

ICC Commercial Crime Services  
6<sup>th</sup> Annual Lecture

**PARMALAT AND OTHER MAJOR FINANCIAL FRAUDS  
– PREVENTION, INVESTIGATION AND CONTROL –**

Since 2001, our faith in financial markets has been shaken. Financial frauds have emerged as a very widespread disease, and no country appears to be immune to them. Enron has been followed by WorldCom, Adelphia, Global Crossing, Tyco, and a number of financial institutions. What appeared to be a uniquely US phenomenon, has developed into a worldwide problem, with all economies being represented: Vivendi, Royal Ahold, Royal Dutch - Shell, and – more recently – Cirio and Parmalat have all followed in Enron's steps.

**1. PARMALAT: A SUMMARY**

Parmalat is a staggering example of corporate fraud, with massive repercussions for several constituencies and countless individuals. Some figures can help to give an idea of the scale of the fraud, and its consequences.

The company's balance-sheets were more a product of fiction, than of accounting. They reported a net indebtedness of 1.8 billion Euros: the subsequent investigations determined the right figure to be 14.3 billion. The official net equity of the company was positive for 2.074 billion Euros, but in reality it was negative for 11.242 billion. The turnover was of 6.2 billion Euros, not of 7.6 billion as stated in the false 2002 accounts.

The numbers and scale of the investigations are not less staggering. Criminal prosecutors and supervisory authorities of at least 10 countries have launched

investigations on several aspects of the Parmalat fraud. Often, in each country more than one authority has taken an interest in the situation.

According to press reports, the provisional status of the criminal investigations in Italy sees about 120 individuals being formally investigated, with over 20 of them having spent time in jail or being under house arrest as a precautionary measure. The alleged crimes include misleading financial disclosure, market rigging, fraud, obstruction of justice, tampering with evidence, misappropriation of funds, money laundering, fraudulent bankruptcy. The Milan prosecutors, who are dealing with financial crimes, have formally requested the indictment of several individuals and, in an early application of a recently-introduced statute on the criminal liability of corporations, two auditing firms and six financial institutions. The Parma prosecutors, who are investigating violations of bankruptcy and company laws, have recently concluded the first stage of their investigation, and formally investigated 71 individuals.

The numbers are not less impressive if we look at those who directly suffered as a consequence of the fraud. Over 100,000 individuals and institutions held bonds issued by Parmalat and its subsidiaries. Although the vast majority of the Parmalat creditors are concentrated in Italy, the United States, and a few European countries, at least one or more Parmalat creditors have their domicile in a grand total of 103 countries in all continents. The number of investors who had invested in Parmalat's shares is probably in the region of 40,000. In addition to the more than 100,000 bondholders, a further 9,200 creditors filed claims in the Parmalat insolvency.

The direct losses are huge, with creditors having filed claims for over 20 billion Euros (including guarantees) and the market capitalisation of the company having plummeted from its 2.5 billion September 2003 height to zero. Indirect costs are of course much higher, and include the losses suffered by suppliers, employees, and - more generally - by other corporations (see below: The Consequences).

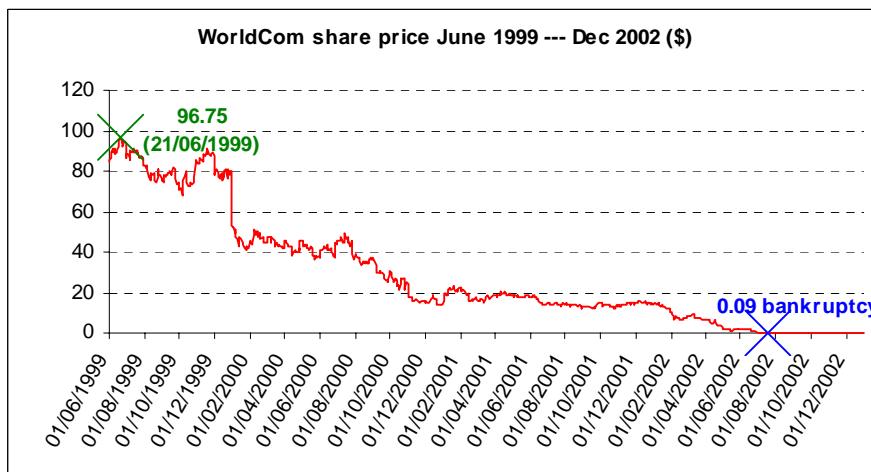
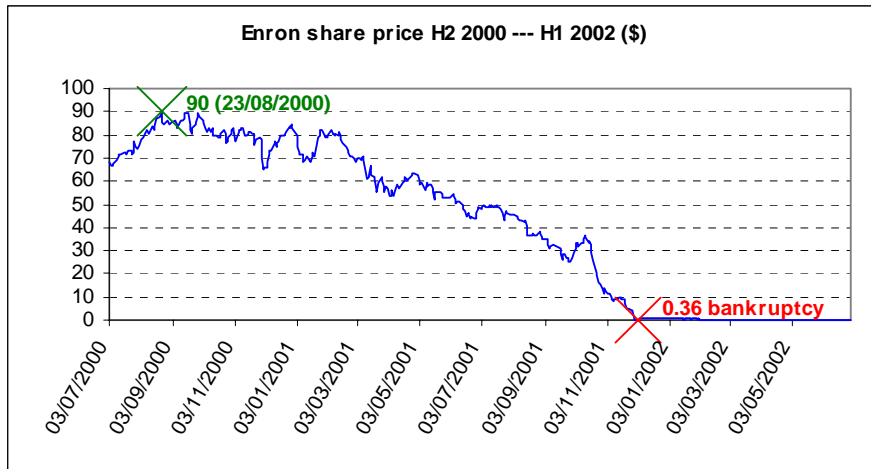


*Above: The destruction of shareholders' value at Parmalat*

## 2. FINANCIAL FRAUDS: THE CONSEQUENCES

The consequences of a financial fraud matter to us all, and can be enormous and very widespread.

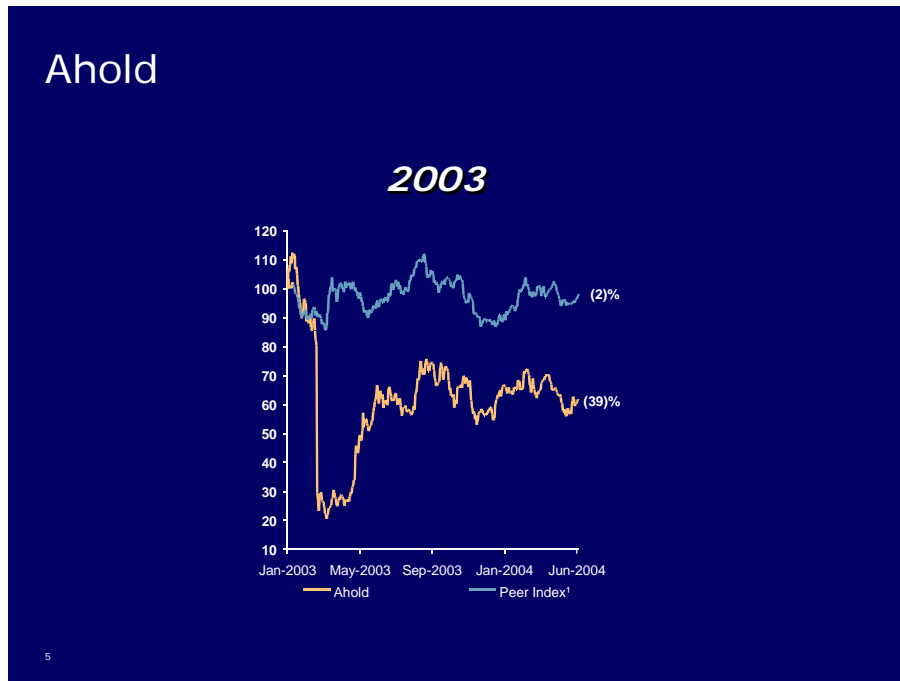
The destruction of shareholder value can be staggering. For instance, the equity market value at height of Enron went from 53.1 billion to 0.156 billion USD, that of Global Crossing plummeted from 42.2 billion to 0.027 billion USD, while for WorldCom the figures were 255.9 and 0.889 billion USD, respectively. The destruction of shareholders' value was more limited in the case of Parmalat, "only" 2.495 billion Euro. Not counting several other examples, the loss of shareholders' value in this four cases only was therefore in excess of 350 billion USD.



