

1. In cases of necessity and as a matter of urgency Consob may, as a precautionary measure, suspend financial salesmen from the exercise of their activity for a maximum of sixty days, where there are grounds to believe that there have been serious violations of the law or of general or specific rules laid down by Consob. |

2. Consob may, as a precautionary measure and for a maximum of one year, suspend financial salesmen from the exercise of their activity where they have been subjected to one of the precautionary measures referred to in Book IV, Title I, Chapter II of the Code of Criminal Procedure or where they are defendants pursuant to Article 60 of that Code for:

a) crimes referred to in Book V, Title XI, of the Civil Code and in the bankruptcy law;

b) crimes against the public administration, against the good faith of the public, against property, against public order or against the public economy, and tax crimes;

c) the crimes referred to in Title VIII of the Banking Law;

d) the crimes referred to in this decree;

CHAPTER 11

CRISIS PROCEDURES

Article 56

Special administration

1. The Minister of the Treasury, acting on a proposal from the Bank of Italy or Consob, within the scope of their respective authority, may issue a decree dissolving the administrative and control bodies of a SIM, an asset management company or a SICAV where:

a) serious administrative irregularities or serious violations of laws,

regulations or bylaws governing its activity are found;

b) serious capital losses are expected;

c) the dissolution has been the object of a reasoned request by the administrative bodies, an extraordinary meeting of shareholders or the provisional administrator appointed pursuant to Article 53.

2. The measure provided for in paragraph 1 may also be adopted with respect to the Italian branches of non-EU investment firms. In this case the administrator and the oversight committee assume the powers of the investment firm's administrative and control bodies with respect to such branches.

3. The Bank of Italy shall be responsible for the direction of the procedure and all the related formalities. Insofar as they are compatible, Articles 70(2-6), 71, 72, 73, 74 and 75 of the Banking Law shall apply; where such provisions shall be understood to refer to investors instead of depositors and to SIMs, non-EU investment firms, asset management companies and SICAVs instead of banks; and the term "financial instruments" shall refer to financial instruments and cash.

4. Title IV of the Bankruptcy Law shall not apply to SIMs, asset management companies or SICAVs.

Article 57

Compulsory administrative liquidation

1. The Minister of the Treasury, acting on a proposal from the Bank of Italy or Consob within the scope of their respective authority, may issue a decree withdrawing authorization to carry on business and ordering the compulsory administrative liquidation of SIMs, asset management companies and SICAVs, even when special administration or liquidation under ordinary rules is already in effect, where the administrative irregularities or the violations of laws, regulations or bylaws or the losses referred to in Article 56 are exceptionally serious.

2. Compulsory liquidation may be ordered in the manner provided for in paragraph 1 upon a reasoned request by the administrative bodies, the extraordinary shareholders' meeting, the provisional administrator appointed pursuant to Article 53, the special administrators or the liquidators.

3. The Bank of Italy shall be responsible for the direction of the procedure and all the related formalities. Insofar as they are compatible, Articles 80(3-6), 81, 82, 83, 84, 85, 86 except for paragraphs 6 and 7, 87(2-4), 88, 89, 90, 91, 92, 93, 94 and 97 of the Banking Law shall apply; where such provisions shall be understood to refer to SIMs, asset management companies and SICAVs instead of banks and the term "financial instruments" shall refer to financial instruments and cash.

4. The special administrators, within thirty days from the expiry of the limitation period referred to in Article 86(5) of the Banking Law and after consulting the superseded directors, shall file the lists of admitted creditors, indicating the existence and order of rights of preference, of holders of rights referred to in paragraph 2 of such article and of persons belonging to the same categories whose request for allowance of their claims has been denied with the clerk of the court of the place where the SIM, asset management

company or SICAV has its registered office for inspection by those having entitlement. Customers entitled to the restitution of financial instruments and funds in connection with services referred to in this decree shall be entered in a special section of the statement of liabilities. This paragraph shall apply in the place of Articles 86(6) and 86(7) of the Banking Law.

5. Persons whose claims have not been allowed in whole or in part may present objections to the statement of liabilities regarding their own position and to the recognition of rights in favour of persons included in the lists referred to in paragraph 4, within fifteen days of receipt of the registered letter referred to in Article 86(8) of the Banking Law, and persons whose claims have been admitted may present objections within the same time limit starting from the publication of the notice referred to in paragraph 8 of such article. This paragraph shall apply in the place of Article 87(1) of the Banking Law.

Article 58

Italian branches of foreign investment firms

1. Where the authorization of an EU investment firm to do business has been revoked by the competent authority, its Italian branches may be subjected to the compulsory administrative liquidation procedure under the provisions of Article 57, insofar as they are compatible.

2. The branches of non-EU investment undertakings shall be subject to the provisions of Article 57, insofar as they are compatible.

Article 59

Compensation systems

1. The provision of investment services shall be subject to membership of a compensation system for the protection of investors recognized by the Minister of the Treasury after consulting the Bank of Italy and Consob.

2. The Minister of the Treasury, after consulting the Bank of Italy and Consob, shall adopt a regulation on the organization and operation of compensation systems.

3. The Bank of Italy, after consulting Consob, shall issue a regulation on the coordination of the operation of compensation systems with the compulsory administrative liquidation procedure and supervisory activity in general.

4. Compensation systems shall succeed to the rights of investors up to the amount of payments made to them.

5. The bodies of the insolvency procedure shall verify and certify whether claims admitted to the statement of liabilities arise from the provision of investment services covered by compensation systems.

6. The competent court for legal actions involving requests for compensation shall be the court of the place in which the registered office of the compensation system is located.

Article 60

Foreign intermediaries' membership of compensation systems

1. Branches of EU investment firms and banks established in Italy may join a recognized compensation system, with reference exclusively to the activity carried on in Italy, in order to supplement the protection provided by the compensation system in force in their home country.

2. Unless they are members of an equivalent foreign compensation system, branches of non-EU investment firms and banks established in Italy must join a recognized compensation system, with reference exclusively to the activity carried on in Italy. The Bank of Italy shall verify whether the protection provided by foreign compensation systems to which branches of non-EU investment firms and banks operating in Italy belong can be considered equivalent to that provided by recognized compensation systems.

PART III

REGULATION OF MARKETS AND

CENTRAL DEPOSITORIES FOR FINANCIAL INSTRUMENTS

TITLE I

REGULATION OF MARKETS

CHAPTER I

REGULATED MARKETS

Article 61

Regulated markets for financial instruments

1. The organization and management of regulated markets for financial instruments is an entrepreneurial activity and shall be performed by *società per azioni*, which may also

operate on a non-profit basis (management companies).

2. Consob shall establish in a regulation:

a) the minimum capital of management companies;

b) the activities related and instrumental to the organization and management of markets which may be performed by management companies.

3. The Minister of the Treasury, after consulting Consob, shall adopt a regulation establishing the integrity and experience requirements for persons performing administrative, managerial or control functions in management companies. Article 13(2) shall apply. In the event of inaction, Consob shall declare the disqualification.

4. The regulation referred to in paragraph 3 shall establish the grounds for temporary suspension from office and its duration. The suspension shall be declared in the manner established in paragraph 3.

5. The Minister of the Treasury, after consulting Consob, shall establish in a regulation the integrity requirements for shareholders, specifying the percentage of capital that must be held for such provisions to apply.

6. Acquisitions and disposals of shareholdings in management companies, whether effected directly or indirectly through subsidiary companies, trust companies or nominees, must be notified by the acquirer to Consob and the management company within 24 hours, together with documentation certifying that the acquirer satisfies the requirements referred to in paragraph 5.

7. Failure to satisfy such requirements or to provide notification shall preclude the exercise of the voting rights attaching to the shares in excess of the limit referred to in paragraph 5.

8. In the event of non-compliance with the prohibition referred to in paragraph 7, Article 14(5) shall apply. The challenge may also be initiated by Consob within the time limit established in Article 14(6).

9. Part IV, Title III, Chapter II, Section VI, except for Articles 157, 158 and 165, shall apply to management companies.

10. The Minister of the Treasury, after consulting the Bank of Italy and Consob, shall specify the characteristics of wholesale trading of financial instruments with a view to the application of the provisions of this decree.

Article 62

Market rules

1. The organization and management of a market shall be governed by rules approved by the ordinary shareholders' meeting of the management company. The rules may assign powers to establish implementing provisions to the board of directors.

2. Such rules shall in all cases establish:

a) the conditions and procedures for the admission, exclusion and suspension of

market participants and financial instruments to and from trading;

b) the conditions and procedures for the conduct of trading and any obligations of market participants and issuers;

c) the procedures for ascertaining, publishing and distributing prices;

d) the types of contract admissible and the methods for determining the minimum amounts which may be traded.

3. Consob shall issue instructions to ensure the publicizing of market rules.

Article 63

Authorization of regulated markets

1. Consob shall authorize the operation of regulated markets where:

a) the requirements referred to in Article 61(2-5) are satisfied;

b) the market rules are in conformity with Community law and sufficient to ensure the transparency of the market, the orderly conduct of trading and the protection of investors.

2. Consob shall enter regulated markets in a register, complying with Community provisions in this field, and shall approve amendments to market rules.

3. The measures referred to in paragraphs 1 and 2 shall be adopted, after consulting the Bank of Italy, for markets for the wholesale trading of private and public debt securities other than government securities, as well as for markets for the trading of instruments referred to in Article 1(2d) and financial derivatives based on public securities, interest rates and currencies.

4. The Bank of Italy shall be admitted to trading in markets for standardized forward contracts on government securities.

Article 64

Organization and operation of markets

1. A management company shall:

a) provide the structures and services of the market and establish its charge schedule;

b) adopt all the measures required for the efficient operation of the market and verify compliance with the rules;

c) admit, exclude and suspend financial instruments and market participants to and from trading;

d) notify Consob of violations of the market rules and the measures adopted.

e) manage and disseminate the information and documents specified in the regulations referred to in Articles 65 and 114;

f) perform any other tasks that may be entrusted to it by Consob.

Article 65

Recording of transactions in financial instruments at the management company

1. Consob shall establish in a regulation:

a. the manner in which all transactions in financial instruments shall be recorded;
b. the manner in which persons providing investments services involving financial instruments admitted to trading in a regulated market shall report transactions effected off that market and the related time limits.

Article 66

Wholesale markets in government securities

1. Also by way of derogation from the provisions of this chapter, the Minister of the Treasury, after consulting the Bank of Italy and Consob, shall regulate and authorize wholesale markets for government securities and shall approve their rules.

2.The Bank of Italy shall be admitted to trading in wholesale markets in government securities. The Ministry of the Treasury shall be admitted to trading in wholesale markets in government securities; it shall notify the Bank of Italy in advance of the timing and manner of its interventions. Within twenty-four hours of the notification, the Bank of Italy may make a reasoned request for interventions to be postponed or carried out in a different manner in order to safeguard monetary stability. The measures issued pursuant to paragraph 1 may also provide for the admission to trading of persons other than intermediaries authorized to engage in trading.

Article 67

Recognition of markets

1. Consob shall enter markets recognized pursuant to Community law in a special section of the register referred to in Article 63(2).

2. Consob, after concluding agreements with the corresponding authorities, may recognize foreign markets for financial instruments other than those entered in the section referred to in paragraph 1, for the purpose of extending the scope of their operations to Italy.

3. Management companies that intend to apply to the authorities of non-EU countries for recognition of the markets they manage shall notify Consob, which shall grant its authorization after concluding agreements with the corresponding foreign authorities.

4. Consob shall verify that the information regarding securities and issuers, the methods of forming prices and settling transactions, and the laws and regulations governing the supervision of markets and intermediaries are equivalent to those in force in Italy and in any case able to ensure adequate protection of investors.

5. Investment firms and banks and market management companies shall notify Consob, in the cases and in the manner it shall establish, of the creation of telematic links with foreign markets.

Article 68

Contract guarantee systems

1. The Bank of Italy, in agreement with Consob, may regulate the establishment and operation of systems designed to ensure the performance of transactions in financial instruments other than derivatives carried out in regulated markets, including the issue of rules on the establishment of guarantee funds financed with contributions from their participants.

2. The capital of each fund shall be kept separate from that of the body that administers it and from that of other funds. Funds may not be the object of actions, seizures or attachments by the creditors of the body administering them or creditors of the individual participants or in the interests of such creditors. Funds may not be included in bankruptcy proceedings involving the body administering them or the individual participants. Legal and judicial set-off shall not apply and voluntary set-off shall not be allowed between credit balances in the deposit accounts of the funds and any debts that the administrator of the funds may have with the depositary.

Article 69

Clearing and settlement of transactions

involving financial instruments other than derivatives

1. The Bank of Italy, in agreement with Consob, shall regulate the operation of the

clearing and settlement service and the gross settlement service for transactions involving financial instruments other than derivatives, including the establishment of time limits and preliminary and supplementary duties. Such regulations may provide for the clearing and settlement service and the gross settlement service, excluding final settlement of the cash portion of transactions, to be managed by a company authorized by the Bank of Italy in agreement with Consob. For the transfer of registered securities, including those different from shares, final endorsement may be effected in accordance with Articles 15(1) and 15(3) of Royal Decree 239 of 29 March 1942.

2. The Bank of Italy, in agreement with Consob, may regulate the institution and operation of systems to ensure the performance of clearing and settlement of the transactions referred to in paragraph 1 and may issue instructions concerning the establishment and administration of guarantee funds financed with contributions from participants.

3. Article 68(2) shall apply to the guarantee funds referred to in paragraph 2.

Article 70

Clearing and settlement of transactions involving financial derivatives

1. The Bank of Italy, in agreement with Consob, may regulate the operation of clearing and guarantee systems for transactions involving financial derivatives and provide for participants to make margin payments. Such margin payments may not be used for other purposes or be subject to enforcement proceedings or preventive measures advanced by the creditors of individual participants.

2. The bodies that administer the systems referred to in paragraph 1 shall assume the contractual positions to be settled.

Article 71

Finality of settlement of transactions involving financial instruments

1. The clearing, settlement and guaranteeing of transactions carried out through the intervention of the systems regulated pursuant to Articles 69 and 70 shall be final and may not be declared ineffectual with regard to the retroactive effect of the opening of bankruptcy proceedings, even where the participants are subject to such proceedings.

Article 72

Regulation of market insolvencies

1. The market insolvency of persons admitted to trading in regulated markets and the participants in the services referred to in Article 69 and the systems referred to in Article 70 shall be declared by Consob. The declaration of market insolvency shall determine the immediate liquidation of the contracts of the insolvent person.

2. Consob, in agreement with the Bank of Italy, shall establish in a regulation the cases of non-performance and the other circumstances that shall constitute market insolvency as well as the manner of ascertaining and liquidating the insolvency.

3. The liquidation of market insolvencies shall be carried out by one or more liquidators appointed by Consob in agreement with the Bank of Italy. The emoluments due to the liquidators shall be determined by Consob and charged to the management companies of the markets in which the insolvent undertaking participated on the basis of criteria established by Consob in agreement with the Bank of Italy.

4. The liquidators shall have the power to carry out all the acts required to liquidate the insolvency and may obtain information from market participants and the managers of market services.

5. Upon the closure of the liquidation procedure, the liquidators shall issue a credit certificate to claimants for residual claims, including expenses incurred by the creditor, which shall give title to enforce the claim on the insolvent for the purposes of Article 474 of the Code of Civil Procedure.

6. Article 71 shall apply to the liquidation of insolvencies.

Article 73

Supervision of management companies

1. Management companies shall be subject to supervision by Consob, which for this purpose shall exercise the powers conferred in Article 74(2).

2. Consob shall enter management companies in a register.

3. Consob shall verify that amendments to the bylaws of management companies do not conflict with the requirements referred to in Article 61. Procedures for entry in the Company Register may not be initiated in the absence of such verification.

4. Consob shall check that market rules are likely to ensure the aims referred to in Article 63(1b) are effectively achieved and may require management companies to amend market rules to eliminate any problems it finds.

Article 74

Supervision of markets

1. Consob shall supervise regulated markets with the aim of ensuring the transparency of

the market, the orderly conduct of trading and the protection of investors.

2. Consob may require management companies to communicate data and information and to transmit documents and records on a periodic or other basis in the manner and within the time limits it shall establish; it may also carry out inspections of such companies and require the exhibition of documents and the adoption of measures it deems necessary.

