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Market-Driven Management and Corporate Governance

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Abstract

The globalisation of relations between stock markets, issuers of shares and investors, has led to frequent reviews of national rules and regulations, by routes that are consistent with the culture, traditions and market conditions of each country. In fact, generally accepted principles of effectiveness of corporate governance have taken hold in the context of different models of governance, whose implementation is also linked to the share structure of the companies and the dynamics of risk capital markets.

In listed companies, a capital market orientation is conditioned by the dominance of an insider or outsider system, by the parties that appoint the governance organs (only the owners in Anglo-Saxon countries and most industrialised countries; the owners and employees in Germany and generally in the so-called 'Rhenish' model) and by the stakeholder that are represented in the administrative and supervisory organs.

The expansion of relations between stock markets, the growth of parallel trading platforms and the spread of ICT certainly emphasises the relief of correct development of the administrative and supervisory activities typical of corporate governance, but it also underlines the importance of effective external controls (auditing carried out by the stock markets and by specific institutions), and consistent, transparent behaviour, associated with clear, verifiable and truthful communications.

Keywords: Corporate Governance; Models of Corporate Governance; Global Markets; Stock Markets; Market Orientation to Capital Market

1. Corporate Governance in Global Markets

In a global market, barriers of space and time to the circulation of information, assets and resources tend to disappear, while the inter-dependence of the conditions for the economic, competitive and social success of any business becomes stronger.

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The globalisation of the markets and of information has a significant influence on corporate governance, because of the growing importance of attributing value to stakeholders' expectations by the creation of virtual cycles of resources, assets, results and consensus, the multiplication of risk factors, and the increase of direct and indirect relations between operating units and markets[1].

The tendency to set up increasingly broad and complex networks of relations has the effect of underlining, on one hand, the importance of market-driven management with reference to all areas of negotiation, and on the other, attention to the effectiveness, flexibility and convergence of the principles and models of corporate governance.

A market-driven approach is in fact ingrained in corporate governance, in view of the fact that: the mandate to govern is granted by the shareholders – possibly with the participation of employees and banks – and correctly exercised in favour of the company's main interlocutors; standards and recommendations regarding administrative, auditing and communications structures and processes are drawn up to safeguard third parties; corporate administration and control presuppose safeguarding the potential for success, from which the optimisation of the capacity to create value in time derives.

Correct behaviour and the skills developed to understand the markets and emerging opportunity, to create effective IT systems and take decisions based on the judicious identification of perspective risks, to anticipate the moves of the competition, and to establish high profile relationships in the markets on which they operate, are phenomena that can decree the success of businesses in their current operating conditions[2].

The complexity of the relationships that are essential for value creation underlines the links between the capacity to optimise economic and competitive performance, and the correct assumption of responsibility before all the relevant players and the environment. The establishment of joint-stock companies, the consequent, at least partial, separation between ownership and management and, to a greater extent, listing on the stock exchange, make it particularly important to protect the shareholders, who risk the financial resources they contribute and may condition the trend of the company's market value.

Globalisation and the fierce competition that listed companies come up against to acquire consensus from the parties who underwrite shares in their capital, have without doubt determined a clear competitive approach to the stock market. The link between results achieved, the capacity to meet perceived expectations, the demand/supply of company stock and the relative market value, has increased in importance thanks to the success of corporate governance.

A company's market value is conditioned by numerous factors, inside and outside the company. The external factors include general economic phenomena (for example, interest rates, inflation, unemployment, exchange rates, the credit capital market, etc.), political relations between countries, the state of development and the transparency of the markets they are listed on, the degree of recourse to parallel markets, the manifestation of states of insolvency, scandals and cases of bad corporate management, communications by the competition, by commercial interlocutors, by organisations and institutions, and increased speculation by investors. Internal factors of particular importance include the behaviour adopted, the results achieved and the conditions that distinguish the evolution of activities (for example, the structure of a company and the geographical areas in which it operates, its supply markets, relations with the workforce and the trades unions, capital spending, selling markets, supply agreements and developments in the sectors where client companies operate, etc).

What is more, the collapse of space and time barriers to the spread of information, the growing importance of institutional investors and the role played by financial analysts are all phenomena that boost competition to obtain resources, emphasising the need for transparency and to maintain trust and consensus regarding company operations.