Additional value has been lost by the shareholders of those companies (in particular, financial institutions) which became involved in the fraud or in subsequent litigation. Financial institutions alleged to be involved in the financial frauds that led to the 2001 and 2002 bankruptcies of Enron and WorldCom have so far agreed to pay 6.5 billion US Dollars in settlements with regulators or investors. A financial institution alleged to have been involved in a 2003 dubious bond issue that deepened the insolvency of Parmalat, finally declared in December 2003, has agreed to pay to the company 160 million Euros in settlement of any claim that Parmalat may have brought against it.

Shareholders can lose massive amounts of money even when their company does not become insolvent as a consequence of the fraud, sometimes even simply because of

financial misconduct allegations. This is clearly illustrated by the two following pictures, showing the drop of value of the shares of Ahold and Shell after the announcement of their accounting problems in 2003 and 2004, respectively, and the subsequent performance of their shares, closely mirroring that of peer companies, thus making the loss of value permanent.



Above: The loss of shareholders' value at Ahold, compared with the performance of the shares of a group of peers (taken from a slide shown by a partner of Deloitte at the IBA Corporate Counsel Conference, Amsterdam, 24<sup>th</sup> February 2005).

# Shell

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Above: The loss of shareholders' value at Royal Dutch - Shell, compared with the performance of the shares of a group of peers (taken from a slide shown by a partner of Deloitte at the IBA Corporate Counsel Conference, Amsterdam, 24<sup>th</sup> February 2005).

Financial costs are not limited to the companies directly affected by the frauds, as there is a knock on impact of failure of trust on other companies and on capital markets in general. For instance, following the discovery of the Parmalat fraud in December 2003 and the very significant loss of trust by Italian retail bond investors, no Italian company was able to issue corporate bonds to retail investors for over a year, until Enel issued bonds for one billion Euro in late February 2005<sup>1</sup>. Likewise, the pricing of Credit Default Swaps<sup>2</sup> relating to a benchmark of Italian companies has significantly increased as weighted against comparable European companies<sup>3</sup>. As evidenced by Parmalat and other financial frauds, the cost of capital to corporations increases, thus in turn

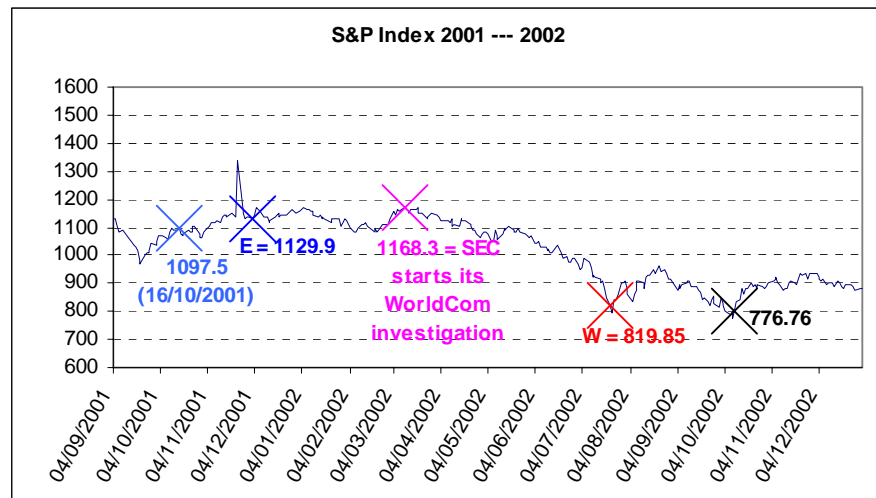
<sup>1</sup> Carlo Maria Pinaridi, *Default e piazza finanziaria*, Egea 2005, page 11-12.

<sup>2</sup> A Credit Default Swap is a contract whereby the seller undertakes, in exchange for a certain price, to pay to the buyer a certain amount if a third party becomes insolvent. They are therefore a useful tool to evaluate the credit risk of a party.

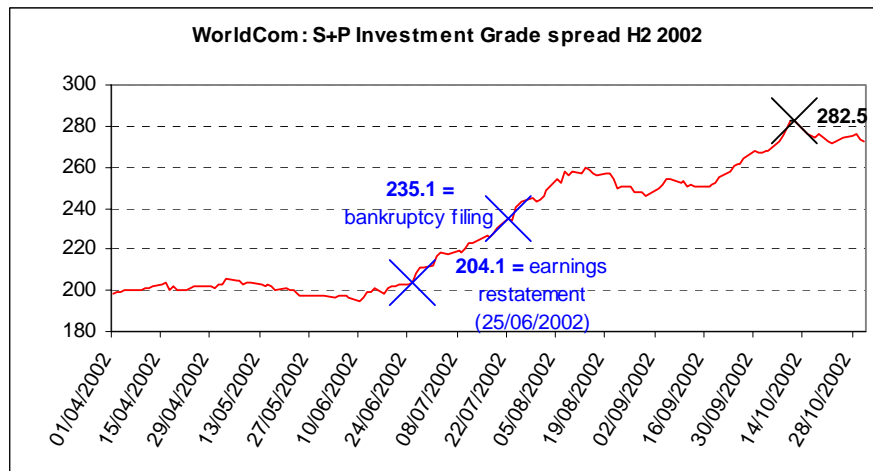
<sup>3</sup> Carlo Maria Pinaridi, *Default e piazza finanziaria*, Egea 2005, page 12 and following. Other interesting examples can be found in this study.

decreasing investments and squeezing market liquidity, with significantly negative effects on the domestic and international economies.

Another indication that the ripple effect of the bankruptcies goes well beyond investors of the insolvent companies is that the S&P 500 Index dropped 25 percent between October 2001 and October 2002 – the 12-month period that saw Enron and WorldCom unravel.



The bankruptcies also pushed the cost of borrowing higher for companies: the yield spread between U.S. investment-grade bonds and government bonds widened 79 basis points to 283 points in the 3 ½ months after June 25, 2002 – the date when WorldCom restated its earnings.



