

Communication no. 7 of March 26th, 2019¹

RE: No-deal Brexit - Requirements for intermediaries who provide investment services and activities, with or without ancillary services, resulting from the adoption of Decree Law no. 22 of March 25, 2019 laying down the transitional regime.

***1. REFERENCE
CONTEXT***

On March 25, 2019, in view of the continuing uncertainty over the ratification by the United Kingdom of Great Britain and Northern Ireland of the agreement for withdrawal from the Treaty on European Union adopted by the European Council on November 25, 2018, Decree Law no. 22 (hereinafter also referred to as the “decree”) was issued.

The regulatory measures prepared are intended to ensure continuity in the provision of investment services and activities by both Italian entities operating in the United Kingdom and British entities operating in Italy, as well as to regulate the orderly exit from the domestic market of British operators obliged to discontinue activities in Italy by the leave date.

In fact, in case of a no-deal Brexit, as of the leave date, domestic intermediaries will have to stop providing investment services and activities in the United Kingdom, given that they will no longer benefit from the European passport. Similarly, British intermediaries will no longer be able to provide their services in Italy using pre-existing authorisations.

The provisions, whose entry into force is subject to the failure to reach a withdrawal agreement, envisage different regimes according to the type of entity, the methods these entities adopt for the provision of services (freedom to provide *vs* branch) and the target client group.

Operators can take advantage of the transitional regime subject to prior notification sent to the competent authorities. Operation beyond the transitional period (to be understood as the period between the date of withdrawal and the end of the eighteenth month following this date) is subject to the presentation of an application for authorisation to the same authorities.

¹ This communication has been updated with [Consob Communication no. 10 of 1st August 2019](#).

The entities that have to end their activity by the date of withdrawal must inform their clients, those with whom they have relations in the provision of services and the competent authorities of the initiatives taken to ensure the orderly termination of activity. The same information must also be provided by intermediaries that, while having sent notification, fail to apply for authorisation within the deadline of six months from the date of the start of the transitional period.

2. OPERATOR REQUIREMENTS

Below is a summary of the requirements resulting from the adoption of the decree that are to be met by intermediaries providing investment services.

Unless otherwise specified, the definitions laid down in the decree law shall apply.

2.1 BRITISH INTERMEDIARIES

The **investment firms based in the United Kingdom** that, at the date of withdrawal, provide investment services and activities, with or without ancillary services, in Italy:

British investment firms

a) under the freedom to provide services, may continue to perform the same activities only with regard to eligible counterparties and professional clients (art. 6, paragraph 2-*quinquies*, letter a) and paragraph 2-*sexies*, letter a) of the Consolidated Law on Finance)², until the adoption of a decision of the European Commission in accordance with article 47, paragraph 1 of Regulation (EU) no. 600/2014, and in any case not beyond the transitional period (art. 3, paragraph 3 of the decree);

b) in the exercise of the right of establishment through branches, may continue, during the transitional period, to perform the same activities (art. 3, paragraph 4 of the decree);

c) under the freedom to provide services, in favour of retail clients (art. 1, paragraph 1, letter m-*duodecies* of the Consolidated Law on Finance) and opt-up professional clients (art. 6, paragraph 2-*quinquies*, letter b) and paragraph 2-*sexies*, letter b) of the Consolidated Law on

² “as well as, only for the management of life cycle events of derivative contracts not subject to central clearing obligation (over the counter) outstanding at the date of withdrawal, even where this implies the modification of such contracts or the conclusion of new contracts within the limits set by article 62 of the decree-law of 25 June 2008 n. 112, converted, with modifications, by the law 6 August 2008, n. 133, of the regions, of the autonomous provinces of Trento and Bolzano and of the local municipalities” (art. 3, paragraph 3, of the decree).

Finance), shall terminate activity by the date of withdrawal (art. 4, paragraph 1 of the decree)³.