For listed companies, we therefore note a market-driven approach to the capital market, both because it is a primary sources of resources, and with regard to the importance of the ratio between the demand and supply of capital shares to assert the corporate value and to express consensus regarding the work of governance organs.

The characteristics of the listing markets and the degree of dispersion of companies' capital stock do tend to emphasise different levels of market orientation, which appear to be linked to the models of corporate governance adopted, to certain conditions that regulate the mandate received, and to how governance is exercised.

The importance of relations with the stockholders also lies behind the legislative measures and recommendations designed to guarantee the effectiveness of corporate governance. At the same time, the gradual integration of the major capital markets seems to stimulate the striving for flexibility and the convergence of the principles and models of governance.

The attention of legislators and the institutions has focused in particular on joint-stock companies and, in this context, on listed companies, in view of the scope of the interests involved and the priority role that corporate governance plays in safeguarding the effectiveness of market relations.

The globalisation of relations between stock markets, issuers of shares and investors, has therefore led to frequent reviews of national rules and regulations, by routes that are consistent with the culture, traditions and market conditions of each country, but also aim to apply international best practices. In fact, generally accepted principles of effectiveness of corporate governance have taken hold in the context of different models of governance, whose implementation is also linked to the share structure of the companies and the dynamics of risk capital markets.

2. The Spread of Models of Corporate Governance

The models of corporate governance recognised around the world are based on the relationship between the stockholders and organisms created to implement governance activities (administration/management, control). In this regard, the standard models are based on: the possible separation of administrative and supervisory organs that have a mandate to govern, to distinguish between one-tier systems (i.e. with a single governance organ) and two-tier or dual systems (i.e. that envisage two distinct organs, dedicated respectively to the development of the administrative and supervisory activities of corporate governance); delegation in the process to appoint specific members of the governance organs, so as to distinguish between horizontal two-tier models (in which both the administrative organ and the supervisory organ are appointed by the stockholders) and vertical two-tier models (in which the stockholders – sometimes with the participation of employees – appoint the supervisory organ, which in turn appoints the administrative organ).

The main industrialised countries currently break down (Table 1) into countries that adopt a single model of corporate governance, countries where it is possible to choose between one-tier and two-tier models, and countries that give priority to models based exclusively on the mandate for administration (pure one-tier model adopted in the United Kingdom, the United States, Canada, Spain, Greece, etc.), in other words countries that highlight the supervisory role of corporate governance by combining the administrative organ and a supervisory organism (two-tier models but even some one-tier models that envisage a specific supervisory organ that acts autonomously).

Table 1: *International Comparison between Models of Corporate Governance–2008*

COUNTRY	ONE-TIER MODEL	VERTICAL TWO-TIER MODEL	HORIZONTAL TWO-TIER MODEL
United States	x		
United Kingdom	x		
Ireland	x		
Canada	x		
Greece	x		
Spain	x		
Sweden	x		
Germany		x	
Austria		x	
Denmark		x	
Italy	x	x	x
Luxembourg	x	x	
Netherlands	x	x	x
Norway	x	x	
Finland	x	x	
Japan	x		x
France	x	x	
Belgium	x	x	
Portugal	x	x	x
Russia	x	x	x

In recent years, there have been changes to legislation and to the rules and regulations of corporate governance in several countries. Prompted by the scale of the interests involved and the role of national stock markets in the development of a country’s economy, self-regulation codes have also been drafted, designed to adapt the conditions of transparency and effectiveness of listed companies to the new competitive requirements imposed by globalisation (Table 2).

Evolutions in corporate governance underline the growing potential for international convergence, the increased flexibility of the structures with a growing number of countries where it is possible to opt for different models of governance, and greater attention to control and communications undertaken to protect the stockholders and other stakeholders.

In Italy, for example, the 2003 reform of company law (the Vietti Reform, effective from 2004) combines a traditional or horizontal two-tier model with vertical two-tier and one-tier models. The alternatives contemplated by legislators envisage the coexistence of two organs: one dedicated primarily to administration (board of directors or management board), the other with control functions (board of auditors, supervisory board, management control committee)[3].