Socially weak segments of society are likely to suffer disproportionately from financial fraud. For instance, pensioners' retirement funds are often directly or indirectly (i.e. through pension funds or unit trusts) invested in stock and bonds of corporates, and they have less time to make up for any losses. The majority (52,1%) of retail holders of Parmalat's bonds and shares at the time of the company's default were older than 60<sup>4</sup>. According to published reports, Enron employees and retirees, many of whom held only Enron stock, watched the company's share price slide from \$ 90 in 2000 to zero in January 2001. In all, between 18,000 – 20,000 employees lost an estimated \$ 1.3 billion. Too often, scores of employees lose their jobs because of the insolvency of the company, or its massive restructuring. This in turn can increase social costs and sometimes provoke significant political turmoil. Before bankruptcy, WorldCom, Enron and Parmalat employed a combined 125,000. It is hard to gauge how many people lost their jobs, given that the companies have, in effect, been broken up, at least to some extent. But 17,000 people were laid off at WorldCom; and Andersen employed 28,000 people before its post-Enron collapse.

The senior executives at all three companies face criminal charges. Bernie Ebbers of WorldCom was the first to be convicted. Others have plead guilty and will be serving significant prison terms. Along with the companies' executives, several outsiders, such

<sup>4</sup> Carlo Maria Pinaridi, *Default e piazza finanziaria*, Egea 2005, page 48.

as auditors, lawyers, bankers, also face criminal charges, and some have already been convicted.

At least three people linked to the companies have committed suicide since the bankruptcies: Jay Clifford Baxter, Vice Chairman of Enron, in May 2001; Alessandro Bassi, a former aide to Fausto Tonna, the chief financial officer of Parmalat, killed himself in January 2004; Carlo Nocerino of Graubunder Kantonbank, a Swiss bank used in connection with certain transactions between Parmalat and a financial institution, was found dead in April 2005, a few hours before being interviewed by Swiss and Italian investigators.

The destruction of value is not limited to shareholders. Massive losses of value affect also the creditors and suppliers of insolvent entities. In the case of Parmalat, as seen above, a 2.5 billion Euro loss of shareholders was dwarfed by the losses of its creditors, who have filed claims for over 20 billion Euros. The combined debt of Enron, WorldCom and Parmalat at the time of their respective insolvencies amounted to about 70 billion USD. The creditors of these companies will only recover a modest fraction of the money they lent, and that only after a time-consuming and expensive restructuring process. Suppliers can suffer to such an extent that it is not uncommon for some of them to go into bankruptcy.

The sad events of 2001 and 2002 not only provoked a severe loss of investors' trust; they also unleashed a growing amount of public outrage. This, in turn, prompted parliaments, governments and supervisory authorities to take action and address public concerns. The result was an impressive and wide-ranging amount of regulation and self-regulation, the most notable example being the U.S. Sarbanes-Oxley Act. The regulatory reaction (or over-reaction) to financial frauds can increase the cost of doing business and increase corporate bureaucracy, thus making corporations and financial markets less efficient. The additional cost to U.S. companies of complying to Sarbanes Oxley is estimated at \$1.2 billion for the S&P 500 companies, and the cost of assessing

fiscal controls has increased to an average of \$4.3 million per company<sup>5</sup>. Caterpillar Inc. reported that its audit fees increased 63% in 2004.

There is no, or very limited, recovery of assets in the event of a financial fraud, and Parmalat is no exception. Its losses, and those of its creditors and shareholders, are clearly not remotely balanced by the company's remaining assets, the recovery of misappropriated assets, or the freezing of assets of culpable parties, although a certain level of recoveries may finally result from the damages and revocatory claims filed by Parmalat's Commissioner. While everything has been attempted by the Commissioner of Parmalat and private and public investigators to try and recover the assets stolen from Parmalat, the truth is that a common feature of financial frauds is that the loss to the victims is completely out of proportion of the advantage to the fraudsters and to those who have willingly or unwillingly assisted in the fraud.

Enron and other financial frauds have affected the way businesses are operated and have significantly changed the role of a number of capital markets players. At board of directors level, audit and compensation committees have seen their role and responsibilities increase and independent directors have been given a far more important task than they used to have. Within a company's management structure, chief executive officers, chief financial officers, chief accounting officers, general counsel, and investors relations managers have all seen their jobs transformed, either as a consequence of regulatory changes (in particular, the Sarbanes – Oxley Act in the United States) or of investors' expectations and pressures. Other capital markets intermediaries, such as investment banks, lenders, law firms, auditing firms, rating agencies, have all had to rethink their role, internal controls, compensation structures, *modus operandi* in general.

### **3. FEATURES COMMON TO FINANCIAL FRAUDS**

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<sup>5</sup> According to a Financial Executives International's study of March 2005.

Well regulated, and honest financial markets are a key element of economic development. We need to understand what went wrong, and rebuild public and investor confidence.

Each financial fraud is of course different. Although in all cases things were not what they seemed and the company's true performance was blurred by wilful deception, the deception took different forms: self-dealing, improper revenue recognition, improper accounting of company's assets, the use of special purpose vehicles or supposedly equity transactions to hide debt, co-mingling of personal and corporate assets, improper capitalising of expenses to overstate operating results, and more. It is therefore difficult or even dangerous to generalise. However, there are some aspects that are common to all or several frauds.

### **3.1 Global Capital Markets**

Most of the financial frauds of the last several years have common features in terms of their global dimension. Global financial markets provide opportunities for fraudsters and multiply the negative impact of corporate wrongdoing. The global dimension of financial frauds is demonstrated by several elements.

Often, bonds or other debt instruments have been issued outside the country of incorporation of the listed company. It is no coincidence that Parmalat raised most of its money in the final 18 months through the international bond market, where regulation is weaker than in the stock market and disclosure requirements are sparse. Only three public bonds, representing about 250 million Euros out of the seven billion Euros of public bonds issued by Parmalat group, were issued by Parmalat itself; all the remaining 6,750 million Euros of public bonds were issued by companies registered outside Italy. Without international bond markets, the Parmalat fraud would have taken a different dimension<sup>6</sup>.

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<sup>6</sup> This comment does not imply a negative judgement of international financial markets, which represent a very important element to encourage competition, and finance investments and growth. On the contrary, it implies the need to prevent abuses to preserve and enhance trust in these essential markets.

Another element of the global dimension of the frauds is that often complex structured finance transactions have been put in place, making liberal use of tax and company law havens, special purpose vehicles, and with complex contractual documents governed by different laws. These sophisticated financial instruments – impossible to set-up efficiently in the company's domestic jurisdiction – have been abused to disguise debt and mislead the markets into believing that the company's financial performance was materially better than reality. The special purpose vehicles used by Enron are a good example, but similar schemes can be traced in other frauds, including Parmalat.

A further common element is that most of the problems have happened at the edges of complex multinational groups, in their off-shore vehicles or in financial companies little-known even within the corporations. The Parmalat group of companies counted over 200 companies, of which 19 based in states where the company did not have any industrial or commercial operation. These companies were often instrumental to facilitating some of the most egregious violations.

The victims of the fraud, be they creditors, shareholders, suppliers or employees are based in many countries. As mentioned above, the unlucky holders of Parmalat bonds are domiciled in 103 countries, with a strong majority of non-Italian creditors. Its employees worked in 32 different countries, and its direct or indirect suppliers are based in many more.

Based on one or several of these elements, foreign authorities take an interest in the fraud and interested parties make use of whatever legal option is available to them.