3. In cases of necessity and as a matter of urgency Consob shall adopt the measures required for the purposes referred to in paragraph 1, including its acting in the place of the management company.

4. The measures referred to in paragraph 3 may be adopted by the Chairman of Consob or his substitute in the event of his absence or incapacity. They shall be immediately enforceable and submitted to the Commission for it to approve within five days, the effect of such measures shall cease if they are not approved within this time limit.

Article 75

Extraordinary measures to protect the market and management company crises

1. In the event of serious irregularities in the management of markets or in the administration of management companies and wherever it is necessary for the protection of investors, the Ministry of the Treasury, acting on a proposal from Consob, shall dissolve the administrative and control bodies of the management company. The powers of the dissolved administrative bodies shall be conferred on a special administrator appointed in the same decree, who shall exercise them, in accordance with directives issued by Consob and under its control, until the administrative bodies are reconstituted. The emoluments due to the special administrator shall be determined with a decree of the Ministry and shall be charged to the management company. Where not otherwise provided for in this paragraph, Article 70(2-6), Article 72, except for paragraphs 2 and 8, and Article 75 of the Banking Law shall apply, with Consob being assigned the powers attributed therein to the Bank of Italy.

2. Where the irregularities referred to in paragraph 1 are exceptionally serious, the Ministry of the Treasury, acting on a proposal from Consob, may issue a decree revoking the authorization referred to in Article 63.

3. Within thirty days of the notification of the order revoking authorization, the directors or the special administrator shall call the shareholders' meeting to modify the corporate purpose or adopt a resolution for the voluntary liquidation of the company. Where the meeting is not called within such time limit or the meeting does not adopt the resolution within three months of the notification of the revocation order, the Ministry of the Treasury, acting on a proposal from Consob, may dissolve the management company and appoint liquidators. The provisions concerning the liquidation of *società per azioni* shall apply, except for those concerning the revocation of liquidators.

4. In the cases referred to in paragraphs 1 and 2, Consob shall promote the agreements needed to ensure the continuity of trading. For this purpose it may arrange for the temporary transfer of the management of the market to another company, subject to that company's consent. The definitive transfer of the management of the market may be effected by way of derogation from Title II, Chapter VI, of the Bankruptcy Law.

5. The proposals referred to in the previous paragraphs shall be formulated by Consob,

after consulting the Bank of Italy, for the management companies of markets for the wholesale trading of private and public sector bonds other than government securities and markets for the trading of instruments referred to in Article l(ld) and financial derivatives based on government securities, interest rates and foreign currencies.

6. Actions for the purpose of initiating bankruptcy proceedings, compositions with creditors or controlled administration and the related measures adopted by the court shall be notified to Consob within three days by the clerk of the court.

Article 76

Supervision of wholesale markets in government securities

1. Without prejudice to the responsibilities of Consob set out in this Decree, the Bank of Italy shall supervise the wholesale markets in government securities, having regard to the overall efficiency of the market and the orderly conduct of trading. The Bank shall exercise the powers conferred in Article 74.

2. The Bank of Italy shall supervise the management companies of the wholesale markets in government securities; for this purpose it shall exercise the powers conferred in Article 74(2).

3. Article 75 shall apply. The Bank of Italy shall have the powers and duties attributed therein to Consob.

Article 77

Supervision of clearing, settlement and guarantee systems

1. The supervision of the systems referred to in Articles 68, 69(2) and 7O, of the persons that administer such systems and of the company referred to in Article 69(1) shall be carried out by the Bank of Italy and Consob. To this end, the Bank of Italy and Consob may require system managers, the company and market participants to provide information and records concerning the clearing and settlement of transactions and may carry out inspections.

2. In cases of necessity and as a matter of urgency, the Bank of Italy shall adopt appropriate measures to ensure the timely closure of settlement, including its acting in the place of the administrators and managers of the systems and services referred to in Articles 69 and 70.

CHAPTER II

UNREGULATED MARKETS

Article 78

Organized trading of financial instruments

1. Consob may require organizers, issuers and intermediaries to provide information and records concerning organized trading of financial instruments.

2. For the purpose of protecting investors, Consob may:

a) establish the procedures, time limits and conditions for providing information on trading to the public;

b) suspend and, in the most serious cases, prohibit trading where this is necessary to prevent the protection of investors from being seriously prejudiced.

3. The measures referred to in paragraph 2 shall be adopted by Consob in agreement with the Bank of Italy where they concern the wholesale trading of private and public sector bonds other than government securities and the trading of instruments referred to in Article l(ld) and financial derivatives based on government securities, interest rates and foreign currencies. They shall be adopted by the Ministry of the Treasury, after consulting the Bank of Italy and Consob, where they concern the wholesale trading of government securities.

Article 79

Trading of interbank funds

1. The Bank of Italy shall monitor the efficiency and proper operation of organized trading of interbank funds.

2. The Bank of Italy may require organizers and intermediaries to provide information and records on the trading referred to in paragraph 1, indicating the related procedures and time limits.

3. Article 78 shall not apply to the trading referred to in paragraph 1.

TITLE II

CENTRAL DEPOSITORIES FOR FINANCIAL INSTRUMENTS

Article 80

The activity of central depositories

1. The activity of central depositories shall be carried out on an entrepreneurial basis by companies having the form of *società per azioni,* which may also operate on a non-profit basis.

2. Central depositories shall have as their exclusive object the provision of central depository services for financial instruments, including instruments dematerialized pursuant to Article 10 of Law 433 of 17 December 1997. They may also engage in related and instrumental activities.

3. Consob, in agreement with the Bank of Italy, shall issue a regulation laying down the minimum capital of central depositories and defining related and instrumental activities.

4. The Minister of the Treasury, after consulting the Bank of Italy and Consob, shall issue a regulation laying down the integrity and experience requirements for persons performing administrative, managerial or control functions in central depositories. Articles 13(2) and 13(3) shall apply.

5. The regulation referred to in paragraph 4 shall specify the causes entailing temporary suspension from office and the duration thereof. Articles 13(2) and 13(3) shall apply.

6. The Minister of the Treasury, after consulting Consob and the Bank of Italy, shall issue a regulation laying down the integrity requirements for shareholders, specifying the threshold of significant shareholdings for this purpose.

7. Purchases and sales of significant shareholdings within the meaning of paragraph 6, whether made directly or indirectly, *inter alia* through subsidiary companies, trust companies or nominees, must be notified within twenty-four hours by the purchaser to Consob, the Bank of Italy and the central depository; such notification must be accompanied by documentation attesting that the purchaser satisfies the requirements laid down pursuant to paragraph 6.

8. Where the requirements are not satisfied or notification is omitted, the voting rights attaching to the shares held in excess of the threshold laid down pursuant to paragraph 6 may not be exercised. In the event of noncompliance with this prohibition, Articles 14(5) and 14(6) shall apply.

9. Consob, in agreement with the Bank of Italy, shall authorize companies to provide central depository services where the requirements laid down in paragraphs 3, 4, 5 and 6 are met and the central system conforms with the regulation referred to in Article 81(1).

10. Central depositories shall be subject to Part IV, Title III, Chapter II, Section VI, except for Articles 157, 158 and 165.

Article 81

Implementing regulation and service rules

1. Consob, in agreement with the Bank of Italy, shall issue a regulation establishing:

a. the categories of persons and the financial instruments eligible for central depository services;
b. the forms and procedures for issuing the certifications provided for in Article 85;
c. the modalities and procedures that must be observed in making entries and keeping the accounts relative to central depository activity, in compliance with the principle of complete separation between central depositories' own accounts and those relative to the performance of the services;
d. the technical characteristics and content of the entries and accounts relative to central depository activity;
e. other provisions designed to ensure the transparency of the system and the orderly performance of the services.

2. Central depositories shall adopt service rules specifying the services performed, the manner of performing them and the related fees.

3. Consob, in agreement with the Bank of Italy, may determine that the fees shall be subject to their approval.

Article 82

Supervision

1. Consob and the Bank of Italy shall supervise central depositories to ensure transparency, the orderly performance of services and the protection of investors. They may require central depositories to communicate data, information, records and documents periodically or otherwise and may carry out inspections and require the exhibition of documents and records deemed necessary, specifying the manner and time limits.

2. Consob and the Bank of Italy shall check central depositories' service rules to ensure that they are likely to achieve the objectives specified in paragraph 1 and may require them to amend their service rules with a view to eliminating any problems found.

Article 83

Crises of central depositories

1. Where serious irregularities are ascertained, the Ministry of the Treasury, acting on a proposal from Consob or the Bank of Italy, may order the dissolution of the administrative bodies of a central depository, with a decree published in the *Gazzetta Ufficiale della Repubblica italiana*. Such decree shall appoint one or more special administrators of the company and determine their emoluments, which shall be charged to the company. Articles 70(2-6), 72, except for paragraphs 2 and 8, and 75 of the Banking Law shall apply, with the authority proposing the measure assigned the powers attributed therein to the Bank of Italy.

2. Where a central depository is declared insolvent pursuant to Article 195 of the Bankruptcy Law, the Ministry of the Treasury shall issue a decree ordering its compulsory administrative liquidation, with the exclusion of bankruptcy, in accordance with Articles 80(3-6), 84, except for paragraph 2, and 85-94 of the Banking Law insofar as they are compatible.

Article 84

Data collection and notification requirements for financial instruments held by central depositories

1. The consignment of financial instruments to a central depository shall not affect the legal obligations arising from title to rights in respect of the instruments. The data collection and notification requirements laid down by laws in force that provide for the numerical identification of certificates shall be satisfied by specifying the type and quantity of the financial instruments to which they refer.

2. The requirements concerning data collection and the updating of the shareholders' register laid down in Article 5 of Law 1745 of 29 December 1962 for issuers and persons appointed pursuant to Article 6 thereof shall be unaffected. The time limit for entries in the shareholders' register laid down in the last paragraph of Article 5 of such law shall commence on the date of payment of profits or on that of the issue of the certification for participation in the shareholders' meeting.

3. The notification requirements concerning the General Register of Shares laid down in Article 7 of Law 1745 of 29 December 1962 for issuers and persons appointed pursuant to Article 6 thereof shall likewise be unaffected. The Minister of Finance shall issue decrees laying down such rules as are necessary for the application of this provision and of Article 89(2).

Article 85

Central deposits

1. Where financial instruments consigned to the central system are represented physically by securities, the performance and the effects of central depository activity shall be governed by this article and Articles 86-89.

2. The clause of the deposit contract concluded with intermediaries identified in the regulation provided for in Article 81(1), with reference to financial instruments identified in the same regulation, which authorizes the intermediary to subdeposit the financial instruments with a central depository must be approved in writing. In exercising such authority, intermediaries shall have all the necessary powers, including that of endorsement to the central depository where the financial instruments in question are registered.

3. Financial instruments shall be consigned to the central system as a non-fungible deposit. The central depository shall be authorized to carry out all the transactions

inherent in central depository activity in conformity with the regulation referred to in Article 81(2) and to take the required action following the destruction, loss or theft of the financial instruments. Owners of the financial instruments consigned to the central system shall remain entitled to exercise the rights attaching thereto.

4. The exercise of the rights referred to in paragraph 3 shall be legitimated by the exhibition of certifications attesting participation in the central system, issued by depositories in conformity with their accounting records and specifying the shareholder right that may be exercised. Certifications shall confer no other rights than such legitimation. Agreements for the transfer of certifications shall be null and void.

5. The deposit of certifications shall serve in place of the deposit referred to in Article 2378 of the Civil Code.

6. There may be no more than one certification in respect of the same financial instruments for the purpose of legitimating the exercise of the rights attaching thereto.

7. Central depositories shall be subject to the ban on representation referred to in the fourth paragraph of Article 2372 of the Civil Code.

8. Financial instruments owned by a central depository must be specifically identified and entered in a special register kept by the company.

9. A central depository shall be liable for loss or harm due to negligence or fraud; intermediaries shall be jointly and severally liable, without prejudice to the right of recourse against the central depository. The regulation provided for in Article 81(1) shall establish the guarantees that intermediaries and the central depository must supply for compensation due to customers and the arrangements and terms governing the guarantees, which may be different from insurance, serving to meet losses arising from events not imputable to the central depository.

Article 86

Transfer of rights attaching to financial instruments on deposit

1. Depositors of financial instruments consigned to a central system may transfer to other depositors, via the intermediary and according to the procedures specified in the regulation provided for in Article 81(2), all or some of the rights attaching to the quantities of financial instruments belonging to them or request delivery of a corresponding quantity of financial instruments of the same type on deposit with the central depository. Persons who, having obtained the certifications provided for in Article 89, intend to transfer their rights or request delivery of the corresponding financial instruments must return such certifications to the intermediary that issued them, unless they are no longer effective.

2. Transfers made pursuant to paragraph 1 shall have the same effects as transfers made pursuant to the statutory provisions governing the circulation of financial instruments. In the case of registered financial instruments, the requirement of notation in the issuer's register pursuant to and for the purposes of the legislation in force shall be unaffected.

3. Owners of financial instruments consigned to a central system shall assume all the rights and obligations arising from the deposit where they demonstrate that the depositor was not entitled to make it.

Article 87

Encumbrances on financial instruments on deposit

1. Encumbrances on financial instruments consigned to a central system shall be transferred, without novation, to the rights of the depositor by the endorsement to the central depository. Notations of encumbrances on certificates shall have no effect; this shall be stated on the instrument. Such encumbrances and those constituted subsequently shall be entered in a special register kept by the depository in conformity with Articles 2215, 2216 and 2219 of the Civil Code.

2. Entry of an encumbrance in the register pursuant to paragraph 1 shall produce the same effects as its notation on the instrument. In the case of registered financial instruments, the requirement of entry in the issuer's register shall be unaffected.

3. In the event of withdrawal of financial instruments from the central system, intermediaries shall note encumbrances on the corresponding certificates, specifying the date of their constitution.

4. The registrations and notations provided for in this article shall be notified, within three days, to the issuer for the consequent notations.

5. In the event of attachment of financial instruments consigned to the central system, the action to be taken in respect of co-owners referred to in Articles 599 and 600 of the Code of Civil Procedure shall be taken in respect of the intermediaries.

Article 88

Withdrawal of financial instruments on deposit

1. The central depository shall put financial instruments whose withdrawal has been requested at the disposal of the intermediary. Registered financial instruments shall be endorsed to the intermediary, which shall complete the endorsement with the name of the endorsee. The completion of the endorsement shall be validated by its being stamped, dated and signed by the intermediary.

2. Article 15 of Royal Decree Law 239 of 29 March 1942, as amended by Article 20 of Law 1745 of 29 December 1962, shall apply.

3. The central depository may authenticate the signature of the endorser even when the endorsement is in its own favour. The signature it affixes upon the instrument as endorser does not require authentication. The endorsement to the central depository of financial instruments to be consigned to the central system and their registration in its name shall explicitly mention this decree.

Article 89

Notations in the shareholders' register

1. Central depositories shall notify issuers of registered shares endorsed in its favour for the consequent entries in the shareholders' register. Intermediaries shall send issuers the names of persons who have requested the certification provided for in Article 85, of those to whom dividends have been paid and of those who have exercised option rights, specifying the quantities of shares in question. The reports must be made within three days of the aforementioned events. Issuers shall note such reports in their shareholders' register.

2. Central depositories may perform, directly or through intermediaries, the activities that the persons specified in Article 6 of Law 1745 of 29 December 1962 may perform.

Article 90

Central depository services for government securities

1. The Minister of the Treasury shall issue a regulation on central depository services for government securities, specifying the criteria for their performance and the person responsible. Articles 81(2), 81(3), 84(1) and, in the circumstances referred to in Article 85(1), 85-88 shall apply.

PART IV

REGULATION OF ISSUERS

TITLE I

GENERAL PROVISIONS

Article 91

Consob's powers

1. Consob shall exercise the powers provided for in this Part having regard to the protection of investors and the efficiency and transparency of the market in corporate control and the capital market.

Article 92

Equal treatment

1. Listed issuers shall guarantee the same treatment to all bearers of listed financial instruments whose conditions are identical.

Article 93

Definition of control

1. In this part, in addition to the companies indicated in subparagraphs 1 and 2 of the first paragraph of Article 2359 of the Civil Code, the following shall also be considered subsidiaries:

a) Italian and foreign companies over which a person has the right, by virtue of a contract or a clause in the instrument of incorporation, to exercise a dominant influence, where the applicable law permits such contracts or clauses,

b) Italian and foreign companies where a shareholder controls alone, on the basis of agreements with other shareholders, enough votes to exercise a dominant influence in the ordinary shareholders' meeting.