Table 2: *The International Evolution of Codes of Self-Regulation*[4]

COUNTRY	YEAR OF PUBLICATION	REVIEWS	INSTITUTIONS PROMOTING THE CODE AND COMMITTEES RESPONSIBLE FOR DRAFTING IT
United Kingdom			Several organisms (London Stock Exchange, Financial Reporting Council, Confederation of British Industry, Institute of Directors, professional accountants) jointly promoted the creation of numerous committees.
	1992		Cadbury committee
	1995		Greenbury committee
	1998		Hampel committee
	1998	2000, 2003, 2005, 2006	Turnbull, Smith and Higgs committees, whose work is collected in the Combined Code
Ireland	1992 – 2006		Adopts the same codes as the United Kingdom
Canada	1994		Toronto Stock Exchange
	2001		Saucier Committee, promoted by the Toronto Stock Exchange and the Board of Chartered Accountants
France			Several organisms (Paris Stock Exchange, National Council of French Employers, business associations) have jointly promoted the creation of numerous committees.
	1995		Viénot I committee
	1999		Viénot II committee
	2002		Bouton committee
	2003		Afep – Medef work group for the consolidation of the previous codes
United States	1997	2002, 2005	Business Roundtable
	2004		National Association of Corporate Directors (NADC)
	2004	2007	TIAA-CREF (teachers' pension fund)
	1998	2005	CalPERS (retirement fund of public employees of California)
	2005		The Council of Institutional Investors
	2002		Institute of Internal Auditors (IIA)
Netherlands	1997		Peters committee, promoted by the Amsterdam Stock Exchange
	2004		Tabaksblat committee, promoted by the Amsterdam Stock Exchange and numerous associations of businesses, investors, etc.

Finland	1997	2003	Work group promoted by the Stock Exchange, the National Chamber of Commerce and business associations
Japan	1997		Keidanren (federation of economic organisations)
	1997	2001, 2004	Work group of the Japanese Corporate Governance Forum
Belgium	1998		Entrepreneurs' Association (VBO/FEB)
	1998		Commission for Banks and Finance (CBFA)
	1998		Cardon committee, promoted by the Brussels Stock Exchange
	2004		Lippens committee, promoted jointly by the organisations issuing the codes of 1998
Spain	1998		Olivencia committee, promoted by the Government
	2003		Aldama committee, promoted by the Government
	2006		Work group proposed by Comisión Nacional del Mercado de Valores (CNMV) and approved by the Ministry for the Economy, to prepare the Combined Code
Italia	1999	2002	Preda committee, promoted by Borsa Italiana spa
	2006		Capuano committee, promoted by Borsa Italiana spa
Portugal	1999	2003, 2007	Comissão do Mercado de Valores Mobiliários (CMVM)
Greece	1999		Hellenic Capital Market Commission (HCMC)
Denmark	2001	2005	Nørby committee, promoted by the Copenhagen Stock Exchange
Germany	2002	Annual	Cromme commission, appointed by the Ministry of Justice
Austria	2002	Annual	Work group promoted by the Vienna Stock Exchange, the Ministry of Finance, financial business associations and professional accountants
Russia	2002		Federal Commission for Securities Market
	2002		The Russian Corporate Governance Roundtable
	2004		International Finance Corporation, with the agreement of the U.S. Department of Commerce
Norway	2004	Annual	Oslo Stock Exchange and numerous associations of businesses, investors and financial analysts
Sweden	2005		Committee promoted by the Government, the Stock Exchange and businesses
Luxem-bourg	2006		Luxembourg Stock Exchange

However, dominant culture and habits tend to determine a net preponderance of models that are rooted in companies (95.61% of the cases noted) (Table 3). In fact, four years after the reform, the spread of the vertical two-tier model (3.04% of the cases noted) and the one-tier model (1.35% of the cases listed) is still very limited, revealing resistance to change, except in the presence of extraordinary events that already envisage changes to governance structures[5].

In the various countries, the behaviour of businesses does however appear to be directed at improving their corporate governance, by exploiting their acquired capabilities and skills, rather than at evaluating opportunities to change their governance models. However, we must point out that even self-regulation codes and the rules and regulation of national stock markets tend to draw primarily on traditional models[6].

Table 3: *Corporate Governance Models Adopted (N. of Companies – Italy – Listed Companies)*

Horizontal two-tier	Vertical two-tier	One-tier	Total*
283	9	4	296

* Companies which had communicated the composition of their organs to Consob up to April 2008.