For instance, in the Parmalat situation, the investigations have been conducted by prosecutors or financial authorities in more than 10 countries, namely: Italy, the United States of America, the United Kingdom, The Netherlands, Luxembourg, Malta, Brazil, the Cayman Islands, Switzerland, Austria, Sweden. In each jurisdiction there may be more than one authority investigating. Italy's criminal investigations of the Parmalat fraud are conducted by prosecutors in Parma, Milan, Rome and Bologna, administrative

investigations by Consob (Italy's equivalent to the FSA), the Bank of Italy, Ufficio Italiano Cambi (the money-laundering watchdog), and a parliamentary committee. In the US, formal or informal interest has been expressed – according to press reports – by the New York District Attorney, the US Attorney, the SEC and the FED.

Each authority has its rules, different powers, different interests, and a specific way of thinking and approaching the issue. This creates significant problems of co-ordination of the investigations, but also huge challenges to a fraudulent company's new management and advisors in trying to work out a strategy to deal with all the different international requirements.

Irrespective of the company's country of incorporation, the United States often play a major role in the aftermath of any financial fraud.

The American financial market is the world's largest, and its financial institutions are among the biggest global sources of financing or investment advice. US authorities do not hesitate to enforce their jurisdiction to protect US investors or to investigate potential wrongdoing by entities subject to their supervision, as demonstrated by the recent DaimlerChrysler, Vivendi, Shell, Ahold and Parmalat cases.

There is clearly an effort by America's trial lawyers to globalise their industry. Unless legislative changes make America a less plaintiff-favourable jurisdiction, or other countries introduce efficient private civil remedies for financial fraud, trial lawyers will continue to seek American jurisdiction for European claims. According to a study published by PricewaterhouseCoopers last year, since 1995 over 100 foreign firms have been sued in US private securities litigation or cases brought by the SEC or the US Department of Justice. The number of class actions for securities frauds against non-US defendants in the last few years has been 5 in 2000, 10 in 2001, 19 in 2002, and 10 in 2003. Class-action lawyers are helping rewriting the rules on Wall Street, as demonstrated by the new guidelines being considered by the Bond Market Association and leading financial institutions after the recent 6 billion USD WorldCom settlements<sup>7</sup>.

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<sup>7</sup> The Wall Street Journal Europe, 5<sup>th</sup> and 7<sup>th</sup> April 2005.

The impact of the American system is also very obvious in its export of accounting rules, corporate governance standards, and securities regulations. For instance, the introduction of the Sarbanes-Oxley Act has had very significant effects well beyond the boundaries of the United States.

However, a global capital market has to live in a fragmented legal and jurisdictional framework. This provides opportunities for wrongdoers; requires corporations and other capital markets players to deal with a complex transnational environment (a often psychological, not only regulatory, issue); and creates obstacles to the identification, punishment and deterrence of fraudsters, and to the restoration of victims' rights.

### **3.2 Corporate Governance**

Corporate governance is about enabling a corporation to attract financial and human capital, to perform efficiently, and to perpetuate itself by generating long-term economic value for its shareholders, while respecting the interests of stockholders and society as a whole<sup>8</sup>.

Corporate governance failed at Enron and other companies affected by financial frauds. Its failure has shown how important good corporate governance is to the well-being of corporations and financial markets. In terms of corporate governance, all the companies involved in financial scandals share some features.

The first is an extremely powerful management, with highly centralised powers.

This is true irrespective of the ownership structure of the company, from very fragmented shareholdings (Enron, WorldCom, Royal Dutch - Shell), to the presence of a clearly dominating shareholder (Hollinger, Parmalat, Adelphia). In general, the key governance problem in large publicly held corporations is the separation of ownership

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<sup>8</sup> The definition is borrowed from Ira Millstein, a leading corporate governance specialist.

and control. The firm's nominal owners, the shareholders, exercise virtually no control over either day to day operations or long-term policy. Instead, control is vested in the hands of professional managers, who typically hold no, or only a small portion of, the company's shares. Enron is as a good example that unscrupulous managers can use their control over the company to benefit themselves at the expense of their shareholders and other stakeholders.

The general theory is that if a company has a controlling shareholder, managers who pursue their own self-interest will be displaced by such shareholder. Yet, the presence of a controlling shareholder introduces a new divergence of interest; namely, that between the majority shareholder and the minority shareholders. Precisely because of the power exercised by a controlling shareholder over management, it is very easy for the controlling shareholder to extract non-pro rata benefits for itself at the expense of the minority. This may explain why the so-called "majority premium" (*i.e.* the premium price that an acquirer is prepared to pay for shares representing a controlling interest in a company it wants to purchase) is often referred to in corporate governance doctrine as the "theft premium".

In many Italian and European listed corporations a single shareholder (or a small group of shareholders acting in concert) owns the majority or a controlling stake of the voting stock of the corporation. In Parmalat's case, the Tanzi family controlled the company through Coloniale, a holding owning a 51% majority of Parmalat's shares, and the family's leader was also the founder, chairman and CEO of the company. The problem of majority shareholder abuses is not confined to continental European companies, however. In juxtaposition to Parmalat, for example, one could cite the Anglo-US example of Hollinger, or the US example of Adelphia.

A second corporate governance feature of recent financial frauds is that all companies were in formal compliance with the rules of corporate governance, or openly declared their non-compliance.

Parmalat, for instance, did declare that nine of the 13 members of the board were executive directors, and that of the four non-executive directors, three were independent. Of the three independent directors one was in fact a school-mate and a close friend of Mr Tanzi, who allegedly owed to him and his political connection the chairmanship of a local bank. As declared by Parmalat, its internal control committee (Italy's equivalent to British or American audit committees) was non-compliant with the voluntary Code of Corporate Governance of Borsa Italiana, the Milan stock exchange, in that of its three members two were executive directors (one being the chief financial officer!), while the third one – supposedly independent – was the bank chairman mentioned above. Parmalat's disclosure admitted that the company was not compliant with best practice in the crucial area of internal audit but argued that "its own internal audit procedures [were] in line with the needs of the group" <sup>9</sup>. In 2000, Enron's corporate governance was rated among the top five US companies<sup>10</sup>.

### **3.3 Legal Loopholes**

The financial scandals have been made easier by ineffective rules or accounting standards, which have sometimes represented real legal loopholes. Instances of such deficient regulations include in the case of Enron ineffective treatment of special purpose entities, and the delay in disclosing internal dealings to the markets; for WorldCom, the lack of a rule prohibiting loans to directors by the corporation; and in the case of Parmalat an insufficient regulation of bonds issued via foreign subsidiaries<sup>11</sup>.

These shortcomings are for parliaments and regulators to rectify, as has been done in a number of cases.

### **3.4 Supervisory Failures**

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<sup>9</sup> The group's internal audit function consisted of one person (incidentally, a former employee of Parmalat's long-standing auditing firm). This person was responsible for auditing a group consisting of over 250 companies, 35,000 employees, and operating in 32 countries. A super-human task.

<sup>10</sup> *Il Sole-24 Ore*, 7<sup>th</sup> March 2005.

<sup>11</sup> However, this loophole played a very minor role in the fraud, and one should not believe that the Parmalat disaster was a result of poor regulation.

In all cases, those that were supposed to protect financial markets from fraud or to give early warning of impending problems, failed, for a number of reasons. Some external supervisors (such as stock exchange watchdogs) often did not have the powers or the human or financial resources to be able to detect and investigate the issuers subject to their jurisdiction. Boards of directors and financial intermediaries such as auditing firms, failed to act on numerous signs that the finances were wrong, often for a perverse mechanism of incentives and the lack of moral courage.