2. For the purposes of paragraph 1, rights held by subsidiaries or exercised through trustees or nominees shall be considered, those held on behalf of third parties shall not be considered.

TITLE II

SOLICITATION OF PUBLIC SAVINGS

CHAPTER I

PUBLIC OFFERINGS

Article 94

Obligations of offerors

1. Persons who intend to make a public offering shall give advance notice thereof to Consob, attaching the prospectus to be published.

2. The prospectus shall contain the information that, depending on the characteristics of the financial products and the issuer, is necessary for investors to make an informed assessment of the issuer's assets and liabilities, profits and losses, financial position and prospects and of the financial products and related rights.

3. Where the public offering concerns financial products that are neither listed nor widely distributed among the public pursuant to Article 116, the publication of the prospectus shall be authorized by Consob in the manner and within the time limits it shall lay down in a regulation. Otherwise, Consob may, within fifteen days of the notification, require offerors to include supplementary information in the prospectus and adopt specific procedures for its publication. At the expiry of such time limit, offerors may proceed with the publication.

4. Offerors may request the issue of the authorization referred to in paragraph 3 in order to have the prospectus published in Italy recognized abroad.

5. Consob, taking account of the characteristics of individual markets, may, at the request of the market management company, entrust such company with tasks concerning the examination of prospectuses for public offerings of financial instruments that are listed or the object of an application for admission to listing on a regulated market.

Article 95

Implementing provisions

1. Consob shall issue a regulation with provisions implementing this chapter, which may be differentiated according to the characteristics of the financial products, issuers and markets. The regulation shall establish in particular:

a) the content of the notice to be sent to Consob and of the prospectus and the procedures for publishing the prospectus and updating it where necessary;

b) the procedures to be observed before the publication of the prospectus for disseminating new information, carrying out market research and surveying intentions to buy or subscribe;

c) the procedures for making public offerings, *inter alia* with a view to ensuring the equal treatment of the persons solicited.

2. Consob shall issue a regulation laying down the conduct-of-business rules to be observed by the offeror, the issuer and the person placing the financial products, as well as by persons who control or are controlled by or related to such persons.

Article 96

Annual accounts of issuers

1. Issuers' latest approved annual accounts and consolidated accounts where applicable shall be accompanied by the reports in which an auditing firm renders its opinion thereon in accordance with Article 156. Public offerings may not be made if the auditing firm rendered an adverse opinion or a disclaimer.

Article 97

Information requirements

1. Without prejudice to Title III, Chapter I, issuers shall be subject to:

a) Articles 114(3) and 114(4), from the date of publication of the prospectus until the close of the offering;

b) Article 115, from the date of the notification provided for in Article 94 until one year from the close of the offering.

2. Consob shall issue a regulation specifying which of the provisions referred to in paragraph 1 shall apply, for the same periods, to the other persons referred to in Article 95(2) and to persons who provide services referred to in Article 1(6e).

3. Issuers shall have their annual and consolidated accounts audited by an auditing firm in accordance with Article 156 where they are approved or drawn up during the offer period.

4. Where there is a well-founded suspicion of violation of the provisions of this chapter or the related regulations, Consob, in order to acquire evidence, may, within one year of the purchase or subscription, require purchasers or subscribers of the financial products to communicate data and information and transmit records and documents and lay down the related time limits. Such power may also be exercised with respect to persons suspected on good grounds of making public offerings in violation of Article 94.

Article 98

Recognition of prospectuses

1. Consob shall issue a regulation on the recognition in Italy of prospectuses:

a) approved, in accordance with Community law, by the competent authorities of other EU member states;

b) approved by the competent authorities of countries with which the European Union has entered into mutual recognition agreements.

2. If a public offering is made simultaneously or within a short interval in Italy and other EU member states, it shall be subject to the requirements provided for in this chapter

where the issuer has its registered office in Italy.

Article 99

Powers of interdiction

1. Consob may:

a) suspend the public offering as a precautionary measure for a maximum of ninety days in the event of a well-founded suspicion of violation of the provisions of this chapter or the related regulations;

b) prohibit the public offering in the event of an ascertained violation of the provisions or rules referred to in subparagraph a).

Article 100

Cases of inapplicability

1. The provisions of this chapter shall not apply to public offerings:

a) aimed exclusively at professional investors as defined pursuant to Article 30(2);

b) aimed at a number of persons not exceeding that established by Consob in a regulation;

c) of a total amount not exceeding that established by Consob in a regulation;

d) having as their object financial instruments issued or guaranteed by the Italian government or an EU member state or issued by international organizations of a public nature of which one or more EU member states are part;

e) having as their object financial instruments issued by the European Central Bank or the national central banks of the EU member states;

f) having as their object financial instruments issued by banks, other than shares or financial instruments that permit the purchase or subscription of shares, or insurance products issued by insurance enterprises.

2. Consob may specify in a regulation other types of public offering to which the provisions of this chapter shall not apply in whole or in part.

Article 101

Advertisements

1. Prior to the publication of the prospectus, public offerings may not be advertised in any way. Advertisements must be transmitted in advance to Consob.

2. Advertisements shall comply with the guidelines laid down by Consob in a regulation having regard to the accuracy of the information and its conformity with the contents of the prospectus. ~

3. Consob may:

a) suspend the further diffusion of an advertisement as a precautionary measure for a maximum of ninety days in the event of a well-founded suspicion of violation of the provisions of this article or the related regulations;

b) prohibit the further diffusion of an advertisement in the event of an ascertained violation of the provisions or rules referred to in subparagraph a).

c) prohibit the making of the public offering in the event of failure to comply with the measures referred to in subparagraphs a) or b).

CHAPTER II

PUBLIC OFFERS TO BUY OR EXCHANGE FINANCIAL INSTRUMENTS

Section I

General provisions

Article 102

Obligations of offerors and powers of interdiction

1. Persons who make a public offer to buy or exchange financial instruments shall give advance notice thereof to Consob, attaching a document to be published containing the information that is necessary for investors to make an informed assessment of the offer.

2. Consob may, within fifteen days of the notification, require offerors to include supplementary information in the offer document, lay down specific procedures for its publication and establish special guarantees to be provided. At the expiry of such time limit, offer documents may be published. For offers having as their object or consideration financial products that are neither listed nor widely distributed among the public in accordance with Article 116, the time limit for Consob to exercise its powers shall be thirty days.

3. Pending the offer, Consob may:

a) suspend it as a precautionary measure in the event of a well-founded suspicion of violation of the provisions of this chapter or regulatory rules;

b) declare it to be null in the event of an ascertained violation of the provisions or rules referred to in subparagraph a).

4. In the event of s well-founded s suspicion of violation of the provisions of this chapter or regulatory rules, Article 97(4) shall apply.

Article 103

Implementation of offers

1. Offers shall be irrevocable. Any clause stating the contrary shall be null and void. The offer shall be made at the same conditions to all the holders of the financial products that are the object thereof.

2. Without prejudice to Title III, Chapter I, issuers shall be subject to:

a) Articles 114(3) and 114(4), from the date of publication of the offer document until the close of the offer;

b) Article 115, from the date of the notification provided for in Article 102(1) until one year from the close of the offer.

3. The issuer shall publish a communiqué containing all the information serving to evaluate the offer, together with its own evaluation thereof.

4. Consob shall issue a regulation with provisions implementing this section and, in particular, shall lay down rules concerning:

a) the content of the offer document to be published and the procedures for publishing it and implementing the offer;

b) the correctness and transparency of transactions involving the financial products that are the object of the offer;

c) the increased and competing offers, with no limit on their number, that may be made until the expiry of a time limit.

5. Consob shall issue a regulation specifying which of the provisions referred to in paragraph 2 shall apply, in the periods indicated therein, to offerors, persons who control or are controlled by offerors or issuers, and intermediaries appointed to collect acceptances.

Article 104

Authorizations by the shareholders' meeting

1. Unless authorized by the ordinary shareholders' meeting or by the extraordinary shareholders' meeting for matters within the scope of its authority, Italian companies whose shares that are the object of an offer are listed on regulated markets in Italy or other EU countries shall refrain from taking action that may hinder the achievement of the objectives of the offer. Shareholders' meetings, including those held at the second or third call, shall adopt resolutions where shareholders representing at least thirty per cent of the capital vote in favour. The responsibility of directors and general managers for the action taken and transactions carried out shall be unaffected.

2. The time limits and procedures for calling shareholders' meetings to be held while an offer is pending shall be governed, by way of derogation from the law in force where appropriate, by a regulation issued by the Minister of Justice after consulting Consob.

Section II

Mandatory public offers to buy

Article 105

General provisions

1. The provisions of this section shall apply to Italian companies with ordinary shares listed on Italian regulated markets.

2. For the purposes of this section, shareholding shall mean a portion of the capital represented by ordinary shares held directly or indirectly through trust companies or nominees.

Article 106

Complete-acquisition public offers

1. Any person who, as a result of purchases for a consideration, comes to own a shareholding exceeding the threshold of thirty per cent, shall make a public offer to buy all the ordinary shares.

2. The offer shall be made within thirty days at a price no lower than the arithmetic mean of the weighted average market price in the last twelve months and the highest price agreed in the same period by the offeror for the purchase of ordinary shares.

3. Consob shall issue a regulation governing the cases in which: ~ ::

a) the shareholding referred to in paragraph 1 is acquired through the purchase of shareholdings in companies whose assets consist prevalently of securities issued by another company with listed shares;

b) the obligation to make the offer arises from purchases by persons who already own the shareholding referred to in paragraph 1 without having the majority of voting rights in the ordinary shareholders' meeting;

c) all or part of the consideration offered may consist of financial instruments.

4. The obligation to make the offer shall not arise where the shareholding referred to in paragraph 1 is owned following a public offer to buy intended to result in the acquisition of all the ordinary shares.

5. Consob shall issue a regulation specifying the cases in which exceeding the shareholding referred to in paragraph 1 shall not give rise to the obligation to make an offer where the threshold is exceeded when there are other shareholders who exercise control or as the result of:

a. transactions aimed at rescuing companies in crisis;
b. the transfer of ordinary shares between persons linked by significant participation relationships;
c. causes independent of the acquirer's will;
d. transactions of a temporary nature;
e. merger or demerger operations.

Article 107

Partial-acquisition public offers

1. In addition to the cases referred to in Articles 106(4) and 106(5), the obligation to make a public offer provided for in Articles 106(1) and 106(3) shall not arise where the shareholding is owned as a result of a public offer to buy or exchange at least sixty per cent of the ordinary shares and all the following conditions are satisfied:

a) the offeror and the persons linked to it by one of the relationships referred to in Article 109(1) have not acquired shareholdings exceeding one per cent, including shares acquired under forward contracts maturing at a later date, in the twelve months preceding the notice to be given to Consob referred to in Article 102(1) nor during the offer;

b) the effectiveness of the offer has been made subject to approval by shareholders owning the majority of the ordinary shares, excluding from the computation the shareholdings, calculated in conformity with the methods laid down pursuant to Article 120(4b), held by the offeror, the shareholder with the absolute majority of the ordinary shares or the relative majority if this exceeds ten per cent, and the persons linked to them by one of the relationships referred to in Article 109(1);

c) Consob grants the exemption after verifying the satisfaction of the

conditions specified in subparagraphs a) and b).

2. The approval procedures shall be laid down by Consob in a regulation. Shareholders who do not take up the offer may express their opinion thereon in accordance with paragraph lb).

3. The offeror is required to make the public offer referred to in Article 106 where, in the twelve months subsequent to the close of the partial-acquisition offer:

a) the offeror or persons linked to it by one of the relationships referred to in Article 109(1) have acquired shareholdings exceeding one per cent, including shares acquired under forward contracts maturing at a later date;

b) the shareholders' meeting of the issuing company has approved merger or demerger operations.

Article 108

Residual-acquisition public offers

1. Any person who comes to own a shareholding exceeding ninety per cent shall make a public offer to buy all the shares with voting rights at the price set by Consob unless within four months he restores a free float sufficient to ensure regular trading.

Article 109

Concerted acquisitions

1. The following shall be jointly and severally subject to the obligations referred to in Articles 106 and 108 where they come to own, as a result of purchases for a consideration made by one or more of them, a combined shareholding exceeding the percentages specified in the preceding articles:

a. participants in an agreement, regardless of whether it is null and void, referred to in Article 122;
b. persons and the companies they control;
c. companies subject to joint control; d) companies and their directors and general managers.

2. The obligation to make a public offer shall also apply to the persons referred to in paragraph la) where the purchases were made in the twelve months preceding the conclusion of the agreement or at the same time as it was concluded.

Article 110

Suspension of voting rights

1. In the event of violation of the obligations laid down in this section, the voting rights attaching to the whole shareholding owned shall not be exercisable and the shares exceeding the percentages specified in Articles 106 and 108 must be disposed of within twelve months. Where the voting rights are exercised, Article 14(5) shall apply. The challenge may also be initiated by Consob within the time limit specified in Article 14(6).

Article 111

Right of acquisition

1. Any person who, as a result of a public offer to buy all the shares with voting rights, owns more than ninety-eight per cent of such shares shall be entitled to acquire the remaining shares within four months of the close of the offer, provided he declared his intention to exercise this right in the offer document.

2. The purchase price shall be set by an expert appointed by the president of the tribunal of the place where the issuing company has its registered office, with account also being taken of the offer price and the market price in the last six months. The expert shall be subject to Article 64 of the Code of Civil Procedure.

3. The transfer shall be effective from the moment notice of the deposit of the consideration with a bank is given to the issuing company, which shall make the consequent entries in the shareholders' register.

Article 112

Implementing provisions

1. Consob shall issue a regulation with provisions implementing this section; in a measure to be published in the *Gazzetta Ufficiale della Repubblica italiana* it may, after consulting the market management company, increase the percentage provided for in Article 108 for individual companies.

TITLE III

ISSUERS

CHAPTER I

Article 113

Listing particulars

1. Before the date set for the start of trading in the financial instruments on a regulated market, issuers shall publish listing particulars containing the information specified in Article 94(2).

2. Consob:

a) shall issue a regulation laying down the contents of listing particulars and the manner of their publication, with specific provisions for cases in which admission to listing on a regulated market is preceded by a public offering;

b) may require issuers to include supplementary information in the listing particulars and lay down specific procedures for their publication;

c) shall issue measures to coordinate the functions of the market management company with its own and, taking account of the characteristics of the individual markets, at the request of such company, may entrust it with tasks concerning the examination of listing particulars. |

3. Listing particulars drawn up in conformity with the Community directives and approved by the competent authorities of another EU member state shall be recognized by Consob, in the manner and on the conditions established in the regulation provided for in paragraph 2, as listing particulars for admission to trading on a regulated market.

Article 114

Information to be provided to the public

1. Without prejudice to the information requirements established by specific provisions of law, listed issuers and the persons that control them shall inform the public of events occurring in their or their subsidiaries' sphere of activity that have not been made public and that if made public would be likely to have a significant effect on the price of the listed financial instruments. Consob shall issue a regulation laying down the manner in which the public is to be notified of such events, adopt measures to coordinate the functions entrusted to the management company with its own and may identify tasks to be entrusted to the latter to ensure the correct performance of the functions referred to in Article 64(1b).

2. Listed issuers shall issue appropriate instructions for subsidiaries to provide all the information necessary to comply with the information requirements established by law. Subsidiaries shall transmit the information required in a timely manner.

3. Consob, on a general basis or otherwise, may require persons referred to in paragraph 1 to publicize, in the manner it shall establish, the information and documents needed to

inform the public. Where such persons fail to comply, Consob shall publish the material at their expense.

4. Where persons referred to in paragraph 1 submit a substantiated petition that the publication of the information is likely to cause them serious injury, the information requirements shall be suspended. Within seven days Consob may waive the requirement to publish all or part of the information permanently or temporarily, provided this is not likely to mislead the public with regard to essential facts and circumstances. At the expiry of the seven day period the petition shall be considered accepted.

5. Consob shall issue a regulation specifying the cases and the manner in which information must be provided to the public on studies and statistics on listed issuers, prepared by such issuers, intermediaries authorized to provide investment services or persons that control or are controlled by them.