3. Models of Corporate Governance and Stock Markets

The models, standards and operating recommendations adopted in different countries and the level of market-driven management of listed companies, reveal links with the characteristics of the financial markets and the degree of concentration of ownership. In this regard, we note:

- countries in which corporate governance is significantly oriented to the risk capital market, in view of the role of control/consensus associated with stock demand trends and the confirmation of governance mandates by stockholders (outsider system or market oriented system);
- countries in which the characteristics of the stock market tend to limit its regulatory role, in relation to the existence of corporate stockholder structures and stock negotiation conditions that make it difficult to exercise effective control over governance (insider system).

Outsider systems are characterised by the dominance of large listed companies with very fragmented, widespread ownership (public companies), typical of Anglo-Saxon countries. In the presence of truthful, correct and transparent communications, the efficient functioning of the capital market determines consensus/control of administrative activities, and variations in stock values due to the dynamics of demand and supply of shares of ownership.

The model that dominates in outsider systems is usually of the one-tier type, with governing organs that have a short mandate and a high degree of independence. In these situations, it is the market that exercises control over corporate governance directly on the basis of information received about behaviour and actual and forecast results. Economic communications therefore take on greater significance, as does the role of external controls to audit financial statements.

Outsider systems presuppose well developed stock markets with a high potential to attract resources, and clear possibilities to shift investments from one stock to another on the basis of available information about corporate governance and the related results, and with significant intervention on the part of institutional investors who act as market facilitators. In this context, investors are not involved in management and they attribute importance to corporate profitability, to the dividend distributed, and to the potential for their investment to grow in value[7].

For example, analysis of the ten most capitalised companies in the United States (Table 4), a country with an outsider system, reveals the high frequency of annual mandates (9 cases out of 10), large governance organs with 10 to 17 members, and a net preference for independent members. The fragmentation of the capital determines a separation between ownership and administration, with Boards made up primarily of members who are potentially equidistant from all the stakeholders, while the adoption of safeguards designed to guarantee transparency and effectiveness in relation to possible conflicts of interest between stockholders, management and other stakeholders, is essential, as well as short mandates.

The connection between the dispersion of capital and market relations is particularly clear if we take the case of the large U.S. retail chain Wal-Mart Stores (the sixth U.S. company in terms of capitalisation). Wal-Mart Stores differs from the other nine companies considered for the breakdown of its stockholder structure which determines a different approach to governance: the Walton family holds over 40% of capital stock and is the major stockholder; the Board of Directors has 15 members, only two of whom are executive; two directors belong to the Walton family and one of them is the executive Chairman; the length of the mandate to the governance organ is five years, decidedly longer than most public companies.

Table 4: *Corporate Governance. Structure of Organs and Length of Mandate (U.S.A.; First Ten Listed Companies; 31-12-2007)*

COMPANY	**Capitalisation at 19-04-2008** (€ M)	**No. members CG Board**	**No. executive members**	**No. non-executive** but not independent **members**	**No. independent members**	**Length of mandate**
EXXON MOBIL	292,860.37	12	1	0	11	1
GENERAL ELECTRIC	211,005.15	16	2	2	12	1
MICROSOFT	164,308.76	10	2	0	8	1
AT&T	134,333.25	16	1	0	15	1
PROCTER & GAMBLE	128,877.45	13	1	0	12	1 – 3*
WAL-MART STORES	124,588.77	15	2	2	11	5
CHEVRON CORP	115,763.44	14	2	0	12	1
JOHNSON & JOHNSON	112,268.96	12	2	0	10	1
BANK OF AMERICA	104,724.38	17	1	1	15	1
IBM	100,350.33	13	1	1	11	1

* At Procter & Gamble some members are concluding a 3-year mandate. The new tenure is one year.

Insider systems are typical of countries like Italy and most European countries, with underdeveloped financial markets, a concentrated and often stable stockholder structure, with blockholders involved in management and in any case able to influence corporate decisions. In this context, stakeholders' interests are primarily safeguarded by the effectiveness of the control exercised by corporate governance, and two-tier systems are important; there are however countries like Spain and Greece, that envisage the use of the one-tier system alone, for which we should make a clear distinction between the administrative and the supervisory functions of corporate governance.

In insider systems a market-driven approach to the stock market is basically defined by the will to maintain a high value of stock and, very often, it may also be influenced by AGM resolutions to authorise the purchase of treasury stock.