### **3.5 Excessive Reliance on Finance**

To a smaller or larger extent, all companies involved in the scandals had failed in, or lost track of, their industrial strategy. The management's inability to reach increasingly ambitious (or unrealistic) growth targets or to sustain profitability led them to quick-fix financial solutions, sometimes offered too eagerly by sophisticated financial institutions and readily subscribed to, or promoted, by chief financial officers keen to obtain and maintain powerful roles in the corporation.

### **3.6 Lack of Moral Courage**

Corporations are complex organisations where every activity requires the involvement of several officers and employees, more often than not very sophisticated individuals able to perceive that a certain transaction is unusual and potentially illegal. All of the frauds could have been prevented or stopped much earlier by one such person refusing to perform the illegal activity or reporting the suspicious transaction to someone in the company who could have. All too often this did not happen.

Perhaps the only good news about the collapse of Enron and WorldCom was that there were some protestations from employees within the company who were unhappy about the accounting scams. Sherron Watkins, Enron's Vice President of Corporate Development, sent a memo to Kenneth Lay, Enron's Chairman, in August 2001 warning him about accounting practices of the company; stating that she was "*nervous that we will implode in a wave of accounting scandals*". Her concerns were that Enron

was using off-the-books partnerships to hide hundreds of millions of dollars of losses. Lay's response was to instigate a limited investigation by Enron's lawyers, which found that there was no major problem. Watkins has stated that Enron's chief financial officer Andrew Fastow, who headed several off-balance-sheet partnerships, sought her dismissal after hearing about her warnings. Watkins also raised her concerns with Andersen, Enron's auditors.

Cynthia Cooper, a Vice President auditor at WorldCom who reported to Chief Financial Officer Scott Sullivan, raised her concerns about the accounting irregularities with WorldCom's accountants PWC and she was told that it was not her problem. She then raised her concerns with Max Bobbitt, head of internal audit, and then Sullivan himself - and was told to back off. In late May 2002, Cooper and her team discovered a substantial accounting discrepancy that allowed WorldCom to turn a \$662 million loss into a \$2.4 billion profit. In June 11 2002, Sullivan asked Cooper to delay the audit and she refused. The next day Cooper told the head of the audit committee about her findings. Finally, Cooper and her team confronted WorldCom's controller David Myers who, according to an internal audit memo, admitted that he knew the accounting could not be justified. On June 20, Cooper and a team member attended an audit-committee meeting of WorldCom's board of directors at which Sullivan was to explain his accounting strategy. Sullivan asked for more time to fully support his argument. When he could not justify his accounting strategy, he was asked to resign. Sullivan refused to step down and was fired on June 24. The following day WorldCom came clean about its financial situation.

#### **4. ROLE OF AND LESSONS FOR CAPITAL MARKETS PLAYERS**

Enron and the other financial scandals have plenty of lessons to offer. Some have been learned, many not yet.

##### **4.1 Lessons for Investors**

Investors are the victims of financial fraud. They deserve to be protected by the law, by supervisory authorities and by financial intermediaries. But they can do more to protect themselves. They should make greater use of their rights, ask questions, and vote at shareholders' meetings.

The short-term view of certain investors is *per-se* a powerful incentive to management looking for quick-fix financial solutions to industrial problems. An investor willing to do his part in improving financial markets should take a more long-view approach, consistently exercise his rights, and be prepared to pay attention to and reward good corporate governance. For instance, it is amazing to see that neither non-executive directors, nor auditors, or investors seem to have noticed that Parmalat's audit committee was composed of individuals who could not be relied upon. All this was apparently acceptable to supervisors and investors two years after Enron. As they readily accepted a board of directors with 8 executive directors out of 13, with the three so-called independent directors being either close friends of Mr. Tanzi, his consultants, or members of the boards of banks doing business with Parmalat.

Parmalat's investors could therefore see – simply reading the company's disclosure – a board of directors dominated by the family of the majority shareholder and by executive or non-independent directors, an internal audit function non-compliant with best practices, an audit committee composed by insiders and chums of Mr Tanzi and therefore palpably dysfunctional.

Similarly, in Enron's case, the independence of the audit committee was compromised by the generous granting of stock options and even by consultancy fees paid to supposedly independent directors, and the accounts duly reported red flag-waving transactions with related parties.

In these and other cases investors (or the financial intermediaries on whom they relied) failed to make use of readily available information.

We cannot ignore the ultimate responsibility of the investors and of the public for creating the conditions that let a company profit through hurting financial markets and the public. Businesses do change (and have changed, for instance on environmental matters) when their investors and the public came to expect and require different behaviour, can reward companies for their virtuous behaviour, and make life difficult for those managers and corporations that do not listen.

## **4.2 Lessons for Corporations**

Of course many of the answers to the corporate governance issues raised by Enron and the other financial scandals have come or will come from legislative and enforcement actions. The United States must be applauded for having reacted quickly by introducing the Sarbanes - Oxley Act (a far-from-perfect piece of legislation, but one with a number of positive features), while enforcement actions taken by prosecutors in countries like the US and Italy will provide a useful deterrent, all the more so if their initiatives are swift.

However, legislation and enforcement cannot be the only answer. Corporations can – and should – take voluntary steps to introduce better corporate governance standards as these measures would reduce the risk of financial frauds and send a powerful message to investors and other stakeholders. A corporation's credibility is entirely based on its ability to keep promises. Until Enron the key promise was that of financial performance, but now markets have understood that the quality of information is essential.

A few such steps of this kind taken by corporations include adopting, when not already contemplated by the laws, an absolute definition of independence for their directors; extending the definition of independent director to include the organisations to which the directors report (in other words, a director who sits on the board of a corporation on behalf of another company, should not be regarded as independent if that company obtains business from the corporation); avoiding cross-directorships; defining a limit to the number of offices any director can hold; offering training to non-executive directors; guaranteeing direct access to the board by so-called whistleblowers; making

independent directors disclose all past and present relationships with the company, so that the market (and not only the board of directors) can form a view as to their independence.

### **4.3 Lessons for Directors**

These days accounting issues have become a major cause of unemployment for CEOs. Several CEOs have lost their jobs because of accounting issues in the last several months<sup>12</sup>. Moreover, by now, executive directors should be aware that – at least in some jurisdictions - there is a significant probability of being caught and facing harsh penalties. Whether these deterrents are enough, remains to be seen.

CEOs have an essential role in setting standards. One lesson of Enron, WorldCom and Parmalat is that the rot spreads rapidly in an organization headed by a corrupt CEO. But the reverse is also true. A CEO who is utterly intolerant of unethical behaviour is almost certainly a better deterrent to fraud than distant regulators. Arguably the best way to weed out corrupt practices is to promote a culture of transparency and zero tolerance for corrupt practices, underpinned by clear corporate governance rules. BP Plc fired 252 people last year as a result of its zero-tolerance policy. A number of US companies, including Citigroup, have now introduced systems that facilitate whistle-blowing.

Directors should also reconsider the compensation system of executive directors. There seems to be a strong correlation between corporate fraud and the value of stock options. A recent study of the Boston Consulting Group<sup>13</sup> calculates that the value of stock options granted to the CEOs of public companies recently found guilty of fraud in the years before the frauds became public, was 800% greater than those granted to the CEOs of comparable firms not found guilty of any wrongdoing.

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<sup>12</sup> A few examples, from March 2004: Sanjay Kumar of Computer Associates, Frank Dunn of Nortel Networks, Sir Philip Watts of Royal Dutch - Shell, Richard Scrushy of Health South, Marta Stewart, Maurice "Hank" Greenberg of AIG, his son Jeffrey Greenberg of Marsh & McLennan.