Article 115

Information to be disclosed to Consob

1. For the purposes of monitoring the accuracy of information provided to the public, Consob, on a general basis or otherwise, may:

a) require listed issuers, the persons that control them and companies controlled by them to provide information and documents, establishing the related procedures;

b) gather information from directors, auditors, auditing firms and managers of companies and of persons referred to in subparagraph a);

c) carry out inspections at the offices of persons referred to in subparagraph a).

2. The powers provided for in paragraphs la) and lb) may be exercised with respect to persons who have a significant shareholding pursuant to Article 120 or who participate in a shareholders' agreement pursuant to Article 122.

3. Consob may also require companies or entities with direct or indirect shareholdings in companies with listed shares to provide, on the basis of the available information, the names of their members or, in the case of trust companies, of their beneficiaries.

Article 116

Financial instruments widely distributed among the public

1. Articles 114 and 115 shall also apply to issuers of financial instruments that, although not listed on a regulated market in Italy, are widely distributed among the public. Consob shall issue a regulation establishing the criteria for identifying such issuers and may disapply the aforementioned articles, in whole or in part, for issuers of financial instruments listed on regulated markets in other EU countries or on markets in non-EU

countries in consideration of the information requirements they are subject to by virtue of being listed.

2. Issuers referred to in paragraph 1 shall have their annual accounts and consolidated accounts where applicable audited by an auditing firm pursuant to Article 156.

Article 117

Accounting information

1. The exemptions from the obligation to prepare consolidated accounts provided for in Article 27 of Legislative Decree 127 of 9 April 1991, Article 27 of Legislative Decree 87 of 27 January 1992 and Article 61 of Legislative Decree 173 of 26 May 1997 shall not apply to Italian companies with shares listed on regulated markets in Italy or other EU countries.

2. The Minister of Justice, in concert with the Minister of the Treasury, shall issue a regulation specifying the internationally accepted accounting standards compatible with those laid down in Community accounting directives that issuers of financial instruments listed on regulated markets in Italy, other EU countries or non EU countries may use, by way of derogation from the rules in force, in preparing their consolidated accounts, provided such principles are accepted by the markets of non-EU countries. The standards shall be identified on the basis of a proposal from Consob, to be formulated in agreement with the Bank of Italy for banks and the financial companies referred to in Article 1(1) of Legislative Decree 87 of 27 January 1992 and with Isvap for the insurance and reinsurance undertakings referred to in Article 1 of Legislative Decree 173 of 26 May 1997.

Article 118

Provisions not applicable

1. The provisions of this section shall not apply to the financial instruments referred to in Articles l00(ld) and l00(le).

2. The provisions of Article 116 shall not apply to the financial instruments referred to in Article l00(lf).

CHAPTER II

Listed companies

Article 119

Scope

1. Unless specified otherwise, the provisions of this chapter shall apply to Italian companies with shares listed on regulated markets in Italy or other EU countries (listed companies).

Section I

Ownership structures

Article 120

Notification requirements for significant shareholdings

1. For the purposes of this section, the capital of *società per azioni* shall mean that represented by voting shares.

2. Persons who hold more than *2* per cent of the capital of a listed company shall notify the investee company and Consob.

3. Listed companies that hold more that 10 per cent of the capital of an Italian or foreign unlisted company or *società a responsibilità limitata* shall notify the investee company and Consob.

4. Consob, taking account of the characteristics of the investors, shall issue a regulation laying down:

a) the variations in the shareholdings referred to in paragraphs 2 and 3 that must be notified;

b) the methods for calculating shareholdings, including indirect shareholdings and those where voting rights belong or have been assigned to a person other than the member;

c) the content of and procedures for notifications and public announcements and any exemptions applicable to the latter;

d) the time limits for notifications and public announcements, which may be periodic in the case referred to in paragraph 3.

5. Voting rights attaching to listed shares which have not been notified pursuant to paragraph 2 shall not be exercisable. In the event of non-compliance, Article 14(5) shall apply. The challenge may also be initiated by Consob within the time limit specified in Article 14(6).

6. Paragraph *2* shall not apply to shares held by the Ministry of the Treasury through companies it controls. The related notification requirements shall be fulfilled by the

companies controlled.

Article 121

Rules governing cross-holdings

1. Except in the cases provided for in Article *2359-bis* of the Civil Code, in the event of cross-holdings that exceed the limits specified in Articles *120(2)* and *120(3),* the company that was the last to exceed the limit may not exercise the voting rights attaching to the excess shares or capital parts and must dispose of them within twelve months from the date on which it exceeded the limit. In the event of failure to make the disposal within such time limit, the suspension of voting rights shall apply to the entire shareholding. Where it is not possible to ascertain which of the two companies was the last to exceed the limit, the suspension of voting rights and the disposal requirement shall apply to both unless they have agreed otherwise.

2. The limit of two per cent recalled in paragraph 1 shall be raised to 5 per cent provided the limit of two per cent is exceeded by both companies following an agreement authorized in advance by the ordinary shareholders' meetings of the companies in question.

3. Where a person owns a shareholding that exceeds two per cent of the capital of a company with listed shares, the latter or the person that controls it may not acquire a shareholding that exceeds such limit in a company with listed shares controlled by the former. In the event of non-compliance, the voting rights attaching to the shares in excess of the limit specified shall be suspended. Where it is not possible to ascertain which of the two persons was the last to exceed the limit, the suspension shall apply to both unless they have agreed otherwise.

4. The shareholdings shall be calculated by applying the methods laid down pursuant to Article 120(4b).

5. Paragraphs 1, 2 and 3 shall not apply where the limits indicated therein are exceeded following a public offer to buy aimed at the acquisition of at least sixty per cent of the ordinary shares.

6. In the event of non-compliance with the prohibitions on the exercise of voting rights provided for in paragraphs 1 and 3, Article 14(5) shall apply. The challenge may also be initiated by Consob within the time limit specified in Article 14(6).

Article 122

Shareholders' agreements

1. Agreements, in whatsoever form concluded, whose object is the exercise of voting rights in companies with listed shares or companies that control them shall be:

a) notified to Consob within five days from the date of their conclusion;

b) published in abridged form in the daily press within ten days from the date of their conclusion;

c) entered in the Company Register of the place where the company has its registered office within fifteen days from the date of their conclusion.

2. Consob shall issue a regulation establishing the contents of the notification, abridged form and publication and the related procedures.

3. Agreements shall be null and void in the event of non-compliance with the requirements laid down in paragraph 1.

4. Voting rights attaching to listed shares for which the requirements laid down in paragraph 1 have not been satisfied may not be exercised. In the event of non-compliance, Article 14(5) shall apply. The challenge may also be initiated by Consob within the time limit specified in Article 14(6).

5. This article shall also apply to agreements, in whatsoever form concluded, that:

a) create obligations of consultation prior to the exercise of voting rights in companies with listed shares or companies that control them;

b) set limits on the transfer of the related shares or of financial instruments that entitle holders to buy or subscribe for them;

c) provide for the purchase of shares or financial instruments referred to in subparagraph b);

d) have as their object or effect the exercise, jointly or otherwise, of a dominant influence on such companies.

Article 123

Duration of agreements and right of withdrawal

1. Where agreements referred to in Article 122 are fixed term, they may not have a duration greater than three years and shall be deemed to have been concluded for such duration even if the parties provided for a longer term; agreements shall be renewable upon expiry.

2. Agreements may also be concluded for an indeterminate period; in such case each party may withdraw on giving six months' notice. Articles 122(1) and 122(2) shall apply to withdrawal.

3. Shareholders who intend to accept a public offer to buy or exchange made pursuant to Articles 106 or 107 may withdraw from the agreements referred to in Article 122 without notice. The declaration of withdrawal shall not produce effects if the transfer of the shares has not been finalized.

Article 124

Provisions not applicable

1. Consob may declare Articles 120, 121, 122 and 123(2), second paragraph, inapplicable to Italian companies with shares listed only on regulated markets in other EU countries in consideration of the legislation applicable to such companies by virtue of their being listed.

Article 125

Calling of the shareholders' meeting at the request of minority shareholders

1. The directors shall call a shareholders' meeting within thirty days of a request where this is made by share-holders representing at least ten per cent of the share capital or the lower percentage established by the bylaws and the items to be discussed are specified therein.

2. Within the time limit specified in paragraph 1, the directors, in view of the items to be discussed, may, in the company's interest, decide not to call the meeting.

3. The president of the court, acting on a petition presented by the shareholders that requested the meeting, after consulting the directors and members of the board of auditors, may order the meeting to be called and designate the person who must chair it.

4. Where the request is made by shareholders representing at least one fifth of the share capital, Article 2367 of thc Civil Code shall apply. |

Section II

Protection of minority shareholders

Article 126

Extraordinary shareholders' meeting

1. Extraordinary shareholders' meetings shall be duly constituted at first and second call with the participation of shareholders representing the proportion of capital specified respectively in Articles 2368, last paragraph, and 2369, third paragraph, of the Civil Code.

2. Where the shareholders attending an extraordinary shareholders' meeting at the second call do not represent the proportion of capital necessary for the meeting to be duly constituted, the meeting may be called again within thirty days. In such case the time limit established by the second paragraph of Article 2366 of the Civil Code shall be reduced to eight days.

3. A meeting held at third call shall be duly constituted with the presence of shareholders representing more than one fifth of the share capital, where the bylaws do not require a higher proportion.

4. Extraordinary shareholders' meetings held at first, second or third call shall adopt resolutions with the favourable vote of at least two thirds of the capital represented at the meeting. The bylaws may require a larger majority.

5. For *società cooperative*, the provisions of the Civil Code shall be unaffected.

Article 127

Postal voting

1. The bylaws may provide for votes also to be cast in shareholders' meetings by mail. Consob shall issue a regulation establishing the procedures for postal voting and shareholders' meetings.

Article 128

Complaints to the board of auditors and the courts

1. The second paragraph of Article 2408 of the Civil Code shall apply where the complaint is filed by shareholders representing at least two per cent of the share capital.

2. Complaints to the courts referred to in the first paragraph of Article 2409 of the Civil Code may be filed by shareholders representing at least five per cent of the share capital.

3. The bylaws may establish lower percentages than those provided for in paragraphs 1 and 2.

4. Article 70(7) of the Banking Law shall be unaffected.

Article 129

Company actions for liability

1. Shareholders entered in the register of shareholders for at least six months who represent at least five per cent of the share capital or the lower percentage established in the bylaws may bring a company action for liability against the directors, the members of the board of auditors or general managers, even if the company is in liquidation. The company must be a party to the action. Where the action is brought against the directors or general managers, the summons may also be served on the company in the person of

the chairman of the board of auditors.

2. The shareholders who intend to promote the action shall appoint, with a majority of the capital held, one or more common representatives to bring the action and carry out the consequent acts. The company may renounce the action or reach a settlement pursuant to Article 2393 of the Civil Code, unless there is the opposing vote of shareholders representing at least five per cent of the share capital

3. In the event of a favourable judgement the comp my shall reimburse the plaintiffs the costs of the action which the judge did not charge to the defendants and which it is not possible to recover following the exhaustion of the latter's property.

Article 130

Information for shareholders

1. Shareholders may consult all the documents filed at the company's registered office for shareholders' meetings that have already been called and may obtain a copy thereof at their own expense.

Article 131

Right of withdrawal from mergers and demergers

1. Shareholders not in agreement with resolutions approving mergers or demergers that involve the allotment of unlisted shares may withdraw pursuant to Article 2437 of the Civil Code.

Article 132

Acquisition of own or parent company shares

1. Purchases of own shares under Articles 2357 and 2357-bis, first paragraph, subparagraph 1, of the Civil Code by companies with listed shares must be made by means of a public offer to buy or exchange or in the market, according to procedures agreed with the market management company so as to ensure equal treatment of shareholders.

2. Paragraph 1 shall also apply to purchases of listed shares made under Article 2359-bis of the Civil Code by a subsidiary.

3. Paragraphs 1 and 2 shall not apply to purchases of own or parent company shares held by employees of the issuing company, subsidiary companies or the parent company and

allotted or subscribed for in accordance with Articles 2349 and 2441, eighth paragraph, of the Civil Code.

Article 133

Exclusion upon request from trading

1. Subject to approval by an extraordinary shareholders' meeting, Italian companies with shares listed on regulated markets in Italy may request that their own financial instruments be excluded from trading, in accordance with the provisions of the rules of the market, where they are admitted to listing on other regulated markets in Italy or another EU country, provided investors are ensured equivalent protection, according to standards established by Consob in a regulation.

Article 134

Increases in capital

1. The time limit established in the second paragraph of Article 2441 of the Civil Code shall be reduced by one half for companies with listed shares.

2. Article 126 shall apply to resolutions approving increases in capital under the first sentence of the eighth paragraph of Article 2441 of the Civil Code, even if the exclusion of the right of pre-emption is not restricted to one quarter of the newly issued shares, provided the increase does not exceed one per cent of the capital.

3. The eighth paragraph of Article 2441 of the Civil Code shall also apply to resolutions approving increases in capital with the exclusion of the right of pre-emption that provide for the shares to be offered for subscription to employees of subsidiary or parent companies. |

Article 135

Società cooperative

1. For *società cooperative*, the percentages of capital specified in this section shall be set in relation to the total number of members.

SECTION III

Proxies

Article 136

Definitions

1. For the purposes of this section:

a) "proxy" shall mean the authority to vote for another in shareholders' meetings;

b) "solicitation" shall mean the seeking of proxies among shareholders in general; c) "promoter" shall mean the person or persons who jointly promote the solicitation, seeking support for specific proposals,

d) "intermediary" shall mean the person who carries out the solicitation on behalf of a promoter;

e) "collection of proxies" shall mean the seeking of proxies by shareholders' associations exclusively among their members.

Article 137

General provisions

1. Solicitation and the collection of proxies shall be regulated by the provisions of this section by way of derogation from Article 2372 of the Civil Code.

2. Bylaws that in any way limit representation in shareholders' meetings shall not apply to proxies given pursuant to the provisions of this chapter.

3. Bylaws may contain rules aimed at facilitating the collection of proxies among employee shareholders.

4. The provisions o-f this section shall not apply to *società cooperative.*

Article 138

Solicitation

1. Solicitation shall be carried out by an intermediary commissioned by the promoter distributing a proxy statement and a proxy form.

2. Votes attaching to shares for which a proxy has been given shall be cast by the promoter or, where commissioned by the latter, by the intermediary that carried out the

solicitation. Intermediaries may not entrust the performance of commissions to third parties.

Article 139

Requirements for promoters

1. Promoters must hold shares allowing them to vote in the shareholders' meeting for which proxies are sought equal to at least one per cent of the share capital represented by shares carrying rights to vote therein and must have been entered in the shareholders' register with the same quantity of shares for at least six months. Consob may establish lower percentages of the share capital for companies with a particularly high market capitalization and wide distribution of its shares.

2. For the purposes of paragraph 1, account shall also be taken, in the case of asset management companies and persons authorized to set up pension funds, of the shares belonging to the funds on behalf of which they exercise the voting rights.

Article 140

Persons authorized to engage in solicitation

1. Solicitation shall be reserved to investment firms, banks, asset management companies, SICAVs and companies whose exclusive object is solicitation and the representation of shareholders in shareholders' meetings. The corporate officers of the latter companies must satisfy the integrity requirements established for SIMs.

Article 141

Shareholders' associations

1. Shareholders' associations may collect proxies provided they:

a) are established with an authenticated private instrument;

b) do not engage in entrepreneurial activities except for those that serve directly to achieve the object of the association;

c) have at least fifty members who are natural persons, each of whom owns shares not exceeding 0.1 per cent of the voting capital.

2. Articles 122(3) and 122(4) shall not apply to the shareholders' associations referred to in paragraph 1.

3. The collection of proxies shall be carried out by distributing the form referred to in Article 142. Proxies shall be given to the legal representatives of the association.

4. The association shall vote, unanimously or otherwise, in conformity with the indications given by each member in the proxy form. Members are not obliged to give a proxy.

Article 142

Proxies

1. Proxies shall be signed by the givers, may be revoked and may be given only for one shareholders' meeting that has already been called, remaining effective for subsequent calls where applicable; they may not be given blank and shall show the date, the name of the appointee and the voting instructions.

2. Proxies may also be given for only some of the resolutions shown on the proxy form. Shares for which complete or partial proxies have been given shall be counted for the purpose of establishing the due constitution of the shareholders' meeting.