In countries with insider systems, mandates for corporate governance are attributed in numerous ways, due to historical, economic and cultural factors. For example, we might find:

- systems in which the mandate for corporate governance is attributed exclusively to the owners, generally with the strong involvement of the majority stockholder (a Latin insider system);
- systems characterised by the active involvement of employees (a 'Rhenish' insider system).

The first group includes countries, like Italy, where the economic risk of investment in the capital stock is evident. The capital market orientation is therefore emphasised in relation to the role attributed to the stockholders, as the exclusive principal from which the administrative and/or controlling function of corporate governance issues. The mandate may also be expressed directly or indirectly by the stockholders, depending whether a horizontal two-tier system (the AGM appoints the Board of Directors and Board of Auditors), a vertical two-tier system (the AGM appoints the supervisory board which in turn appoints the management committee), or a one-tier system (the AGM appoints the Board of Directors which appoints the Management Control Committee from among its members) is adopted.

The presence of one or more majority stockholders and the possible existence of stockholders' agreements tend in any case to condition the market orientation, which is often purely formal, in other words, bound by standards and recommendations. This phenomenon reflects on the characteristics of the corporate governance systems, in terms of the models chosen and the composition and length of the mandate.

For example, analysis of the corporate governance systems of the ten most capitalised Italian companies (Table 5) reveals: the net prevalence of two-tier systems; two cases of a vertical two-tier system, both within the credit sector and with recent changes to the corporate structure; the constant length of the mandate[8].

Germanic insider systems, on the other hand, attribute importance to all the contributors of primary resources (capital and labour), thus emphasising the role of employees and the relation between governance, employees and trades unions. In this case, the orientation tends to balance relations with the capital and labour markets, thus also underlining the role of the banks which are part of the stockholder structure, as well as granting loans with interest.

Table 5: *Corporate Governance. Structure of Organs and Length of Mandate (Italy; First Ten Listed Companies; 31-12-2007)*

COMPANY	Capitalisation on 19-04-2008 (€ M)	MODELS OF GOVERNANCE			No. Members of Administrative Organ	No. Members of Control Organ	Length of Mandate
		One-tier	Vertical two-tier	Horizontal two-tier			
ENI	93,525.1			x	9	5+2*	3
UNICREDIT	64,693.8			x	23	5+2*	3
INTESA SANPAOLO	55,952.7		x		11	19	3
ENEL	43,576.4			x	9	3+2*	3
GENERALI	39,992.1			x	20	3+2*	3
TELECOM ITALIA	29,629.0			x	17	5+2*	3
FIAT	16,788.5			x	15	5+2*	3
SAIPEM	12,174.1			x	9	3+2*	3
ATLANTIA	11,885.8			x	15	5+2*	3
MEDIO-BANCA	10,205.9		x		6	21	3

* Regular members plus substitute members

For example, if we consider the ten most highly capitalised companies in Germany (Table 6) we can see that the owners and employees are on a par when it comes to appointing the members of the supervisory board[9].

Table 6: *Corporate Governance. Structure of Organs and Length of Mandate (Germany; First Ten Listed Companies; 31-12-2007)*

COMPANY	Capitalisation on 19-04-2008 (€ M)	SUPERVISORY BOARD			
		No. members SB	Elected by stockholders	Elected by employees	Length of mandate
E.ON AG	81,240.6	20	10	10	ND
SIEMENS	78,136.9	20	10	10	5 years
DAIMLER	55,652.3	20	10	10	ND
VOLKSWAGEN	54,389.9	20	10	10	5 years
DEUTSCHE TELEKOM	53,862.0	20	10	10	ND
ALLIANZ SE	52,235.4	12	6	6	5 years
RWE ST	43,522.8	20	10	10	ND
BASF	40,135.3	12	6	6	ND
SAP AG	39,431.6	16	8	8	ND
DEUTSCHE BK	38,713.9	20	10	10	ND

Germanic insider systems seem to attribute importance to the link between the capacity to create value for the stockholder and organisational behaviour, emphasising the coordination between top management and employees to optimise relations between resources, activities and results.