<sup>13</sup> Quoted in *The Economist*, 5<sup>th</sup> March 2005, page 14, and on *Il Sole-24 Ore* of 7<sup>th</sup> March 2005.

Non-executive directors face increasing responsibilities. For instance, ten former directors of WorldCom and ten former members of the board of Enron have recently agreed to pay respectively 18 and 13 million USD to settle a class-action suits. Non-executives should follow the advice I heard from Mr. Vesey, former Chief Justice of Delaware<sup>14</sup>: *”There is no such thing as a stupid question. A director should keep asking questions until he understands. And then he should ask himself if he is doing the right thing”*. It is now abundantly clear that directors who fail to do that put not only their corporation, but themselves as well, at high risk.

#### **4.4 Lessons for Employees**

A number of senior and not-so-senior employees have remained embroiled in their superiors’ wrongdoing and are now facing criminal charges and civil liabilities. Their number includes the chief financial officers of Enron, Tyco, WorldCom, Parmalat; the chief accounting officer, the treasurer and a few additional members of the finance and accounting departments of Parmalat. Several senior executives of Nortel Networks have been blamed by the company for using “inappropriate” accounting methods to inflate profits, and thus their own bonuses, and have been asked to return 8.6 million USD in bonuses. Very often, these minor players in the fraud have received very limited financial rewards for their wrongdoings, which seem to have been committed out of a warped concept of loyalty to their superiors. Invariably, they use the “superior orders” defence. It did not work at the post-war Nuremberg or Tokyo trials, it will not work at their trials.

Employees owe their loyalty to the corporation, not to their superiors, whenever there is a conflict. This requires the moral courage of being able to say no to your superior; a tough call, but one that employees have to make, if they want to protect their future as well as that of their company and its stakeholders. Employees must protect themselves by trying to understand what happens at the top. Executives at fraudulent companies have made decisions that were wrong and often involved illegal activities. Those

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<sup>14</sup> At a conference on financial markets, Courmayeur, Italy, 2004.

decisions would have not been possible if the company culture had allowed people to challenge ideas. Not allowing appropriate dissent killed those companies.

Another obvious lesson from Enron and other financial scandals is the importance of making sure a retirement plan – such as a 401(k) plan – has a diversified investment portfolio, and is not heavily invested in the corporation where the worker is employed.

#### **4.5 Lessons for Financial Intermediaries**

Professor John Coffee describes financial intermediaries as: “*reputational intermediaries who provide verification and certification services to investors*”. Coffee then goes on to describe some of these services as verifying a company’s financial statement (independent auditor); evaluating the creditworthiness of a company (rating agency); assessing the company’s business and financial prospect *vis-à-vis* its rivals (securities analyst); appraising the fairness of a specific transaction (investment banker); providing reassurances as to the truthfulness of a company’s situation or the legality of a transaction (lawyers).

Increasingly, not only directors are held accountable for their actions, but also other key players, as they are believed owing a fiduciary responsibility to the markets. This requires taking into account the impact of a transaction on the whole community of investors in the client company, rather than just the narrow interests of managers.

##### Independent Auditors

The independent auditors of company’s involved in financial frauds run a very high risk: Andersen collapsed as a result of its involvement with Enron, which included fraud; Deloitte and Grant Thornton face a criminal investigation by Italian prosecutors in connection with Parmalat, as well as civil lawsuits in the US led by Parmalat and by its creditors and shareholders. Financial frauds have already changed the shape of the

auditing industry (including with the exit of one of the then Big Five, Andersen, from the market) and the way it operates.

Before the financial scandals, it was believed that market incentives could be sufficient to lead gatekeepers to screen against fraud by their clients. The rationale was that auditors share none (or very little) of the gains of frauds and are exposed to a large fraction of risk. Enron and the subsequent scandals have demonstrated that this theory does not work in practice.

During the 1990's big auditing firms learned how to use auditing services as an entry-point into the lucrative market of consulting services. Their involvement in non-audit services created perverse incentives and disincentives that worked well because of the remuneration structure of auditing firms. Some partners of audit firms began to lower auditing standards (and thus their firms' reputational assets) in order to protect and increase their own revenues. This effectively created a shift of the usual corporate governance problem from the issuer to the gatekeeper.

This was coupled – at least in the US – to a reduction of civil liability risks during the 1990's, because of new statutes<sup>15</sup> that decreased exposure to securities class actions. The risk is also considerably lowered by the corporate shielding. During their sales pitches auditing firms appear as single, global organisations, offering the full benefits of a seamless worldwide organisation. Alas, when they have to face liability, the same seamless organisations suddenly dissolve to become a loose network of separate entities, thus minimising any financial and reputational risk.

Auditing firms are in a difficult juncture, and are facing very significant liabilities which no professional organisation can bear, or the risk of becoming an overly-regulated low-margins industry.

### Rating Agencies

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<sup>15</sup> Private Securities Litigation Reform Act of 1995; Securities Litigation Uniform Standard Act of 1998

Rating agencies have been criticised since the Asian crisis for being unable to do what they are supposed to do best, *i.e.* identify creditworthy businesses for investors. This may have something to do with the fact they are paid by the corporation (interestingly so-called “spontaneous” ratings are normally lower than paid ratings). This is likely to become of greater concern given a recent trend of rating agencies to add additional services to their catalogue, following a pattern which has done no good to auditing firms.

Rating agencies will sooner or later be under pressure to reform, either by litigation promoted by disgruntled investors, or by legislative actions.

### Financial Analysts

In October 2001, sixteen of the seventeen financial analysts covering Enron had a “buy” or “strong buy” recommendation. In August 2003, nine analysts out of fourteen recommended to “buy” Parmalat shares, three had a “hold” recommendation. In November there were still seven “buy” recommendations. This is surprising, as a recent study examining the 25 largest bankruptcies of the last five years<sup>16</sup> shows in all cases “red flags” existed and were perceived by stock exchanges: the share price of all companies analysed decreased by an average of 40% in the 12 months before the insolvency was declared.

Some high-profile US cases have shown that conflicts of interests within the financial industry can make it very difficult for financial analysts to exercise the independence of judgement on which so many investors rely.

The US answer to the conflicts can be found in section 501 of the Sarbanes – Oxley Act that requires the SEC and other regulators to issue rules designed to address conflicts of interest. Europe is only now beginning to tackle this problem.

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<sup>16</sup> By Boston Consulting Group, Il Sole-24 Ore, 7th March 2005.

## Financial Institutions

Some of the cases of unacceptable behaviour have occurred in the financial services industry. Companies like Enron wanted to make their books look a lot better. Some major financial institutions are alleged to have participated in this and similar deceptions. There is no doubt that it was the companies' management that wanted to deceive investors, but without the assistance of some institutions, they would have not been able to enter into these transactions, nor would financial markets have been damaged to the same extent.

In some cases, banks continued to finance those entities when they were clearly in trouble, or devised exceedingly complicated financial structures which had the intended or unintended effect of misleading markets. Certain transactions elevated form over substance, violated accounting rules, and created serious reputational and legal risks for the institution, all with the apparent approval of outside auditors and lawyers.

