

DECREE OF THE TREASURY MINISTER No. 471 OF 11 NOVEMBER 1998

**Regulation establishing the integrity and experience requirements
for corporate officers of companies operating regulated markets and central depositories
for financial instruments, the integrity requirements
for shareholders and the threshold of significant shareholding ⁽¹⁾**

THE MINISTER OF THE TREASURY,
THE BUDGET AND ECONOMIC PLANNING

Having regard to Legislative Decree 58/1998;

Having regard in particular to Articles 61(3), 61(4) and 61(5) of the above-mentioned legislative decree pursuant to which the Minister of the Treasury, the Budget and Economic Planning, after consulting Consob, shall adopt a regulation establishing the integrity and experience requirements for persons performing administrative, management or supervisory functions within companies operating regulated markets for financial instruments and the integrity requirements for shareholders, specifying the threshold of significant shareholdings for this purpose;

Having regard to Articles 80(4), 80(5) and 80(6) of the above-mentioned legislative decree pursuant to which the Minister of the Treasury, the Budget and Economic Planning, after consulting the Bank of Italy and Consob, shall lay down in a regulation the integrity and experience requirements for persons performing administrative, management or supervisory functions within central depositories for financial instruments and the integrity requirements for shareholders, specifying the threshold of significant shareholdings for this purpose;

After consulting the Bank of Italy and Consob;

Having regard to Article 17(3) of Law 400/1988;

Having heard the opinion expressed by the State Council in the session of the consultative section for legislative acts on 28 September 1998;

Having regard to the memorandum of 23 October 1998 with which, pursuant to Article 17 of Law 400/1988, the draft regulation was transmitted to the Office of the President of the Council of Ministers;

ADOPTS

the following regulation:

¹ The decree and the attached regulation were published in *Gazzetta Ufficiale* No. 7 of 11 January 1999.

Article 1

Experience requirements for corporate officers of companies operating regulated markets and central depositories for financial instruments

1. Directors and members of the board of auditors of companies operating regulated markets for financial instruments (“market operating companies”) and central depositories for financial instruments (“central depositories”) must be selected on the basis of criteria of professionalism and competence among persons who have acquired a total of at least three years’ experience:

- a) serving as directors, members of the board of auditors or senior managers of firms;
- b) performing professional activities relating to the credit, financial, securities or insurance sector or functionally related to the activity of market operating company or central depository;
- c) in university teaching of legal or economic subjects; performing administrative or managerial functions in public entities or governmental authorities relating to the credit, financial, securities or insurance sector or in public entities or governmental authorities not related to such sectors provided the functions involve management of economic or financial resources.

2. The chairman of the board of directors must be selected on the basis of criteria of professionalism and competence among persons who have acquired a total of at least five years’ experience in performing the activities or functions referred to in paragraph 1.

3. The managing director and the general manager must have specific expertise in the credit, financial, securities or insurance field acquired through experience gained in positions of sufficient responsibility for a period of not less than five years. Analogous requirements shall apply for positions involving the performance of functions equivalent to those of general manager.

Article 2

Causes of ineligibility

1. Persons who in at least the two financial years preceding the adoption of the relevant measure have performed administrative, management or supervisory functions in firms subjected to bankruptcy, compulsory administrative liquidation or equivalent procedures may not serve as directors, members of the board of auditors or general managers of market operating companies or central depositories. Fractions of the latest financial year exceeding six months shall count as a full year.

2. Paragraph 1 shall also apply to persons who:

- a) have performed administrative management or supervisory functions in firms operating in the credit, financial, securities or insurance sector placed under special administration;
- b) in exercising the profession of stockbroker has failed to meet the commitments laid down by law or are excluded from trading on a regulated market.

3. The prohibition referred to in paragraphs 1 and 2 shall last for three years from the date of the adoption of the relevant measure. The period shall be reduced to one year if the measure was adopted at the request of the entrepreneur or of the firm’s board of directors.

Article 3
Integrity requirements

1. The offices, however named, of director, member of the board of auditors and general manager in market operating companies and central depositories may not be held by persons who:

- a) are in one of the situations of ineligibility or disqualification provided for in Article 2382 of the Civil Code;
- b) have been subjected to precautionary measures imposed by the judicial authorities under Law 1423/1956 or Law 575/1965, as amended, without prejudice to the effects of rehabilitation;
- c) have been convicted with an irrevocable judgment, without prejudice to the effects of rehabilitation, and sentenced to:
 - 1) imprisonment for one of the offences provided for in the legislation governing banking, financial, securities or insurance activity or in the legislation on securities markets and securities or payment instruments;
 - 2) imprisonment for one of the offences provided for in Title XI of Book V of the Civil Code or Royal Decree 267/1942;
 - 3) a term of imprisonment of not less than one year for a crime against the public administration, the public faith, property, the public order, the public economy or for a tax offence;
 - 4) a term of imprisonment of not less than two years for any offence that is not a crime of negligence.