4. Corporate Governance and Market-Driven Orientation to the Capital Market

As we have seen, globalisation – accompanied by a gradual reduction in the diversity of spatial environments, culture, ICT systems, traditions and institutions – and the increase in the number and importance of international regulatory organisms, reveal a trend towards the harmonisation of corporate governance on a global level on one hand, while on the other they underline the differences existing in the various countries, particularly where listed companies, the different characteristics of the stock markets and the composition of corporate stockholder structures are concerned.

The tendency to fragment ownership, the affirmation of institutional investors and the separation of ownership and management, underline the growing need to safeguard contributors of risk capital and the importance of focusing ever greater attention on capital markets. In this context, however, we must distinguish between situations where there is a strong dependence on the capacity to attract capital, and those in which market consensus, although important, is usually combined with the presence of one or more majority stockholders.

In listed companies, a capital market orientation is conditioned by the dominance of an insider or outsider system, by the parties that appoint the governance organs (only the owners in Anglo-Saxon countries and most industrialised countries; the owners and employees in Germany and generally in the so-called 'Rhenish' model) and by the stakeholder that are represented in the administrative and supervisory organs.

A capital market orientation is without doubt more marked in an outsider system, in view of the dispersion of the stockholder structure and the potential for growth that the market offers. Companies compete to acquire financial resources that can decree their capacity for growth and success in their environment, while the market's efficiency and appeal for investors tend to decree corporate capitalisation. This is reflected on the models of governance and the variables that help to avoid conflicts of interest between owners and directors. In particular, if the capacity to attract market resources remains the same, then transparency and the achievement of results that meet the potential expectations of investors better than other operators acquire greater significance.

Insider systems, on the other hand, are generally affected by the existence of blockholders that can generate unbalanced governance systems in the absence of particular standards to safeguard minority and/or other significant classes of stakeholder; this makes it necessary to underline the importance of control, in its dual role of dedicated organ and the composition of the administrative organ (for example, by appointing representatives of minority interests, and non-executive and independent members).

The different role that the market has acquired over the years in insider and outside systems is reflected in the different capitalisation values of listed companies. For example, analysis of the data set out in the previous tables reveals that the first ten U.S. companies have a higher capitalisation value than their Italian or German counterparts (Graph 1). At the end of fine 2007, the first Italian and German listed companies both had a capitalisation value below that of the tenth

American company; the capitalisation of the first U.S. company was more than 68% higher than that of the first Italian company, and more than 72% higher than the first German company.

The diversity between insider and outsider systems is however attenuated by the globalisation of the markets and of information, which entails the implementation of strategies to integrate the various national stock markets, increasingly frequent movements of investors from one market to another on the basis of considerations of convenience and risk limitation, the global impact of phenomena of evident economic significance originating in specific geographical areas and markets, and the growth of so-called 'off-exchange operations[10].

From the mid 1990s, a number of international alliances took place between financial market operators, through the implementation of different strategies, which can be attributed primarily to: network strategies, based on collaboration agreements involving several stock exchanges in what is essentially a federative project; investment strategies that involve stockholder structures and herald mergers between stock exchanges; and segmentation strategies centred on the activation of market segments designed to incorporate foreign stock (for example, the MTA International segment created by Borsa Italiana in 2006).

In the early years of this century, the removal of space and time barriers has produced increasingly frequent shifts of capital from one stock market to another, particularly by institutional investors. In this regard, we only have to think that at the end of September 2007, the portfolios of the first ten U.S. investment funds included significant investments (i.e. above 2% of the capital) in companies listed on the Milan stock market for over ten billion dollars.

And finally, the spread of information – with specific reference to situations and variables regarding crises and scandals of great economic significance – acquires global significance, conditioning the market dynamics of all the industrialised countries, in the face of threatened risks and changes to relationships of trust and consensus between issuer, stock exchange and investor. What is more, the spread of this information is often also associated with speculative behaviour, capable of disrupting stock market trends.

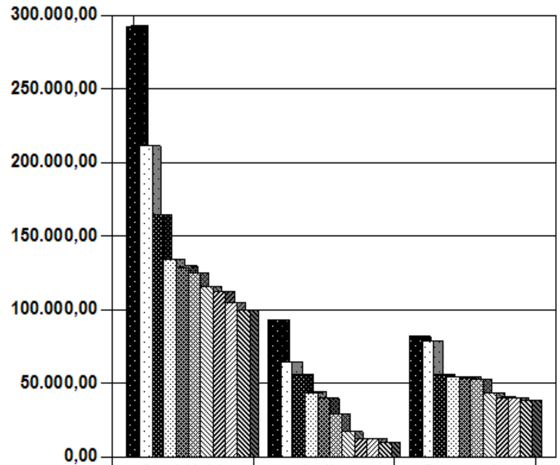
These phenomena seem to expand the reference scenarios, increasing the importance of information and risk management systems, while they attenuate the different market orientation of corporate governance between insider and outsider systems.