Article 143

Liability

1. The information contained in the proxy statement or the proxy form and any sent out during a solicitation or collection of proxies must enable shareholders to make an informed decision; the promoter or the representatives of the shareholders' association shall be responsible for its appropriateness.

2. The intermediary shall be responsible for the completeness of the information sent out during a solicitation.

3. In actions for damages arising from violation of the provisions of this section and the related regulations the burden of proof of having acted with the due diligence required shall be on the promoter or the shareholders' association.

Article 144

Performance of solicitations and collections of proxies

1. Consob shall issue a regulation on the transparency and correctness of solicitations and collections of proxies. In particular, the regulation shall lay down rules for:

a) the content of proxy statements and proxy forms and the procedures for their distribution;

b) the procedures for solicitation and the collection of proxies, and the conditions and procedures for casting proxy votes and revoking proxies;

c) the forms of cooperation between intermediaries and the persons possessing the information on the identity of shareholders in order to permit the performance of solicitations.

2. Consob may:

a) require proxy statements and proxy forms to contain supplementary information and lay down specific procedures for their distribution;

b) forbid solicitation and the collection of proxies where it finds a violation of the provisions of this section;

c) exercise the powers referred to in Articles 115(1a) and 115(1b) with respect to promoters and shareholders' associations.

3. The Minister of Justice, after consulting Consob, shall issue a regulation establishing the time limits for calling shareholders' meetings, by way of derogation from the legislation in force where appropriate, and ensure proposed resolutions are publicized in an adequate and timely manner.

4. Where the law establishes forms of control over shareholdings, a copy of the proxy statement or proxy form must be sent to the competent supervisory authority before the solicitation or collection of proxies. The authorities shall forbid solicitation and the collection of proxies where they interfere with the aims of the aims on shareholding.

SECTION IV

Savings shares

Article 145

Issue of savings shares

1. Italian companies with ordinary shares listed on regulated markets in Italy or other EU countries may issue non-voting shares with preferential rights as regards the payment of dividends and the liquidation of assets.

2. The bylaws shall specify the substance of such preferential rights and the conditions and time and other limits for their exercise; they shall also establish the rights of holders of savings shares where ordinary or savings shares are excluded from trading.

3. The shares must carry, in addition to the information laid down in Article 2354 of the Civil Code, the words "azioni di risparmio" and an indication of the related privileges; the shares may be bearer shares, without prejudice to the second paragraph of Article 2355 of the Civil Code. The shares belonging to directors, members of the board of auditors and general managers must be registered shares.

4. The total face value of savings shares, together with that of shares with limited voting rights issued in accordance with Article 2351 of the Civil Code, may not exceed half the share capital.

5. Where, as a consequence of a reduction in the capital owing to losses, the value of savings shares and shares with limited voting rights exceeds half the share capital, the ratio referred to in paragraph 4 must be restored within two years through an issue of ordinary shares offered with the right of pre-emption to the holders of ordinary shares. However, where the capital represented by ordinary shares falls below one quarter of the share capital, it must be replenished to at least one quarter within six months. Companies shall be dissolved where the ratio of ordinary shares to savings shares and shares with limited voting rights is not restored within the aforementioned time limits.

6. The share capital represented by savings shares shall not be counted for the purpose of establishing the due constitution of the shareholders' meeting and the validity of the resolutions adopted, nor for the purpose of calculating the ratios referred to in the third and fourth paragraphs of Article 2393 of the Civil Code and Articles 125, 128 and 129 of this decree.

7. Savings shares may be issued both on the occasion of increases in the share capital, in accordance with Article 2441 of the Civil Code, and on the occasion of the conversion of ordinary or other classes of shares already issued; conversion rights shall be assigned to shareholders by a resolution of the extraordinary shareholders' meeting.

8. Unless the instrument of incorporation and bylaws state otherwise, in the case of issues of new shares for cash where the right of pre-emption has not been excluded or limited, holders of savings shares shall enjoy the right of pre-emption for savings shares of the same class or, in the absence thereof or to make up the difference, for savings shares of another class, preference shares or ordinary shares, in that order.

Article 146

Special shareholders' meetings

1. Special shareholders' meetings of holders of savings shares shall resolve:

a) on the appointment and removal of the common representative and legal action for liability against such person;

b) on the approval of resolutions adopted by the shareholders' meeting of the company that prejudice the rights of the category, with the favourable vote of as many shares as represent at least twenty per cent of the shares of the class in question;

c) on the creation of a fund for the expenses necessary to protect common interests and the related statement of accounts; the fund shall be advanced by the company, which may recover the advance from the profits due to

holders of savings shares in excess of any amount guaranteed;

d) on the settlement of disputes with the company, with the favourable vote of shares representing at least twenty per cent of the shares of the class in question;

e) on other matters of common interest.

2. Special shareholders' meetings of holders of savings shares shall be called by the common representative of the holders of savings shares or by the directors of the company within two months from the issue or conversion of the shares and when they deem it necessary or it has been requested by holders of savings shares representing at least one per cent of the savings shares of the same class. Article 2406 of the Civil Code shall apply.

3. By way of derogation from the second paragraph of Article 2376 of the Civil Code, special shareholders' meetings, except in the cases referred to in paragraphs lb) and ld), shall adopt resolutions at the first and second calls with the favourable vote of shares representing at least twenty and ten per cent of the shares in circulation; at the third call, the special shareholders' meetings shall adopt resolutions by simple majority of the persons present, regardless of the proportion of the capital they represent. Article 2416 of the Civil Code shall apply.

Article 147

Common representatives

1. Common representatives shall be subject to Article 2417 of the Civil Code, where the term bondholders shall be understood to refer to holders of savings shares.

2. Legal persons authorized to provide investment services and trust companies may be appointed as common representatives.

3. Common representatives shall have the obligations and powers referred to in Article 2418 of the Civil Code, where the term bondholders shall be understood to refer to holders of savings shares; they may also examine the books referred to in subparagraphs 1) and 3) of Article 2421 of the Civil Code, obtain extracts thereof, attend shareholders' meetings and challenge the resolutions they adopt. Their expenses shall be charged to the fund referred to in Article 146(1c).

4. The bylaws may assign the common representative additional powers to protect the interests of holders of savings shares and must establish procedures to ensure the common representative receives adequate information on corporate transactions that may influence the price of shares of the class in question

Section V

Boards of auditors

Article 148

Composition

1. The bylaws of a company shall establish, for the board of auditors:

a. the number, not less than three, of auditors;
b. the number not less than two, of alternates;
c. the criteria and procedures for appointing the chairman;
d. limits on the cumulation of positions.

2. The bylaws shall contain the clauses necessary to ensure that one of the auditors is elected by the minority shareholders. Where the board consists of more than three auditors, the number of auditors elected by the minority shareholders may not be less than two.

3. The following persons may not be elected as auditors and, where elected, they shall be disqualified from office:

a) persons who are in the conditions referred to in Article 23 82 of the Civil Code;

b) spouses, relatives and the like up to the fourth degree of kinship of the directors of the company or of its subsidiary or parent companies,

c) persons who work either in a self-employed capacity or as employees for the company or for its subsidiary or parent companies.

4. The Minister of Justice, in agreement with the Minister of the Treasury, after consulting Consob, the Bank of Italy and Isvap, shall issue a regulation laying down the integrity and experience requirements for the members of the board of auditors. Article 13(2) shall apply.

Article 149

Duties

1. The board of auditors shall check:

a. compliance with the law and the bylaws;
b. observance of the principles of correct administration;
c. the adequacy of the company's organizational structure for matters within the scope of the board's authority, the internal control system and the administrative and accounting system as well as the reliability of the latter in correctly representing the company's transactions; d) the adequacy of the instructions imparted by the company to its subsidiaries pursuant to Article 114(2).

2. The members of the board of auditors shall attend the shareholders' meetings and the meetings of the board of directors and the executive committee. The second paragraph of Article 2405 of the Civil Code shall apply in the event of failure to attend two meetings

of the executive committee.

3. The board of auditors shall notify Consob without delay of irregularities found in the performance of its oversight activity and shall transmit the related minutes of the meetings and investigations conducted with all other relevant documentation.

4. Paragraph 3 shall not apply to companies with shares listed only on regulated markets in other EU countries.

Article 150

Information requirements

1. The directors shall promptly inform the board of auditors, in the manner laid down in the bylaws and at least every three months, of the activities carried out and the transactions of greatest significance for the company's profitability, financial position or assets and liabilities effected by the company or its subsidiaries; in particular, they shall report on any transactions potentially involving a conflict of interest.

2. The board of auditors and the external auditing firm shall exchange data and information relevant to the performance of their respective duties.

3. The persons assigned to internal control functions shall also report to the board of auditors at their own initiative or at the request of one or more members of the board of auditors.

Article 151

Powers

1. The auditors, jointly or severally, may require the directors to supply information on the company's operations or on particular transactions and may at any time carry out inspections and controls.

2. The board of auditors, after notifying the chairman of the board of directors, may call the shareholders' meeting and meetings of the board of directors or the executive committee and use employees of the company in performing its duties. The powers of calling meetings and requesting collaboration may also be exercised by at least two members of the board of auditors.

3. For the purpose of evaluating the adequacy and reliability of the administrative and accounting system, the auditors, on their own responsibility and at their own expense, may use, individually or otherwise, their own employees and assistants who are not in any of the conditions referred to in Article 148(3). The company may deny such assistants access to confidential information.

4. Investigations carried out must be entered in the register of meetings and resolutions of the board of auditors, which must be kept by the board at the registered office of the

company. The last paragraph of Article 2421 of the Civil Code shall apply.

Article 152

Reports to the courts

1. The board of auditors, where it has a well-founded suspicion of serious irregularities in the directors' performance of their duties, may report the facts to the courts pursuant to Article 2409 of the Civil Code. In such case the costs of the investigation shall be charged to the company and the court may also remove the directors alone.

2. Consob, where it has a well-founded suspicion of serious irregularities in the auditors' performance of their duties, may report the facts to the courts pursuant to Article 2409 of the Civil Code, the costs of the investigation shall be charged to the company.

3. Paragraph 2 shall not apply to companies with shares listed only on regulated markets in other EU countries.

4. Article 70(7) of the Banking Law shall be unaffected.

Article 153

Obligation to report to the shareholders' meeting

1. The board of auditors shall report to the shareholders' meeting called to approve the annual accounts on its oversight activities and any omissions or censurable actions found.

2. The board of auditors may make proposals to the shareholders' meeting concerning the annual accounts and their approval and matters within the scope of its authority.

Article 154

Provisions not applicable

1. Articles 2397, 2398, 2399, 2403, 2403-*bis*, 2405, first paragraph, 2426, subparagraphs 5 and 6, 2429, second paragraph, 2433-*bis*, fifth paragraph, 2440 and 2441, sixth paragraph, of the Civil Code shall not apply to boards of auditors of companies with listed shares.

Section VI

Auditing

Article 155

Performance of audits

1. Auditing firms entered in the special register referred to in Article 161shall verify:

> a) during the financial year, that companies' accounts are kept properly and their transactions reported correctly in the accounting records; b) b) that companies' annual accounts and consolidated accounts correspond to the results of the accounting records and tests performed and that they comply with the relevant statutory and regulatory provisions.

2. Auditing firms may obtain documents and information serving to carry out the audit from the company's directors and may carry out examinations, inspections and controls; they shall inform Consob and the board of auditors without delay of any facts deemed to be censurable.

3. Auditing firms shall record information on their activity in a special book kept at the registered office of the companies that engaged them, according to the criteria and procedures laid down by Consob in a regulation. The third paragraph of Article 2421 of the Civil Code shall apply.

Article 156

Opinion on the annual accounts

1. Auditing firms shall render an opinion on companies' annual accounts and consolidated accounts in special reports. The reports must be signed by the person responsible for the audit, who must be a partner or director of the auditing firm and entered in the register of auditors kept at the Ministry of Justice.

2. Auditing firms shall render an unqualified opinion whore the company's annual accounts and consolidated accounts comply with the statutory and regulatory provisions governing their preparation.

3. Auditing firms may render a qualified opinion, an adverse opinion or a disclaimer. In such cases the firm shall detail the reasons for its decision in its reports.

4. Where an auditing firm renders an adverse opinion or a disclaimer, it shall immediately inform Consob.

5. The reports on the accounts shall be filed in accordance with Article 2435 of the Civil Code and must remain on deposit at the registered office of the company during the fifteen days preceding the shareholders' meeting called to approve the annual accounts and

until the annual accounts are approved.

Article 157

Effects of audit opinions on the accounts

1. Except in the cases referred to in Article 156(4), the resolution of the shareholders' meeting approving the annual accounts may be challenged by shareholders representing at least five per cent of the share capital on the grounds that the accounts fail to conform with the provisions governing the preparation thereof Shareholder's representing the same percentage of the capital of companies with listed shares may request the courts to verify the conformity of the consolidated accounts with the provisions governing the preparation thereof.

2. Consob may take the actions referred to in paragraph 1 within six months from the entry of the annual accounts or the consolidated accounts in the Company Register.

3. This article shall not apply to companies with shares listed only on regulated markets in other EU countries.

4. For *società cooperative*, the percentage of capital specified in paragraph 1 shall be understood to refer to the total number of members.

Article 158

Proposals for increases in capital, mergers, demergers and the distribution of interim dividends

1. In the case of increases in capital where the right of pre-emption has been excluded or limited, the opinion on the fairness of the issue price of the shares shall be rendered by the auditing firm engaged to audit the accounts. Proposals for increases in capital shall be sent to the auditing firm together with the directors' report referred to in the sixth paragraph of Article 2441 of the Civil Code at least forty-five days before the day set for the shareholders' meeting that must examine them. The auditing firm shall render its opinion within thirty days.

2. The directors' report and the opinion of the auditing firm must be kept on deposit at the registered office of the company during the fifteen days preceding the meeting and until the meeting has resolved. Such documents must be annexed to the other documents required for the entry of the resolution in the Company Register.

3. In the case of increases in capital by means of contributions in kind, the tasks assigned to the board of auditors by Article 2440 of the Civil Code shall be performed by the auditing firm engaged to audit the accounts.

4. An accounting firm engaged to audit the accounts of more than one company involved in a merger or a demerger may prepare the report on the fairness of the share exchange rate only for one of the companies involved.

5. The opinion referred to in the fifth paragraph of Article 2433-*bis* of the Civil Code shall be rendered by auditing firm engaged to audit the accounts.

Article 159

Conferment and revocation of the engagement

1. The shareholders' meeting shall confer, on the occasion of the approval of the accounts, the engagement to audit the annual accounts and the consolidated accounts on an auditing firm entered in the special register referred to in Article 161, after consulting the board of auditors. The meeting shall determine the fee to which the auditing firm shall be entitled.

2. The meeting shall revoke the engagement, after consulting the board of auditors, where there is just cause, at the same time conferring the engagement on another auditing firm.

3. Article 2469 of the Civil Code shall apply to the resolutions referred to in paragraphs 1 and 2 adopted by the shareholders' meeting of a listed *società in accomandita per azioni.*

4. The engagement shall last for three financial years and may be renewed not more than twice.

5. The resolutions referred to in paragraphs 1 and *2* shall be transmitted to Consob.

6. Consob shall confer the engagement, proceeding on its own authority, where no resolution conferring the engagement is adopted; in such case Consob shall also determine the fee.

7. In the event of revocation of the engagement, auditing activity shall continue to be performed by the revoked auditing firm until the conferment of the new engagement takes effect.

8. Consob shall issue a regulation laying down:

a) the documentation to be transmitted together with the resolutions referred to in paragraphs 1 and 2 and the procedures and time limits for the transmission;

b) the procedures and time limits for the approval and communication to interested parties of measures adopted by Consob;

c) the time limits within which the directors must enter the resolutions and measures referred to in paragraphs 1, 2 and 6 in the Company Register.

Article 160

Incompatibility

1. In order to ensure the independence of auditing firms and the persons responsible for

audits, an engagement may not be conferred on an auditing firm that is in one of the situations of incompatibility established in a regulation issued by the Minister of Justice after consulting Consob.

2. The prohibition referred to in the fourth paragraph of Article 2372of the Civil Code shall also apply to the auditing firm on which the engagement h a been conferred and the person responsible for the audit.

Article 161

Special register of auditing firms

1. Consob shall keep a special register of auditing firms authorized to perform the activities referred to in Articles 155 and 158.