This has been particularly true in the context of the placement of financial instruments, where the opportunity for misleading investors is greater. Investors or bankrupt companies have sued several financial institutions, accusing them of failing to adequately examine the financial health of companies that subsequently became insolvent. In a December 2004 ruling<sup>17</sup> in the WorldCom case, underwriters were thought to be obliged to conduct "*a reasonable investigation*" into the finances of the issuer, aside from merely relying on the company's audited financial statements or a comfort letter from the company's auditors. Financial institutions appear to be taking the situation seriously, whether because of genuine concerns, regulators' pressure, or the sheer costs of increasingly expensive settlements, and are considering whether to establish formal guidelines for performing due diligence as part of their underwriting of bonds.

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<sup>17</sup> By US District Judge Denise Cote, as reported by The Wall Street Journal Europe, 7th April 2005.

The financial scandals and subsequent investigations have shown how conflicts of interest, perverse incentives, and lax internal controls have affected financial intermediaries. Conflicts of interest meant that institutional investors have not always proved able to act with a sufficient level of independence, thus failing to exercise enough control on the companies in which they are shareholders or creditors. Poorly designed career and financial incentives have created a culture of pushing to the limits that has sometimes encouraged bankers to put their institution's reputation and well-being behind their eagerness to achieve ambitious financial targets. Lax, badly conceived and ineffectually enforced internal controls have failed to sufficiently contain wrongdoing.

Financial institutions are an attractive target for litigation, and are therefore in a particularly difficult situation. Plaintiff lawyers see them as "deep pockets" and unpopular entities that are not likely to be willing to face a jury and are often prepared to settle for very significant amounts of money (as in the case of the WorldCom settlements).

Moreover, banks work in a regulated environment, and as a consequence are particularly subject to the negative consequences of an investigation conducted by regulators or prosecutors.

### Lawyers

Last but not least, my profession. Financial frauds pose risks and opportunities for all the branches of the legal profession.

Financial frauds must be sorted out in a highly uncertain and complex regulatory and legal environment. This requires an ability to deal with complex multi-jurisdictional issues and provides an opportunity for international law firms.

Arthur Andersen worldwide disappeared because of the wrongdoing of a very few of its members in Houston, Texas. Likewise, global law firms risk having their reputation tarnished or even disappearing because some of their partners may have been too keen to devise dubious financial schemes for their client, or because they have been negligent in their due diligence. In the Parmalat situation, criminal charges have been brought against three Italian lawyers (two former members of the board of directors, and an external advisor), a law firm has been put in liquidation, and another has been named as defendant in a class action in the United States. Internal controls are therefore likely to become increasingly important to law firms.

In some countries (notably in the US with the attorney's obligations to withdraw from representation) new rules oblige in-house and outside counsel to step down or even to report wrongdoing to supervisory bodies. This is bound to create friction with clients and increase exposure to professional risks.

The attorney-client privilege is being eroded by increasing regulatory authority requests to lift privilege, and also from the client's willingness to allow in-house counsel to testify in court.

## **6. CONCLUSIONS**

The last few years' revelations of accounting and corporate governance problems at many of our nations' best-known corporations are both disturbing and unacceptable. The foundations of an efficient and competitive free market economy in a democratic society include accounting transparency, a commitment by owners, managers, and employees to high standards of ethical behaviour, and the maintenance of internal organizational structures and incentives that encourage ethical behaviour.

Parmalat has shown that the lessons of Enron have not been completely learned, and has confirmed that rule-making cannot be the only answer to corporate wrong-doing. A number of elements must contribute to restoring faith in corporations and financial

markets. Beside improving laws and regulations, supervisory agencies must be given enough resources and powers to become more effective enforcers, wrong-doers (including those whose task is to prevent fraud) must be held accountable, international co-operation has to be strengthened. But the best results can be achieved by promoting a more responsible behaviour by all key-players. In this, corporations can take the leadership by introducing the right incentives, not only in terms of internal rule-making, but also in terms of creating a culture that encourages ethical behaviour. Investors and enforcers should take notice, and reward those corporations.

## PARMALAT TIMELINE: DECEMBER 2003 – MAY 2005

### December 2003

- 8: Parmalat says it hasn't been able to cash in the Epicurum investment.
- 9: Parmalat misses deadline to repay €150 million-euro bond, prompting S&P to slash its credit rating to junk; Enrico Bondi called in as a turnaround consultant.
- 10: S&P cuts rating again, citing ``clear'' default risk; Chief Financial Officer Luciano Del Soldato quits.
- 12: Parmalat repays the €150 million-euro bond after emergency help from banks and the Italian government.
- 15: Calisto Tanzi quits and Bondi takes over as CEO and chairman.
- 16: PricewaterhouseCoopers hired to review accounts.
- 18: Parmalat missed deadline to pay investors in Brazil unit.
- 19: Parmalat discloses that a €1 billion account held at Bank of America doesn't actually exist.
- 23: Italian government rushes through legislation aimed at keeping Parmalat afloat.
- 24: Parmalat files for bankruptcy protection. Tanzi cannot be located. Later transpires that he was in Ecuador.
- 27: Parma court declares Parmalat insolvent; Tanzi is arrested in Milan.
- 29: Securities and Exchange Commission opens investigation into ``one of the largest and most brazen corporate financial frauds in history.'' Parmalat shares suspended indefinitely.
- 30: Tanzi tells prosecutors that there is nearly €8 billion missing from what is listed as Parmalat assets and that he diverted €500 million to family owned companies.
- 31: Seven more people linked to the fraud are arrested including Fausto Tonna, Del Soldato, Gian Paolo Zini and Lorenzo Penca.

### January 2004

- 5: Milberg Weiss Bershad Hynes & Lerach files a class-action lawsuit against Parmalat in the Southern District Court of Manhattan, also citing Citigroup, Deloitte & Touche Tohmatsu and other companies.

7: Parmatour denies allegation from investigators that Parmatour has a hole in its accounts worth as much as €2.5 billion; Italy's parliament starts an inquiry into the collapse of Parmalat.

8: Grant Thornton International severs ties with its Italian affiliate; Italian prosecutors widen their investigation to include Deloitte & Touche.

17: A Brazilian judge names an administrator to manage the Brazilian operations of Parmalat.

19: Investigators estimate Parmalat's assets were overstated by about €13 billion.

21: Administrators overseeing Parmalat Capital Finance and its affiliates Food Holdings and Dairy Holdings file for protection against U.S. creditors; the European Commission says it will consider proposals to regulate international credit-rating agencies as the Milan police search the offices of S&P.

23: Alessandro Bassi, a personal assistant to Del Soldato commits suicide.

26: Initial report by PWC finds that Parmalat had net debt of about \$17 billion, including \$16 billion that hadn't been previously disclosed, confirming that the fraud was Europe's largest-ever financial scandal.

## **February 2004**

7: Italian investigators widen the probe to 28 people as they seize \$2.5 billion in a Monte Carlo bank account belonging to Del Soldato.

17: Francesca Tanzi, Stefano Tanzi and Giovanni Tanzi, the two children and brother of Calisto Tanzi, are arrested, taking the total number of people in jail or under house arrest to 18.

23: Cayman Islands judge bars Bondi from becoming liquidator for businesses based on the island.

24: Parmalat USA Corp. files for Chapter 11 bankruptcy protection in the Southern District Court of Manhattan.

26: Luca Sala, the former Bank of America relationship manager with Parmalat, tells investigators that he was paid \$27 million in kickbacks.

## **March 2004**

2: Parmalat hires Kroll to find missing \$ millions.

4: Parmalat reaches agreement with a group of 20 banks on a €05.8 million-euro credit facility.