2. The offices, however named, of director, member of the board of auditors or general manager in market operating companies and central depositories may not be held by persons who have been sentenced at the request of the parties to one of the punishments referred to in paragraphs 1c), except in the case of extinguishment of the crime. The punishments referred to in paragraph 1c), points 1) and 2), shall not count if the period is less than one year.

3. With reference to cases governed in full or in part by foreign law, the non-existence of the grounds referred to in paragraphs 1 and 2 shall be verified on the basis of the evaluation of substantial equivalence by the authority competent to issue the authorization to the company.

Article 4
Suspension from office

1. The following shall be causes of suspension from the functions of director, member of the board of auditors and general manager:

- a) conviction for one of the offences referred to in Article 3(1)(c) under a judgment that is not final;
- b) sentencing at the request of the parties to one of the punishments referred to in Article 3(2) under a judgment that is not final;
- c) provisional application of one of the measures provided for in Article 10(3) of Law 575/1965, as replaced by Article 3 of Law 55/1990, as amended;
- d) application of a precautionary measure of a personal nature.

2. The board of directors shall put the possible removal of the persons whose suspension it has declared on the agenda of the first shareholders' meeting following the occurrence of one of the causes of suspension referred to in paragraph 1. The suspension of a general manager appointed by the directors may not last for more than forty-five days, at the end of which the board of directors must decide whether to remove him from office, except in the cases referred to in paragraphs 1c) and 1d). A suspended corporate officer who is not removed shall be reinstated with full powers. In the cases referred to in paragraphs 1c) and 1d), the suspension shall always apply for the full duration of the measures referred to therein.

Article 5

Integrity requirements for shareholders of market operating companies and central depositories for financial instruments

1. Any person who holds more than 5 per cent of a market operating company's or central depository's share capital represented by shares carrying voting rights may not exercise the voting rights attaching to the shares or capital parts in excess where he has been:

- a) subjected to precautionary measures imposed by the judicial authorities under Law 1423/1956 or Law 575/1965, as amended, without prejudice to the effects of rehabilitation;
- b) convicted with an irrevocable judgment, without prejudice to the effects of rehabilitation, and sentenced to:
 - 1) imprisonment for one of the offences provided for in the legislation governing banking, financial, securities or insurance activity or in the legislation on securities markets and securities or payment instruments;
 - 2) imprisonment for one of the offences provided for in Title XI of Book V of the Civil Code or Royal Decree 267/1942;
 - 3) a term of imprisonment of not less than one year for a crime against the public administration, the public faith, property, the public order, the public economy or for a tax offence;
 - 4) a term of imprisonment of not less than two years for any offence that is not a crime of negligence.

2. Paragraph 1 shall also apply to any person who, regardless of the size of the shareholding held, controls the market operating company or central depository pursuant to Article 23 of Legislative Decree 385/1993. In such case the prohibition to exercise voting rights shall apply to the entire shareholding.

3. Where the shareholder is a legal person, the requirements of paragraph 1 must be satisfied by the directors and the general manager or the persons holding equivalent offices.

4. With reference to cases governed by foreign law, the non-existence of the grounds referred to in this article shall be verified on the basis of the evaluation of substantial equivalence by the authority competent to issue the authorization to the company.

Article 6

Method of calculating the shareholding

1. For the purpose of verifying the conditions indicated in Articles 5(1) and 5(2), account shall be taken of:

- a) the shares held directly and those acquired under repurchase agreements, even if the person is deprived of voting rights;
- b) the shares held indirectly through subsidiaries, trust companies or nominees;
- c) the shares for which the person is in any case the holder of voting rights;
- d) the existence of agreements on the exercise of voting rights. In such cases the integrity requirement must be satisfied by all the parties to the agreement on voting rights, regardless of the percentage of capital of the company that each of them individually holds.

Article 7

Verification of satisfaction of the requirements and prohibition on exercising voting rights

1. It shall be up to the chairman of the shareholders' meeting, in connection with his tasks of verifying the due constitution of the meeting and the entitlement of shareholders, to allow or not to allow voting by persons who on the basis of the available information are required to prove that they satisfy the integrity requirement.

2. Verification of satisfaction of the requirements shall be performed by the authority competent to issue the authorization to the company.

Article 8

Transitional provisions

1. For shareholders of a company at the date of entry into force of this regulation, failure to satisfy requirements referred to in Article 5 that were not provided for in the legislation previously in force shall not count, if it occurred before such date, only with regard to the shareholding already held.

2. For corporate officers at the date of entry into force of this regulation, failure to satisfy the requirement referred to in Articles 2, 3 and 4 that were not provided for in the legislation previously in force shall not count for the remaining part of their mandates if it occurred before such date.

Rome, 11 November 1998

The Minister: CIAMPI