2. Consob shall enter auditing firms in the special register after verifying that they satisfy the requirements referred to in Article 6(1) of Legislative Decree 88 of 27 January 1992 and the requirement of technical adequacy. An auditing firm with a director in one of the situations specified in Article 8(1) of Legislative Decree 88 of 27 January 1992 may not be entered in the register.

3. Auditing firms constituted abroad may be entered in the register if they satisfy the requirements referred to in paragraph 2. Such firms shall transmit an annual report to Consob on their accounts with reference to the activity of auditing and organizing accounts carried on in Italy.

4. In order to be entered in the register, an auditing firm must possess an adequate guarantee provided by banks, insurance companies or intermediaries entered in the special register referred to in Article 107 of the Banking Law to cover the risks deriving from their auditing activity.

Article 162

Supervision of auditing firms

1. Consob shall supervise the activity of the auditing firms entered in the special register to verify their independence and technical adequacy.

2. In performing its supervision, Consob may:

a) require auditing firms to communicate data, information, records and documents periodically or otherwise, specifying the manner and time limits.
b) b) b) carry out inspections and obtain information and clarification from partners, directors, members of the board of auditors and general managers of auditing firms;

c) recommend principles and methods to be adopted for auditing activity, after consulting the *Consiglio nazionale dei dottori commercialisti* and the

Consiglio nazionale dei ragionieri.

3. Auditing firms entered in the special register shall inform Consob within thirty days of the replacement of directors, partners who represent the firm in auditing or general managers, and of transfers of capital parts and shares; within the same time limit they shall inform Consob of any other changes in the membership, administrative body or shareholder agreements affecting the requirements set forth in Article 161(2).

Article 163

Consob measures

1. Where Consob finds serious irregularities in the performance of auditing activity with reference to one or more engagements, it may:

a) order the auditing firm not to use, for a period of not more than two years, the person responsible for the audit in which the irregularities were found;

b) prohibit the firm from accepting new auditing engagements for a period not longer than one year.

2. Consob shall delete the firm from the register where:

a) the irregularities are particularly serious;

b) the requirements for ent6 in the special register are no longer satisfied and the firm does not satisfy them within a time limit, of not more than six months, established by Consob;

c) the firm does not comply with measures referred to in paragraph 1.

3. Consob may also delete auditing firms from the special register where, for an uninterrupted period of five years, they have not carried out auditing engagements communicated to Consob pursuant to Article 159.

4. Deletions from the special register and the measures referred to in paragraph 1 shall be communicated to the interested parties and the Ministry of Justice; the latter shall inform Consob of measures adopted in respect of persons entered in the register of auditors.

5. Deletions from the special register shall be communicated immediately to the companies that have conferred the auditing engagements. Article 159(6) shall apply.

Article 164

Liability

1. The first paragraph of Article 2047 of the Civil Code shall apply to auditing firms.

2. The persons responsible for an audit and the employees who performed the audit shall be liable, jointly and severally with the auditing firm, for injury to the company that conferred the engagement and third parties as a result of non-fulfilment of their duties or illicit actions.

Article 165

Auditing of groups

1. The provisions of this section, except for Article 157, shall also apply to subsidiaries of companies with listed shares. The checks provided for in Article 155(1) shall be performed exclusively by an auditing firm, without prejudice to the other powers attributed to the board of auditors by the Civil Code.

2. Consob shall issue a regulation with provisions implementing this article, establishing, in particular, criteria for the exclusion of subsidiaries that are not material for the purposes of the consolidation. The regulation shall be issued in agreement with the supervisory authorities competent for the regulation of the persons subject to their supervision.

PART V

SANCTIONS

TITLE I

PENAL SANCTIONS

CHAPTER I

INTERMEDIARIES AND MARKETS

Article 166

Unauthorized activity

1. The penalty of imprisonment for a term of between six months and four years and a fine of between four million and twenty million lire shall be inflicted on any person who,

without being authorized *pursuant to this decree:*

a. provides investment services or collective asset management services;
b. markets units or shares of collective investment undertakings in Italy;
c. sells financial instruments or investment services door-to-door or uses telemarketing techniques to promote or place such instruments and services.

2. The same penalty shall apply to any person who acts as a financial salesman without being entered in the register referred to in Article 31.

3. Where there is a well-founded suspicion that a company is providing investment services or collective asset management services without being authorized pursuant to this decree, the Bank of Italy or Consob shall inform the public prosecutor with a view to the adoption of the measures provided for in Article 2409 of the Civil Code.

Article 167

Breach of duty

1. Unless the act constitutes a more serious offence, any person who, in performing the service of management on a client-by-client basis of investment portfolios or the service of collective asset management in violation of the provisions governing conflicts of interest, undertakes operations that cause injury to investors with a view to obtaining an undue profit for himself or for others shall be punished by imprisonment for a term of between six months and three years and by a fine of between ten million and two hundred million lire.

Article 168

Commingling of assets

1. Unless the act constitutes a more serious offence, any person who, in providing investment services or collective asset management services or custody for the financial instruments or cash of a collective investment undertaking, with a view to obtaining an undue profit for himself or for others, violates the provisions governing the separation of assets and thereby causes injury to clients shall be punished by imprisonment for a term of between six months and three yea s and by a fine of between ten million and two hundred million lire.

Article 169

Holdings of capital

1. Unless the act constitutes a more serious offence, any person who makes false representations in the notifications referred to in Articles 15(1), 15(3), 61(6) and 80(7) or in those required pursuant to Article 17 shall be punished by imprisonment for a term of between six months and three years and by a fine of between ten million and one hundred million lire.

Article 170

Central depository services for financial instruments

1. Any person who in effecting registrations or issuing certifications in connection with central depository services falsely represents facts of which the registration or certification is intended to prove the truth or who transfers or delivers financial instruments or transfers the related rights without recovering the certifications, shall be punished by imprisonment for a term of between three months and two years.

Article 171

Protection of supervision

1. In cases other than those provided for in Article 134(1) of the Banking Law, any person performing administrative, managerial or control functions for persons authorized to provide investment services or collective asset management services who, with a view to obstructing the performance of supervisory functions, in communications to the Bank of Italy or Consob misrepresents facts concerning the economic conditions of such persons or concerning activities performed on behalf of customers, or who, for the same purpose, wholly or partly conceals facts that he or she should have notified concerning such conditions or activities, shall be punished, unless the act constitutes a more serious offence, by imprisonment for a term of between one and five years and by a fine of between two million and twenty million lire.

2. In cases other than those provided for in paragraph 1 and Article 134 of the Banking Law, any person performing administrative, managerial or control function for persons authorized to provide investment services or collective asset management services who obstructs the performance of the supervisory functions entrusted to the Bank of Italy and Consob shall be punished by imprisonment for a term of up to one year and by a fine of between twenty-five million and one hundred million lire.

3. Paragraphs 1 and 2 shall also apply to:

a) independent experts whose engagement the Bank of Italy may require pursuant to Article 6;

b) persons performing administrative, managerial or control functions for foreign persons authorized to market units or shares in collective investment

undertakings pursuant to Article 42;

c) persons performing administrative, managerial or control functions in the management companies referred to in Articles 61 and 80;

d) persons who organize the trading referred to in Articles 78 and 79, persons who carry out such trading and issuers referred to in Article 78;

e) financial salesmen and stockbrokers;

f) persons performing administrative, managerial or control functions for the company referred to in Article 69(1);

g) persons managing the systems referred to in Articles 68, 69(2) and 70.

CHAPTER II

ISSUERS

Article 172

Irregular acquisition of shares

1. Directors of companies with listed shares or of subsidiaries thereof who acquire own shares or shares of the parent company in violation of Article 132 shall be punished by imprisonment for a term of between six months and three years and by a fine of between four hundred thousand and two million lire.

2. Paragraph 1 shall not apply where the acquisition is made in the market in a manner not agreed with the market management company or different from that agreed but which is nonetheless likely to ensure the equal treatment of shareholders.

Article 173

Failure to dispose of shareholdings

1. Directors of companies with listed shares or of companies that own shareholdings in companies with listed shares who violate the obligation to dispose of shareholdings referred to in Articles 110 and 121 shall be punished by imprisonment for a term of up to one year and by a fine of between two hundred thousand and two million lire.

Article 174

False notifications and obstruction of Consob's functions

1. Unless the act constitutes a more serious offence, persons who make false statements in the notifications referred to in Articles 94, 102, 113, 114, 115, 120(2), 120(3), 144(2) and 144(4) shall be punished by imprisonment for a term of between six months and three years and by a fine of between ten million and one hundred million lire.

2. Apart from the cases provided for in paragraph 1, persons performing administrative, managerial or control functions at listed issuers who obstruct the exercise of Consob's functions shall be punished by imprisonment for a term of between six months and three years and by a fine of between twenty-five million and one hundred million lire.

CHAPTER III

AUDITING OF ACCOUNTS

Article 175

False statements in auditing firms' reports or communications

1. The directors and audit partners of an auditing firm who in reports or other communications concerning a company audited by the firm make false statements or false representations or wholly or partly conceal facts regarding the company's economic situation shall be punished by imprisonment for a term of between one and five years and by a fine of between two million and twenty million lire.

Article 176

Use and divulgence of confidential information

1. The directors, audit partners and employees of an auditing firm who for their own or others' profit use confidential information obtained by virtue of their duties in relation to a company audited by the firm shall be punished by imprisonment for a term of between six months and two years and by a fine of between eight hundred thousand and eight million lire.

2. The directors, audit partners and employees of an auditing firm who. without good cause, divulge information obtained by virtue of their duties in relation to a company audited by the firm shall be punished, where the act is likely to injure the company, by imprisonment for a term of up to one year.

3) The offences referred to in this article shall be punishable where an action is brought by the company to which the information used or divulged refers.

Article 177

Illegal financial relationships with the audited company

1. The directors, audit partners and employees of an auditing firm who contract loans in whatsoever form, whether directly or through nominees, with a company audited by the firm, or a parent or subsidiary company thereof, or who have such a company provide guarantees for their own debts shall be punished by imprisonment for a term of between one and three years and by a fine of between four hundred thousand and four million lire.

Article 178

Illegal compensation

1. The directors, audit partners and employees of an auditing firm who receive, directly or indirectly, from a company audited by the firm compensation in money or kind beyond that legitimately agreed shall be punished by imprisonment for a term of between six months and three years and by a fine of between four hundred thousand and two million lire.

2. The same penalty shall apply to the directors, managers and liquidators of the company audited by the firm who paid the compensation not due.

Article 179

Common provisions

1. Where the cases provided for in the articles of this chapter result in serious injury to the auditing firm or the company audited, the penalty shall be increased up to one half.

2. Criminal judgements issued against directors, partners or employees of an auditing firm for offences committed in the performance or because of the duties provided for in this decree shall be communicated to Consob by the clerk of the judicial authority that issued the judgement.

3. The provisions of this chapter shall apply in the cases of compulsory auditing of accounts pursuant to this decree or other statutory or regulatory provisions and where the auditing of accounts or submission of annual accounts to the opinion of an auditing firm constitutes a statutory or regulatory condition for engaging in a given activity or obtaining benefits or subsidies.

CHAPTER IV

UNAUTHORIZED USE OF INSIDE INFORMATION AND MANIPULATION INVOLVING FINANCIAL INSTRUMENTS

Article 180

Unauthorized use of inside information

1. The penalty of imprisonment for a term of up to two years and a fine of between twenty million and six hundred million lire shall be inflicted on any person who, possessing inside information by virtue of holding an interest in a company's capital or exercising public or other duties, a profession or an office:

a) makes purchases or sales or carries out other transactions, directly or through a nominee, involving financial instruments on the basis of such information;

b) divulges such information to others without good cause or advises others, on the basis thereof, to carry out any of the transactions referred to in subparagraph a).

2. The same penalty shall be inflicted on any person who, having obtained, directly or indirectly, inside information from persons referred to in paragraph 1, commits any of the acts described in subparagraph a) thereof.

3. For the purposes of applying paragraphs 1 and 2, inside information shall mean specific information having a precise content concerning financial instruments or issuers of financial instruments that has not been made public and that if made public would be likely to have a significant effect on the price of such instruments.

4. In the cases referred to in paragraphs 1 and 2, the judge may increase the fine up to three times where, in view of the particular seriousness of the offence, the personal situation of the guilty party or the size of the resulting gain, the maximum appears inadequate.

5. In the event of conviction or application of the penalty at the request of the parties pursuant to Article 444 of the Code of Penal Procedure, the confiscation of the means, including financial resources, used to commit the offence and the goods constituting the profit thereof shall always be ordered, unless they belong to persons not involved in the offence.

6. The provisions of this article shall not apply to transactions carried out on behalf of the Italian State, the Bank of Italy or the Italian Foreign Exchange Office for reasons relating to economic policy.

Article 181

Manipulation involving financial instruments

1. Any person who spreads false, exaggerated or misleading information or sets up sham transactions or other devices that are likely to have a significant effect on the price of financial instruments or create the appearance of an active market in them shall be punished by imprisonment for a term of up to three years and by a fine of between one and fifty million lire.

2. Where the price is significantly affected or the appearance of an active market is created, the penalties shall be increased.

3. The penalties shall be doubled:

a) in the cases provided for in the third paragraph of Article 501 of the Penal Code;

b) where the act is committed by shareholders who exercise control within the meaning of Article 93, or by directors, liquidators, general managers, managers, members of the board of auditors or independent auditors of investment firms or banks that provide investment services, or by stockbrokers, or by members or employees of Consob;

c) where the act is perpetrated through the press or other mass media.

Article 182

Accessory penalties

1. Conviction for any of the offences referred to in Articles 180 and 181 shall entail the application of the accessory penalties referred to in Articles 28, 30, 32-*bis* and 32-*ter* of the Penal Code for a period of not less than six months and not more than two years and the publication of the judgement in at least two daily newspapers having national circulation of which one shall be an economic newspaper.

Article 183

Scope

1. The offences referred to in Articles 180 and 181 shall be punished in accordance with Italian law even if they were committed abroad, where they involve financial instruments traded in Italian regulated markets.

2. Without prejudice to what is provided for in paragraph 1, Articles 180 and 181 shall apply to acts involving financial instruments admitted to trading in regulated markets in Italy or other EU countries.

Article 184

Interdictions

1. The interdiction provided for in Article 290 (1) of the Code of Penal Procedure may be applied in penal proceedings for the offences referred to in Articles 180 and 181, where appropriate beyond the penalty limits established by Article 287(1) of such Code.

Article 185

Information concerning an offence and investigative activity

1. When the public prosecutor has information concerning any of the offences referred to in Articles 180 and 181, he shall immediately report it to the chairman of Consob.

2. Consob shall investigate the violations using the powers attributed to it with respect to the persons subject to its supervision.

3. To the same end, Consob may also:

a) request information, data or documents of anyone who appears to be acquainted with the facts, establishing the time limits for the related communication;

b) hear anyone who appears to be acquainted with the facts and shall prepare procès-verbaux of such hearings;

c) avail itself of the cooperation of governmental bodies and access the information system of the taxpayer register in the manner provided for in Articles 2 and 3(1) of Legislative Decree 212 of 12 July 1991.

4. The powers provided for in paragraphs 3(a) and 3(b) shall be exercised in compliance with Articles 199, 200, 201, 202 and 203 of the Code of Penal Procedure insofar as they are compatible.

Article 186

Transmission of the records to the public prosecutor

1. At the conclusion of the investigation the chairman of Consob shall transmit the documentation gathered in the course of the activity referred to in Article 185 to the public prosecutor, together with an accompanying report.

Article 187

Powers of Consob in penal proceedings

1. In proceedings for the offences referred to in Articles 180 and 181, Consob shall exercise the rights and powers which the Code of Penal Procedure attributes to entities and associations representing the interests injured by the offence.

TITLE II

ADMINISTRATIVE SANCTIONS

Article 188

Unauthorized use of names

1. The use in the name or in any logo or communication addressed to the public of the words *SIM* or *società di intermediazione mobiliare* or *impresa di investimento, società di gestione di risparmio, SICAV or società di investimento a capitale variabile*, or other words or expressions in Italian or in a foreign language likely to deceive as to authorization to provide investment services or the service of collective portfolio management, shall be prohibited for persons other than, respectively, investment firms, asset management companies and SICAVs. Any person who contravenes the prohibition of this article shall be punished by a pecuniary administrative sanction of between one million and twenty million lire. .!