Corporate governance is directed at guaranteeing the long-term pursuit of the company's own mission, in conditions of economy and sustainable development. The related realisation is based on decisions, whose implementation implies that relations with different interlocutors and their expectations be taken into consideration, to define compatible times and means of satisfaction that are compatible with the internal and external dynamics, so as to guarantee the acquisition of consensus and trust. In this regard, establishing effective relationships with contributors of risk capital is of primary importance and, for listed companies, must take into account the significant variables in the stock market where they are listed, the other operators that they compete with to acquire capital, investors' expectations and the existence of possible facilitators and/or influencers of behaviour.

The expansion of relations between stock markets, the growth of parallel trading platforms and the spread of ICT certainly underline the need for a global approach to the acquisition of consensus and financial resources, necessary directed at improving the competitiveness of the market, to increase the value of the company and maintain opportune capabilities to raise stock value. This emphasises the correct development of the administrative and supervisory activities typical of corporate governance, but it also underlines the importance of effective external controls (auditing carried out by the stock markets and by specific institutions), and consistent, transparent behaviour, associated with clear, verifiable and truthful communications.

The recent corporate crises, which first appeared in countries with outsider systems (for example, the bankruptcy of Lehman Brothers, the salvage operations of the U.S. companies Bear Stearns, Fannie Mae, Freddie Mac and AIG, and of British bank Northern Rock, etc.) appear to highlight the limits potentially inherent in the excessive transfer of this control to the market, questioning the validity of pure one-tier models of corporate governance.

Graph 1: *Capitalisation Values (U.S.A., Italy, Germany; First Ten Listed Companies; 31-12-2007) (€ M)*



	Stati Uniti	Italia	Germania
1	292.860,37	93.525,10	81.240,60
2	211.005,15	64.693,80	78.136,90
3	164.308,76	55.952,70	55.652,30
4	134.333,25	43.576,40	54.389,90
5	128.877,45	39.992,10	53.862,00
6	124.588,77	29.629,00	52.235,40
7	115.763,44	16.788,50	43.522,80
8	112.268,96	12.174,10	40.135,30
9	104.724,38	11.885,80	39.431,60
10	100.350,33	10.205,90	38.713,90

Notes

[1] In this regard it is sufficient to mention the global financial crisis that exploded in 2007/2008 and is still ongoing. It is currently difficult to undertake an exhaustive, comprehensive analysis of the present crisis and the extent of its implications, although we can identify the principal factors triggering it, which have produced unprecedented losses, failures and salvage operations, primarily of financial institutions (for example, the well-known cases: New Century Financial, Northern Rock, IKB, Bear Stearns, ABN Financial, Roskilde Bank, First Integrity Bank, First Heritage and FirstNational Bank, IndyMac, Silver State Bank, Fanny Mae, Freddie Mac, Lehman Brothers, AIG, Merryl Lynch, Bradford & Bingley, Fortis, Hypo and Dexia), high fluctuations and reductions in the market value of listed companies all over the world, the widespread risk of recession, and the need for a worldwide review of the financial market surveillance system. The factor at the origin of the current global economic situation can be attributed to the subprime crisis which, because of the globalisation of the markets, has involved the world's entire economic system, with different effects but such as to influence all companies present on the various markets. The crisis factors have revealed the deficiencies in the risk management system, in efforts to monitor the credit market, in the transparency underlying trading operations, in the corporate governance systems of credit institutes and in related internal control functions.

[2] With regard to the ability to understand the markets, we refer you to: G.S. Day, Market-Driven Winners, in S.M. Brondoni (ed.) [2007], *Market-driven management, concorrenza e mercati globali*, G. Giappichelli, Turin.

[3] The approach is founded in Italian tradition, based on the mandate of the stockholders and the separation between the administrative and supervisory activities of corporate governance, but also in the characteristics of the financial market and the degree of concentration of corporate ownership.