6: Review of financial figures for first-nine months of 2003 finds that the company lost money, over-turning a previously reported profit. Parmalat hires Lombardi, Molinari & Associates to help with litigation against banks in Italy.

9: Bondi presents draft restructuring plan to Italian government.

11: Italian government publishes report supporting strengthening market-governance rules.

16: European Commission seeks to tighten rules for auditors as a result of Parmalat collapse.

18: Milan prosecutors seek to fast-track indictment of Tanzi and 28 other individuals, as well as Bank of America and the auditors.

20: Full-page advertisements show procedure for creditors to register their claims in debt-for-equity swap.

24: Judge Guido Piffer rejects fast-tracking in Milan criminal case, meaning that the preliminary inquiry must first be completed.

26: Parmalat restructuring team, led by Bondi, holds first meeting with creditors, outlining plan for debt-for-equity swap. The plan receives broad backing.

#### **April 2004**

20: Deadline for filings of proofs of claims for creditors wishing to swap their debt for equity.

28: Parma football club granted bankruptcy protection by Parma court.

#### **May 2004**

6: Capitalia, Italy's fourth-largest bank, says that its chairman Geronzi is under investigation in connection with the Parmalat bankruptcy.

25: Parmalat's profit projection and industrial plan validated by consultant A. T. Kearney.

26: Milan prosecutor requests indictment of Calisto Tanzi and 28 other individuals, as well as Bank of America, Deloitte & Touche and Grant Thornton.

27: Ireland's Supreme Court refers dispute over who controls Dublin-based Eurofood to European Court of Justice.

#### **June 2004**

21: Parmalat Extraordinary Commissioner Enrico Bondi files restructuring plan with Industry Minister Antonio Marzano. Parmatour, the Tanzi family's travel company, is put up for sale.

22: Parmalat Finanziaria files for bankruptcy protection from U.S. creditors.

### **July 2004**

2: Judge Robert Drain agrees to two-month injunction against suing Parmalat Finanziaria in U.S.

14: Parmalat Extraordinary Commissioner Enrico Bondi publishes recovery ratios for debt-to-equity swap and recommendations on which credits should be swapped for debt.

24: Italian industry minister Marzano approves Bondi's restructuring plan, which includes a debt-for-equity swap and envisages the repayment of 50 percent of profits in the form of dividends.

26: Parmalat publishes preliminary first-half results showing increase in Ebitda.

28: Parmalat reaches a settlement with the Securities and Exchange Commission, endorsing corporate governance reforms proposed by Bondi.

29: Parmalat Extraordinary Administrator Enrico Bondi files lawsuit against Citigroup in New Jersey state court, the first legal civil lawsuit against a financial institution since the bankruptcy.

### **August 2004**

8: Parmalat Extraordinary Administrator Enrico Bondi files a lawsuit against UBS, seeking the return of €290 million euros.

9: Parmalat Extraordinary Administrator Enrico Bondi files a lawsuit against Deutsche Bank, seeking the return of €17 million.

13: Brazil judge grants bankruptcy protection to Parmalat's Brazil units.

18: Parmalat Extraordinary Administrator Enrico Bondi files lawsuit against Deloitte & Touche and Grant Thornton in Illinois state court.

19: Parmalat Extraordinary Administrator Enrico Bondi sues CSFB, seeking the return of 248 million euros.

### **September 2004**

16: Citigroup files to move Parmalat lawsuit from state court in New Jersey to federal court in New York.

18: Deadline for creditors to file appeals against Parmalat Extraordinary Administrator Enrico Bondi's recommendations on which creditors should be allowed to swap their debt for equity.

21: Parmalat board approves plan to list shares in the new company on the Milan stock exchange.

28: Parma court files order to confiscate assets worth 7 billion euros from Tanzi and 26 others.

#### **October 2004**

4: Parmalat prosecutors start hearings on indictments.

6: Banca Intesa's Nextra unit agrees to pay €60 million in a settlement with Parmalat Extraordinary Administrator Enrico Bondi.

7: Parmalat Extraordinary Administrator Enrico Bondi sues Bank of America in North Carolina state court.

8: Citigroup sues the Italian government for its handling of the Parmalat bankruptcy.

28: European Commission recommends new rules aimed at forcing companies to disclose off-balance-sheet debt in response to the Parmalat fraud.

#### **November 2004**

18: Citigroup bid to move Parmalat lawsuit from state court in New Jersey to federal court in New York is rejected by New Jersey judge.

#### **December 2005**

1: Bank of America files motion to dismiss against Parmalat Extraordinary Administrator Enrico Bondi's lawsuit.

8: Parmalat USA Corp. files plan to liquidate its assets and exit bankruptcy protection.

16: Parma court judge Giuseppe Coscioni rules on which credits can be admitted to the Parmalat debt-for-equity plan, admitting claims worth 19.5 billion euros. Parmalat Extraordinary Administrator Enrico Bondi sues 45 financial institutions, mostly Italian, in a series of "clawback" actions filed at the Parma court.

#### **January 2005**

3: Deloitte CEO Bill Parrett says in an interview with the Financial Times that Grant Thornton, not Deloitte were to blame for the misleading information in the Parmalat accounts.

12: Parmalat USA Corp plan to liquidate assets approved by U.S. judge, clearing the way for a vote of creditors.

19: Bank of America executive Jaap Dutry says in an interview with the Financial Times that litigation against the banks is a ``distraction'' and that investors should club together to get the board of Parmalat to reach a global settlement as soon the company is re-listed and Bondi has gone.

25: Milan judge rejects Bank of America's request to be admitted as a plaintiff in the criminal suit in Milan – where Bank of America may be a defendant.

26: A group of bondholders publish a letter rebutting Bank of America's attempt to stop litigation against the banks and urging Parmalat Extraordinary Administrator Enrico Bondi to continue efforts to recoup funds.

### **February 2005**

1: Parmalat Extraordinary Administrator Enrico Bondi sues Morgan Stanley for €135.7 million.

3: Parmalat publishes preliminary 2004 earnings, which show a 30 percent increase in operating profit.

25: Creditors of Parmalat USA Corp vote in favour of plan to liquidate assets.

28: Citigroup motion to dismiss lawsuit brought against the bank by Parmalat Extraordinary Administrator Enrico Bondi is rejected by New Jersey judge.

### **March 2005**

2: Parmalat Extraordinary Administrator Enrico Bondi publishes revised recovery ratios for debt-to-equity swap, following ruling by Judge Coscioni on credits that should be admitted to the plan.

9: Parmalat Extraordinary Administrator Enrico Bondi sues factoring companies.

17: Milan prosecutor files request to indict Morgan Stanley, UBS, Deutsche Bank, Citigroup, Nextra. Citigroup files civil lawsuit in the U.S. against Parmalat seeking damages.

24: Parmalat Extraordinary Administrator Enrico Bondi publishes double-page advertisement in Il Sole, Financial Times and other newspapers outlining restructuring plan, including new corporate governance plans that will make it difficult for banks to pressure the board of Parmalat to drop litigation against them, once Parmalat is re-listed in Milan.

31: Consob fails to approve share offer prospectus, leading to delay in the listing of new Parmalat on the Milan stock exchange.

**April 2005**

15: Parmalat Extraordinary Administrator Enrico Bondi files new share offer prospectus.

**May 2005**

9: Borsa Italiana approves the listing of Parmalat's shares on the Milan stock exchange, subject to Consob's approval of the share offer prospectus.

11: Parma prosecutors file indictments against 71 individuals.