2. Article 16 of Law 689 of 24 November 1981 shall not apply to the pecuniary administrative sanction provided for in this article.

Article 189

Holdings of capital

1. Omission of notifications referred to in Articles 15(1), 15(3), 61(6) and 80(7) and of those required pursuant to Article 17 shall be punished by a pecuniary administrative sanction of between ten million and one hundred million lire.

2. The same sanction shall apply in the case of violation of the prohibitions on voting referred to in Articles 16(1-2), 61(7) and 80(8).

Article 190

Other pecuniary administrative sanctions relating to the regulation of intermediaries and markets

1. Persons performing administrative or managerial functions in and employees of companies or entities shall be liable to a pecuniary administrative sanction of between one million and fifty million lire for noncompliance with Articles 6, 7(2-3), 8(1), 9, 10, 12, 13(2), 21, 22, 24(1), 25, 27(3-4), 28(3), 30(3-5), 31(1-2), 31(5-7), 32(2), 36(2-4), 36(6-7), 37, 38(3-4), 39(1-2), 40(1), 41(2-3), 42(2-4), 42(6-8), 43(7-8), 50(1) and 65, or with general or specific rules issued by the Bank of Italy or Consob pursuant thereto.

2. The same sanction shall also apply to:

a)persons performing administrative or managerial functions in and employees of market management companies, for non-compliance with Part III, Title I, Chapter I, or with the provisions issued pursuant thereto;

b) persons performing administrative or managerial functions in and employees of

central depositories, for non-compliance with Part III, Title II, or with the provisions issued pursuant thereto;

c) organizers, issuers and intermediaries for non-compliance with Articles 78 and 79;

d) persons managing systems referred to in Articles 68, 69(2) and 70 or performing administrative or managerial functions in the company referred to in Article 69(1), for non-compliance with Articles 68, 69, 70 and 77(1) or the related implementing provisions.

3. The sanctions provided for in paragraphs 1 and 2 shall also apply to persons performing control functions in the companies or entities referred to therein for violation of the provisions referred to in those paragraphs and for failure to ensure, in accordance with the duties inherent in their office, compliance with such provisions by others. The same sanctions shall apply in the case of violation of the provisions of Article 8(2-6).

4. Article 16 of Law 689 of 24 November 1981 shall not apply to the pecuniary administrative sanctions provided for in this article.

Article 191

Public offerings

1. Any person who makes a public offering in violation of Articles 94(1) and 96 or of the interdictions adopted pursuant to Articles 99 and 101(3c) shall be punished by a pecuniary administrative sanction of between one tenth and one half of the total value of the financial products marketed but not exceeding two hundred million lire. If the total value of the financial products marketed is not determined, a pecuniary administrative sanction of between ten million and two hundred million lire shall apply.

2. Any person who makes a public offering in violation of Articles 94(3), 94(4), 95, 97 and 98 or the related implementing provisions issued by Consob shall be punished by a pecuniary administrative sanction of between ten million and two hundred million lire.

3. The sanction referred to in paragraph 2 shall also apply to any person who advertises public offerings in violation of Article 101(1) or of the regulation issued or the interdictions issued pursuant to paragraphs 2, 3(a) and 3 (b) of the same article.

Article 192

Public offers to buy or exchange

1. Any person who violates the obligation to make a public offer to buy or exchange or who makes a public offer in violation of Articles 102(1) and 102(3) shall be punished by a pecuniary administrative sanction of between ten million and two hundred million lire.

2. The sanction referred to in paragraph I shall apply to persons who:

a) fail to comply with the indications given by Consob pursuant to Article

102(2) or violate the regulations issued in accordance with Articles 103(4) and 103(5);

b) exercise voting rights in violation of Article 110.

3. Directors of companies with shares listed on Italian regulated markets who carry out transactions in violation of the compulsory abstention referred to in Article 104(1) shall be punished by a pecuniary administrative sanction of between ten million and two hundred million lire.

Article 193

Corporate information and duties of auditing firms and members of boards of auditors

1. Persons performing administrative, managerial or control functions in companies, entities or associations required to effect the notifications referred to in Articles 113, 114 and ll5 shall be liable to a pecuniary administrative sanction of between ten million and two hundred million lire for non-compliance with such articles or the related implementing provisions. Where the notifications are due from a natural person, in the event of a violation the sanction shall be applied to the latter.

2. Omission of the notifications of significant shareholdings and shareholders' agreements referred to, respectively, in Articles 120(2-4) and Articles 122(1-2) and 122(5) or violation of the prohibitions established by Articles 120(5), 121(1), 121(3) and 122(4) shall be punished by a pecuniary administrative sanction of between ten million and due hundred million lire.

3. The sanction referred to in paragraph 2 shall apply to: a) members of boards of auditors who omit the notifications referred to in Article 149(3), b) directors of auditing firms who violate Article 162(3).

Article 194

Proxies

1. Any person who solicits or collects, or confers an appointment to solicit or collect, proxies for shareholders' meetings of companies listed on regulated markets in Italy or other EU countries without being authorized to do so under Article 140 or without satisfying the requirements laid down in Articles 139 and 141 shall be punished by a pecuniary administrative sanction of between ten million and two hundred million lire.

2. The promoter, persons who perform administrative, managerial or control functions in intermediaries, and representatives of shareholders' associations who violate Articles 138(2), 142(1), 144(4) or the regulation issued in accordance with Article 144(1) shall be punished by a pecuniary administrative sanction of between ten million and due hundred million lire.

Article 195

Sanction procedures

1. Except as provided for by Article 196, the administrative sanctions referred to in this Title shall be imposed by the Ministry of the Treasury, acting on a proposal from the Bank of Italy or Consob, within the scope of their respective authority, with a decree stating the grounds for the decision.

2. The Bank of Italy or Consob shaL1 formulate the proposal, after it has notified the charges to the interested parties, considered briefs submitted within thirty days and taken account of all the information gathered.

3. The decree imposing sanctions shaL1 be published in abridged form in the Bulletin of the Bank of Italy or Consob. The Ministry of the Treasury, upon request of the authority that proposed the imposition of sanctions, taking account of the nature of the violation and the interests involved, may establish further methods of publicizing the measure, charging the related expenses to the perpetrator.

4. Objection to the measure imposing sanctions may be presented to the court of appeal of the place where the company or entity with which the perpetrator of the violation is connected has its registered office or, where such criterion is not applicable, the place where the violation was committed. The objection must be communicated to the Ministry of the Treasury and the authority that proposed the imposition of sanctions within thirty days of the notification of the measure and must be filed with the clerk of the court of appeal within thirty days of such communication.

5. The objection shall not suspend enforcement of the measure. Where serious grounds exist, the court of appeal may order suspension with a ruling stating the grounds for the decision.

6. At the request of the parties, the court of appeal may establish time limits for the submission of memoranda and documents and may grant a hearing with or without the personal appearance of the parties.

7. The court of appeal shall decide on the objection in camera, having heard the public prosecutor, in a ruling stating the grounds for the decision.

8. A copy of the court's ruling shall be sent by the clerk of the court of appeal to the Ministry of the Treasury and to the authority that proposed the imposition of sanctions for publication in abridged form in the latter's Bulletin.

9. The companies and entities with which the perpetrators of the violations are connected shall answer jointly and severally with them for payment of the sanction and the publicity expenses referred to in the second sentence of paragraph 3 and shall be held to the exercise of the right of recourse against those responsible for the violations.

Article 196

Sanctions applicable to financial salesmen

1. Financial salesmen who violate the provisions of this decree or general or specific rules issued by Consob pursuant thereto shall be punished, taking account of the seriousness of

the violation and recidivism, with one of the following sanctions:

a) a reprimand in writing;

b) a pecuniary administrative sanction of between one million and fifty million lire;

c) suspension from the register for a period of between one and four months;

d) deletion from the register.

2. The sanctions shall be imposed by Consob with a measure stating the grounds for the decision after it has notified the charges to the interested parties and evaluated briefs submitted by them within thirty days. Interested parties may also request to be heard in person within the same time limit.

3. The provisions of Law 689 of 24 November 1981 shall apply to the sanctions established by this article, except for Article 16.

4. The companies that use the services of the persons responsible for the violations shall answer jointly and severally with them for payment of the pecuniary sanctions and shall be held to the exercise of the right of recourse against them.

PART VI

TRANSITIONAL AND FINAL PROVISIONS

Article 197

Consob staff

1. In order to ensure the full and prompt exercise of the control functions established by Article 62 of Law 449 of 27 December 1997 Consob shall carry out directly all the procedures necessary for the immediate filling of staff positions according to the competitive examination criteria referred to therein, within the limits of its own financial resources and without burdening the public finances.

Article 198

Endorsement of share certificates

1. The power to authenticate endorsements of share certificates provided for in Article 12 of Royal Decree Law 239 of 29 March 1942 may also be exercised by SIMs.

Article 199

Trust companies

1. Pending the comprehensive reform of the provisions governing trust companies and auditing firms, the provisions of Law 1966 of 23 November 1939 and Article 60(4) of Legislative Decree 415 of 23 July 1996 shall remain in effect.

Article 200

Intermediaries already authorized

1. Investment firms that at the date of entry into force of this decree are entered in the register referred to in Article 9 of Legislative Decree 415 of 23 July 1996 shall be automatically entered in the register referred to in Article 20.

2. Management companies that at the date of entry into force of this decree are entered in the register referred to in Article 7(1) of Law 77 of 23 March 1983, the register referred to in Article 3 (1) of Law 344 of 14 August 1993 and the register referred to in Article 3(1) of Law 86 of 25 January 1994 shall be automatically entered in the register referred to in Article 35 and shall be deemed authorized in accordance with Article 34.

3. SICAVs that at the date of entry into force of this decree are entered in the register referred to in Article 9(1) of Legislative Decree 84 of 25 January 1992 shall be automatically entered in the register referred to in Article 44.

4. Banks that at the date of entry into force of this decree are authorized to provide investment services shall remain authorized to provide the same services.

Article 201

Stockbrokers

1. The National Council of Stockbrokers' Associations shall dissolve the professional associations referred to in Article 3 of Law 402 of 29 May 19G7, except for the Milan and Rome associations.

2. Stockbrokers shall be entered in the professional register kept by one of the associations referred to in paragraph 1, which shall receive payments of the annual fee fixed by the association itself, having regard to entry in the special roll or the national roll referred to in paragraphs 5 and 6. The association must conserve the books of stockbrokers who are deceased or have been deleted from the single national roll.

3. The other provisions of Law 402 of 29 May 1967 shall be unaffected. Competitive examinations for the appointment of stockbrokers may not be held. Stockbrokers shall be removed from the rolls referred to in paragraphs 5 and 6 upon reaching the age of seventy. Stockbrokers who were appointed before the entry into force of Law 515 of 23 May 1956 shall be removed from the rolls upon reaching the age of seventy while preserving the rights and duties inherent in the office.

4. The funds in the stockbrokers' common fund and the sureties outstanding at the date of entry into force of this decree shall be returned to those having entitlement.

5. Stockbrokers in office who are members, directors, managers, employees or collaborators of SIMs, banks or asset management companies shall be entered in a special roll kept by the Ministry of the Treasury. They may not provide investment services and

may be directors, employees or collaborators of only one of the aforesaid intermediaries. They shall remain individually subject to the incompatibilities established in paragraph 11.

6. Stockbrokers in office who are not entered in the special roll referred to in paragraph 5 shall be entered in the single national roll kept by the Ministry of the Treasury.

7. Stockbrokers entered in the single national roll may perform the investment services referred to in Articles 1(5b) and 1(5c), only as regards placement, without firm commitment underwriting or standby commitments to issuers, and 1(5d) and 1(5e). They may also provide their own investment services off their business premises and the non-core services referred to in Articles 1(6c), only as regards the conclusion of stock exchange repurchase agreements and other market-practice transactions, 1(6f) and 1(6g), as well as related and instrumental activities, without prejudice to the reservation of activities by law.

8. Stockbrokers entered in the single national roll must keep the accounting records referred to in Articles 2144ff. of the Civil Code; Consob shall issue a regulation establishing the procedures for accounting control on the part of auditing firms entered in the special register referred to in Article 161.

9. Failure to perform the service of dealing for customer account for a period exceeding six months shall result in disqualification from office, where documented reasons of health are pleaded, the Ministry of the Treasury, after consulting Consob, may extend such time limit up to a maximum of 18 months.

10. In order to perform investment services, stockbrokers shall be members of the compensation systems provided for in Article 59. Coordination of the operations of the compensation systems with the insolvency procedure for stockbrokers shall be governed by the regulation referred to in Article 59(3).

11. The position of stockbroker entered in the single national roll shall be incompatible with the performance of any commercial activity, with participation as a member with unlimited liability of companies of whatever nature, with the position of director or manager of companies that engage in commercial activity and, in particular, with the position of member, director, manager, employee or collaborator of banks, SIMs, asset management companies and every other kind of financial intermediary.

12. Articles 6(1a), only as regards administrative and accounting procedures and internal controls, 6(1b), 6(2a), 6(2b), 6(2c), 8(1), 10(1), 21-25, 31-32, 167, 171, 190 and 195 shall apply to stockbrokers entered in the single national roll.

13. Stockbrokers may not deal for own account in financial instruments, directly or through nominees, except to invest their personal wealth; such investments shall be immediately communicated to Consob.

14. The Chairman of Consob may as a matter of urgency, where customers or markets are in danger, order the suspension of a stockbroker entered in the single national roll from engaging in the activities performed and the appointment of a special administrator to take over the management thereof where serious violations of legislative or administrative provisions are found. Article 53(2-4) shall apply.

15. The Ministry of the Treasury, acting on a proposal from Consob, may issue a decree deleting the stockbroker from the single national roll where the irregularities or violations of legislative or administrative provisions are exceptionally serious. The decree may be also be adopted on a proposal from the special administrator referred to in paragraph 14 or at the request of the stockbroker.

16. In the case provided for in paragraph 15, the Ministry of the Treasury shall appoint a

special administrator for the protection and restitution of the assets belonging to customers. In the performance of his functions the special administrator shall be a public official; he shall act alongside the bodies responsible for bankruptcy proceedings, where these have been established. The Ministry may provide for special safeguards and limitations on the activity of the special administrator and may remove or replace him. The emoluments due to the special administrator shall be determined by the Ministry and charged to the stockbroker. The measures provided for in this paragraph may also be adopted following the death of the stockbroker, acting on a proposal from Consob or the special administrator appointed pursuant to paragraph 14, or at the request of customers.

17. Deletion of a stockbroker from the single national roll shall result automatically from a judicial finding of insolvency. Consob shall report insolvencies declared under Article 72 to the civil court.

18. Article 190 shall apply to violations of paragraphs 8, 11 and 13.

Article 202

Rules regarding compulsory stock exchange settlement

1. Without prejudice to Article 72, the rules regarding compulsory settlement of contracts concluded by stockbrokers shall apply, insofar as they are compatible, to investment firms and banks authorized to engage in the activities referred to in Articles l(5a) and l(5b).

2. Authority over the compulsory settlement of contracts shall belong to Consob, which may issue a regulation to coordinate such procedure with that referred to in Article 72.

Article 203

Forward contracts

1. Without prejudice to the time limits for the effects of compulsory administrative liquidation referred to in Article 83 of the Banking Law and to the provisions of Article 90(3) thereof, Article 76 of the Bankruptcy Law shall apply to derivative financial instruments, to the analogous instruments identified pursuant to Article 18(5a), to foreign exchange forward transactions, securities lending transactions, repurchase agreements and stock exchange repos. All contracts concluded, even if not yet executed in full or in part, by the date of declaration of bankruptcy or the date from which the decree of compulsory administrative liquidation has effect shall be included for the purposes of this article.

2. For the application of Article 76 of the Bankruptcy Law to financial instruments and transactions specified in paragraph 1, reference may also be made to the replacement cost of the same, calculated according to market values at the date of declaration of bankruptcy or the date from which the decree of compulsory administrative liquidation has effect.

Article 204

Central depository services

1. Within twenty-four months from the date of entry into force of this decree, the Bank of Italy shall arrange for the disposal of its shareholding in "Monte Titoli S.p.A. Istituto per la custodia e l'amministrazione accentrata di valori mobiliari".

2. Until the issue of the decrees provided for in Article 90, the central depository for government securities at the 13ank of Italy shall continue to be governed by the provisions previously in force.