[4] *Source:* L. Bosetti, *Le variabili rilevanti dei sistemi di corporate governance*, in Daniela M. Salvioni (ed.), *Corporate governance, controllo e trasparenza*, FrancoAngeli, Milan, 2007

[5] In this regard, suffice it to mention the well-known cases of the adoption of the vertical two-tier system after the Intesa-SanPaolo merger, or that between AEM Milano and ASM Brescia.

[6] For example, the last version of the Borsa Italiana code of self-regulation (2006) focuses on the traditional model (horizontal two-tier) of corporate governance and only extends its considerations, albeit significant, to the new vertical and one-tier models in the final part.

[7] L. Van den Berghe [2002], *Corporate Governance in a Globalising World: Convergence or Divergence?*, Kluwer Academic Publishers, Boston, p. 10.

[8] We mention the listed companies that have adopted alternative models of corporate governance according to official Borsa Italiana data on 29/05/08.

- Vertical two-tier model: Banco Popolare Società Cooperativa (S&P - blue chip); Intesa San Paolo S.p.A. (S&P - blue chip); Management & Capitali S.p.A. (MTF3 – Funds Market); Mediobanca S.p.A. (S&P – blue chip); Mid Industry Capital (MTF3 – Funds Market); Monti Ascensori S.p.A. (Expandi); S. S. Lazio S.p.A. (Standard); Unione Banche Italiane S.c.p.A. (S&P - blue chip); A2A S.p.A. (blue chip).
- One-tier model: Buongiorno S.p.A. (Star); CHL centro distribuzione HL S.p.A. (Standard); Engineering (Star); Fmr-Art'e' Società internazionale arte e cultura S.p.A. (Standard).

We also point out that some companies, including Mediobanca, that have adopted the vertical two-tier model, are now debating whether to return to the traditional model.

[9] The choice reflects the current legal constraints in relation to the size of the workforce. What is more, it appears significant to underline that at least two companies (Allianz and Basf) have adopted the legal form of the European Company, signing up to the single model introduced in 2004. The European Company ('SE' from the Latin name 'Societas Europaea') was adopted by the EU with a

regulation of 2001 (EC Council Regulation no. 2157/2001 of 08.10.2001, which came into effect on 08.10.2004, and Directive 2001/86/CE, with a final deadline for assimilation by member states of 08.10.2004), and is a form of company that can be established in the territory of the European Union, complying with a single legal and management system rather than being subject to different national legislation. An SE is therefore a company established under EU law, which has its own legal set-up and functions as a single economic operator all over the European Union.

[10] In this regard, the European Parliament approved Directive 2004/39/CE of April 21, 2004 (MiFID - 'Markets in Financial Instruments Directive'), which marks an important step towards the creation of an effective, competitive integrated financial market within the EU.

The directive abolishes the obligation for concentration in regulated markets, and introduces new forms of trading, such as the Multilateral Trading Facility (MTF) and Systematic Internalisers.

The assimilation of the MiFID directive was originally envisaged for April 2006, but in view of the substantial impact it would have on the legislation of individual Member States, the deadline for implementation was postponed to January 31, 2007 (directive 2006/31/CE).

In Italy, the Financial Consolidating Law was modified by Leg. Decree no. 164 of September 17, 2007. Moreover, in October 2007 CONSOB updated its secondary regulations (Regulation of Markets and Brokers). And finally, from November 1, 2007 (the date the MiFID legislation came into effect) all operators were obliged to apply and respect the new regulations. One of the main objectives of MiFID is to create a competitive, harmonious financial environment for regulated markets and investment companies, but also to step up protection for investors, and the efficiency and integrity of the financial markets themselves.

The main standards regarding the markets are:

- the elimination of the obligation to concentrate trading in regulated markets;
- the new figure of the trading venue, represented by regulated markets, multilateral trading facilities (MTF) and internalisers;
- pre-trade and post-trade transparency requirements for market information;
- specific arrangements for the admission of financial instruments on regulated markets;
- regulations for the admission of operators to the regulated markets and MTF;
- regulations for reporting on transactions to the competent authorities (transaction reporting);
- regulations applicable to clearing and settlement systems.

It does seem advisable to point out that transaction reporting – the system by which European authorities began to exchange information about the continent's listed stock – recently revealed that about one quarter of trading in the most widespread Italian stock takes place over the counter.