Article 205

Price quotations

1. Offers to buy or sell financial products in regulated markets or in the organized trading referred to in Articles 78 and 79 by persons admitted to trading therein shall not constitute either public offerings or public offers to buy or exchange within the meaning of Part IV, Title II.

Article 206

Rules applicable to companies listed on markets other than the stock exchange

1. The provisions of the Civil Code referring to companies with shares listed on the stock exchange shall apply to all companies with shares listed on regulated markets in Italy or other EU countries.

Article 207

Shareholders' agreements

1. Shareholders' agreements referred to in Article 122 and existing at the date of entry into force thereof shall be entered in the Company Register within one month of such date.

2. Fixed-term shareholders' agreements existing at the date of entry into force of this decree shall remain in effect until the time limit agreed but not beyond 1 July 2001.

3. Without prejudice to paragraph 2, Article 123 shall also apply to permanent agreements existing at the date of entry into force of this decree.

Article 208

Proxies, saving shares, boards of auditors and auditing firms

1. The provisions concerning proxies shall apply to shareholders' meetings called as of the sixtieth day following the issue of the regulations provided for in Article 144.

2. The provisions concerning saving shares shall also apply to savings shares already issued at the date of entry into force of this decree.

3. Companies with listed shares shall apply the provisions concerning the appointment of the board of auditors as of the first renewal following the date of entry into force of this decree. Until the issue of the regulation provided for in Article 148(4), the second paragraph of Article 2397 of the Civil Code shall apply.

4.Boards of auditors appointed before the entry into force of this decree but following its publication in the *Gazzetta Ufficiale della Repubblica italiana* shall remain in office for one financial year only.

5. The other provisions concerning boards of auditors and those concerning auditing firms shall apply as of the financial year commencing on 1 July 1998or thereafter.

Article 209

Auditing firms

1. Auditing firms that at the date of entry into force of this decree are entered in the register referred to in Article 8 of Presidential Decree 136 of 31 March 1975 shall be automatically entered in the register referred to in Article 161.

2.For the purposes of entering external auditors in the register kept at the Ministry of Justice, the time limit laid down in Article 13(1)of Law 132 of 13 May 1997 shall be extended to the sixtieth day following the date of entry into force of this decree.

3. Companies with listed shares shall conserve a copy of the auditing firms' report on the annual accounts for the purposes of audits by the tax authorities of the corresponding income tax returns. Where such conservation is omitted, Article 39, second paragraph, of Presidential Decree 600 of 29 September 1973 shall apply.

Article 210

Amendments to the Civil Code

1. In the fourth paragraph of Article 2372 of the Civil Code, the words "or on banks or credit institutions" shall be suppressed.

2.The seventh paragraph of Article 2441 shall be replaced by the following:

> "The right of pre-emption shall not be considered excluded or limited where the resolution to increase the capital provides for the newly-issued shares to be subscribed for by banks, financial entities or companies subject to supervision by the Commissione Nazionale per le Società e la Borsa or other persons authorized to engage in the placement of financial instruments, with the obligation to offer them to the shareholders of the company, with whatsoever type of transaction, in conformity with the first three paragraphs of this article. During the period in which they hold the shares offered to the shareholders and in any case until the right of pre-emption has been exercised, such persons may not exercise the voting rights. The costs of the operation shall be borne by the company and the resolution to increase the capital must indicate their amount".

3.The following subparagraph shall be inserted in the first paragraph of Article 2630 of the Civil Code:

> "4)fail to offer on the stock exchange, within the time limits and in the manner established by the third paragraph of Article 2441, the unexercised pre-emption rights if the related shares are subscribed for."

4.The following paragraph shall be added to Article 2633 of the Civil Code:

> "Directors who issue convertible bonds without the indications prescribed in the last paragraph of Article 2420-bis shall be punished by a fine of between *2* million and 10 million lire.

5. In the provisions for the implementation of the Civil Code and transitional provisions, approved with Royal Decree 318 of 30 March 1942, the following article shall be inserted after Article 211*:*

> "211-bis.The second sentence of Article 2441, seventh paragraph, of the Code shall not apply to the shares held at 7 March 1992 by the persons indicated in the same paragraph, with the obligation to offer them to the shareholders."

Article 211

Amendments to the Banking Law

1. Article 52 of the Banking law shall be replaced by the following:

> "Article 52 - *Notifications by the board of auditors and the persons engaged to perform the statutory audit of the accounts*
>
> 1. The board of auditors shall inform the Bank of Italy without delay of all the acts or facts of which they learn in performing their duties that may constitute an irregularity in the management of banks or a violation of the rules governing banking.

2. Firms engaged to audit the accounts of banks shall notify the Bank of Italy without delay of the acts or facts found in the performance of the engagement that may constitute a serious violation of the provisions governing banking, jeopardize the continued existence of the undertaking or result in their rendering an adverse opinion or a qualified opinion on the annual accounts or a disclaimer. Such firms shall send the Bank of Italy all other information and documents requested.

3.Paragraphs 1 and *2* shall also apply to persons who perform the duties referred to therein at companies that control banks or are controlled by them within the meaning of Article 23.

4. The Bank of Italy shall establish the manner and time limits for the transmission of the information referred to in paragraphs 1 and 2."

2.The following paragraph shall be added to Article 107 of the Banking Law:

"6.Financial intermediaries entered in the special register that have been authorized to provide investment services or have accepted repayable funds for an amount exceeding their capital shall be subject to Title IV, Chapter I, Sections I and III; in place of Articles 86(6), 86(7) and 87(1),Articles 57(4) and 57(5) of the consolidated law on financial markets, issued pursuant to Article 21 of Law 52of 6 February 1996, shall apply."

3.The following paragraph shall be added to Article 111 of the Banking Law:

"5.This article shall not apply in the cases referred to in Article 107(6)."

4. Article 160 of the Banking Law is repealed.

Article 212

Provisions concerning privatizations

1. The second sentence of Article 3(3) of Decree Law 332 of 31 May 1994, ratified with amendments by Law 474 of 30 July 1994, shall be replaced by the following: "The clause providing for a limit of ownership shall not be effective in any case where the limit is exceeded as a result of a public offer to buy made in accordance with Articles 106 and 107 of the consolidated law on financial markets, issued pursuant to Article 21 of Law 52 of 6 February 1996".

Article 213

Conversion of bankruptcy into compulsory administrative liquidation

1. From the date of entry into force of this decree bankruptcy procedures for intermediaries referred to in Article 107 of the Banking Law for which the conditions indicated in paragraph 6 thereof are satisfied and the statement of liabilities has not yet

been declared enforceable shall be converted into compulsory administrative liquidation procedures.

2. Without prejudice to the judicial finding of insolvency already declared, the court, proceeding on its own authority or otherwise, shall declare the company subject to compulsory liquidation with a ruling in camera and shall order the transfer of the record to the Ministry of the Treasury for the issue of the related decree and to the Bank of Italy.

3. The bodies of the terminated procedure and those of the compulsory liquidation shall promptly effect the handing over of the company and give notice thereof in the manner established by the Bank of Italy. The effects of acts legally completed shall not be prejudiced.

Article 214

Repeals

1. Without prejudice to what is provided for in paragraphs 2 and 3, the following provisions are or remain repealed:

a) Articles 11(1), 12-17, 22, 25, 26, 28, 31, 45-52 and 58-60 of Law 272 of 20 March 1913 and subsequent amendments;

b) Articles 26 to 43, 44(2), 46(2), 47, 49, 51, 54, last sentence, 56, 61(2), 97, and 106 to 108 of Royal Decree 1068 of 4 August 1913;

c) Articles 2 to 10 of Royal Decree Law 222 of 7 March 1925, ratified by Law 597 of 21 March 1926;

d) Royal Decree Law 375 of 9 April 1925, ratified by Law 597 of 21 March 1926;

e) Royal Decree 376 of 9 April 1925; 1

f) Articles 4, 6 and 7 of Royal Decree Law 601 of 14 May 1925, ratified by Law 562 of 18 March 1926;

g) Royal Decree Law 1047 of 26 June 1925, ratified by Law 562 of 18 March 1926;

h) Royal Decree Law 1261 of 29 July 1925, ratified by Law 562 of 18 March 1926;

i) Royal Decree Law 1748 of 11 October 1925, ratified by Law 562 of 18 March 1926;

j) Royal Decree Law 950 of 1 9 February 193 1, ratified by Law 1657 of 31 December 1931;

k) Articles 1 to 11 and 14 to 18 of Royal Decree Law 815 of 30 June 1932, ratified by Law 118 of 5 January 1933;

l) Royal Decree Law 1607 of 20 December 1932, ratified by Law 291 of 20

April 1932; m) Law 1913 of 4 December 1939;

n) Article 2369-bis of the Civil Code, approved by Royal Decree 262 of 16 March 1942; o) Viceregal Legislative Decree 250 of 18 September 1944;

p) Viceregal Legislative Decree 321 of 19 April 1946;

q) Law 515 of 23 May 1956;

r) Law 1778 of 31 December 1962;

s) Articles 1, eleventh paragraph, 2, tenth paragraph, first and second sentences, 3, 4, 4-*bis,* 4-*ter,* 5-*quinquies,* 5-*sexies,* 9, second paragraph, 13, second paragraph, 14, 15, 16, 17, 18, sixth paragraph, 18-*ter* 18-*quinquies,* fifth paragraph, and 18-*septies,* second sentence, of Decree Law 95 of 8 April 1974, ratified with amendments by Law 216 of 7 June 1974 and subsequent amendments;

t) Presidential Decree 136 of 31 March 1975; u) Presidential Decree 137 of 31 March 1975;

v) Presidential Decree 138 of 31 March 1975, except for Articles 16 and 18;

w) Law 49 of 23 February 1977; x) Law 77 of 23 March 1983, except for Articles 9 and 10-*ter;*

y) Law 289 of 19 June 1986;

z) Presidential Decree 556 of 12 December 1987;

aa) Law 1 of 2 January 1991;

bb) Law 157 of 17 May 1991, except for Article 10;

cc) Legislative Decree 84 of 25 January 1992, except for Article 14;

dd) Legislative Decree 86 of 27 January 1992, except for Article 4;

ee) Law 149 of 18 February 1992;

ff) Law 344 of 14 August 1993, except for Article 11;

gg) Law 561 of 28 December 1993; |

hh) Law 86 of 25 January 1994, except for Articles 14-*bis* and 15;

ii) Article 5(3), 5(4), 5(5) and 8 of Decree Law 332 of 31 May 1994, ratified with amendments by Law 474 of 30 July 1994;

jj Legislative Decree 415 of 23 July 1996, except for Articles 60(4), 62, 63, 64 and 65.

2. The following are repealed but shall continue to apply until the date of entry into force of the provisions issued pursuant to this decree:

a) Articles 5, 5-*bis,* 5-*ter* and 5-*quater* of Decree Law 95 of 8 April 1974, ratified with amendments by Law 216 of 7 June 1974 and subsequent

amendments; related violations shall be punished under Articles 173 and 174 or sanctioned under Article 193(2);

b) Articles 18, except for the sixth paragraph, 18-*bis*, 18-*quater*, 18-*quinquies*, except for the fifth paragraph, 18-*sexies* and 18-*septies*, except for the second sentence, of Decree Law 95of *8* April 1974, ratified with amendments by Law 216 of 7 June 1974 and subsequent amendments; related violations shall be sanctioned under Article 191;

c) Article 3 of Presidential Decree 136 of 31 March 1975*;*

d) Articles 1(1-9), 1(11), 2(2-3), 2-*bis* (3), 2-*bis* (4), 2-*bis* (5), 2-*bis* (7), 2-*ter*, 3(3-4), 4(2-14), 7(3), 7(5-6) and 10-*bis* of Law 77 of 23 March 1983; related violations shall be sanctioned under Article 190;

e) Articles 3(2b), 3(2c), 3(2d), 3(2e), 4(2), 9(12-14), and 15 of Law 1 of 2 January 1991; related violations shall be punished under Article 169 or sanctioned under Articles 189 and 190;

f) Article 6 of Law 157 of 17 May 1991; related violations shall be punished under Article 174 or sanctioned under Article 193;

g) Articles 2-4 and 6-7 of Law 149 of 18 February 1992; related violations shall be sanctioned under Article 191;

h) Articles 1O, 14, 15, 16(1), 20(1), 20(4), 22-25, 27 and 28 of Law 149 of 18 February 1992; related violations shall be sanctioned under Article 192;

i) Articles 1, 2(3), 2(4), 4(1), 4(4), 5(3), 5(6-11), 6(2), 7(1-6), 8 and 9(2-3) of Legislative Decree 84 of 25 January 1992; related violations shall be sanctioned under Article 190;

j) Articles 1 and 2(2a) of Legislative Decree 86 of 27 January 1992;

k) Articles 1(1-7), 3(2), last sentence, 4(1-5), 5(1-4). 8(2), 8(4-5), 9 and l0 of Law- 344 of 14 August 1993; related violations shall be sanctioned under Article 190;

l) Articles 1(1-6), 3(2), last sentence, 4(1-6), 5(1-4), 7, 8, 9, 12(2), 12(5), 13 and 14 of Law 86 of 25 January 1994; related violations shall be sanctioned under Article 190;

m) Articles 2(4), 6(3-4), 7, 8, 10. 13, 14, 15, 18(1), 18(3), 20(1e), 21(2-3), 22(2), 23(5-6), 24, 25, 35(2-3), 66(1b), 66(1c) and 66(1e) of Legislative Decree 415 of 23 July 1996; related violations shall be punished under Article 169 or sanctioned under Articles 189 and 190.

3. Until the issue of the regulations provided for in Articles 80(4), 80(5) and 80(6) and in any case until the completion of the sale referred to in Article 204(1), Articles 1 and 10-14 of Law 289 of 19 June 1986 shall apply.

4. Every other provision incompatible with this decree is repealed. Reference to the repealed provisions by statutory provisions, regulations or other measures shall be deemed to refer to the corresponding provisions of this decree and the measures provided for therein.

5. Provisions issued pursuant to provisions repealed or replaced shall continue to apply, insofar as they are compatible, until the date of entry into force of the provisions issued pursuant to this legislative decree concerning the corresponding matters. In the event of violations, Articles 190-193 shall apply, with the procedure provided for in Article 195, in relation to the matters respectively governed therein.

Article 215

Implementing provisions

1. The regulations and provisions of a general nature to be issued pursuant to this decree shall be adopted initially within six months of the date of its entry into force.

Article 216

Entry into force

1. This decree shall enter into force on 1 July 1998.

This decree, bearing the State seal, shall be included in the Official Collection of the Legislative Acts of the Italian Republic. It shall be the duty of all concerned to observe it and see that it is observed.

Done in Rome, 24 February 1998

SCALFARO

PRODI, President of the Council of Ministers

CIAMPI, Minister of the Treasury

FLICK, Minister of Justice

DINI, Minister of Foreign Affairs 114

BERSANI, Minister of Industry (~.

Visaed, the Minister of Justice: FLICK l~

ANNEX

SECTION A - Services

1. Reception and transmission, on behalf of investors, of orders in relation to one or more of the instruments listed in Section B.

2. Execution of such orders other than for own account.

3. Dealing in any of the instruments listed in Section B for own account.

4. Managing portfolios of investments in accordance with mandates give by investors on a discretionary, client-by-client basis where such portfolios include one or more of the instruments listed in Section B.

5. Underwriting in respect of issues of any of the instruments listed in Section B and/or the placing of such issues.

SECTION B - Instruments

1. Transferable securities.

2. Units in collective investment undertakings.

3. Money market instruments.

4. Financial futures contracts, including equivalent cash-settled instruments.

5. Forward interest rate agreements (FRAs).

6. Interest rate, currency and equity swaps.

7. Options to acquire or dispose of any instruments falling within this section of the Annex, including equivalent cash-settled instruments. This category includes in particular options on currency and on interest rates.

SECTION C - Non-core services

1. Safekeeping and administration in relation to one or more of the instruments listed in Section B.

2. Safe custody services.

3. Granting credits or loans to an investor to allow him to carry out a transaction in one or more of the instruments listed in Section B, where the firm granting the credit or loan is involved in the transaction.

4. Advice to undertakings on capital structure, industrial strategy and related matters and advice and services relating to mergers and the purchase of undertakings.

5. Services related to underwriting.

6. Investment advice concerning one or more of the instruments listed in Section B.

7. Foreign exchange services where ere these are connected with the provision of investment services.