Notifications

The investment firms referred to in points **a)** and **b)** may benefit from the transitional period subject to forwarding to CONSOB - within 3 working days prior to the date of withdrawal – a notification⁴ according to the attached sheets (see Annexes 1 and 2). These firms shall also send - within 15 days following the date of withdrawal - information and data on existing relations with Italian clients according to the attached form (see Annex 3).

Applications for authorisation

The same firms referred to in points **a)** and **b)**, where they intend to operate in Italy beyond the transitional period, shall submit to CONSOB - within a final deadline of six months from the date of the start of the said period - the application for authorisation to practise their activities, pursuant to art. 28, paragraphs 1 and 6 of the Consolidated Law on Finance, or, where necessary, for the constitution of an Italian investment firm, pursuant to art. 19 of the Consolidated Law on Finance.

The investment firms referred to in point **c)** - within fifteen days of the date of entry into force of the decree - shall inform clients, other entities with whom they have relations in the provision of services and CONSOB on the initiatives taken to ensure the orderly termination of activity.

Notices of termination of activity by British intermediaries

Similar information on the initiatives taken for the interruption of the activity, within the same time frame, is also provided by:

- d)** British banks that operate in Italy under the freedom of provision in favour of retail clients and opt-up professional clients, as well as fund managers and the UCIs that must stop activity within the date of withdrawal;
- e)** British banks and investment firms that have not sent notification of their intention to continue their activity in Italy during the transitional period or have decided not to apply for authorisation to provide services beyond the transitional period within six months of the start of that period⁵.

³ See, footnote 1.

⁴ The British investment firms which, at the date of entry into force of the decree, are entitled to participate in government bond auctions don't need to provide notification in order to continue to offer investment services and activities, without prejudice to the need to present an application for authorization if they intend to operate in Italy beyond the transitional period (article 3, paragraph 6, of the decree).

⁵ For entities that have not applied for authorisation to provide services beyond the transitional period, the deadline of fifteen days for sending notices shall run from the expiry of the deadline for the submission of the aforementioned application.

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In order to avoid injury to clients, the intermediaries referred to in points **c)**, **d)** and **e)** are required to adopt the necessary operations for the orderly termination of existing contracts, in the shortest time possible, and in any case no later than the final deadline of six months from the date of withdrawal, in compliance with the advance notice required for the dissolution of contracts. These intermediaries shall not conclude new contracts nor renew, even tacitly, existing contracts (art. 4, paragraph 1 of the decree). The intermediaries that, despite having sent notification, have decided not to apply for the provision of services beyond the transitional period, are granted a further period of six months for the termination of contracts, running from the expiry of the deadline for the submission of applications (art. 4, paragraph 3 of the decree).

Notices to clients

The notices to be sent to clients must be drafted using clear language and in such a way as to avoid causing undue alarm, while also highlighting the consequences and the measures prepared in the event of a 'hard Brexit' scenario, as well as providing adequate evidence of the initiatives taken to ensure the orderly termination of activity and of the impact on existing contractual relations.

The information notice sent to each client concerned, to be adjusted according to the type of client (retail vs professional), shall also discuss the impacts of a 'hard Brexit'. In line with the warning notices by the *European Securities and Markets Authority (ESMA)* of December 19, 2018⁶ and by CONSOB of March 12, 2019⁷, in case they have not already done so, intermediaries must provide clients with at least the following information:

- (i) the impact of Brexit on the way investment services and activities are provided by the firm, on the specific service provided to the client, as well as on the future relationship with the same client;
- (ii) the actions taken to achieve the orderly management of the existing relationship with the client as well as the management of the requests for information and complaints received from clients in connection to Brexit (firm contact details, any dedicated telephone number, publication of FAQs on the website, special department to deal with complaints, possibility of recourse to alternative dispute resolution systems, ...);

⁶ With a Statement of December 19, 2018 (Reminder to firms on their MiFID obligations on disclosure of information to clients in the context of the United Kingdom withdrawing from the European Union, ESMA35-43-1328, available at https://www.esma.europa.eu/sites/default/files/library/esma35-43-1328_brexit_statement_information_to_clients.pdf), ESMA asked intermediaries operating in the provision of investment services to provide clients with information on the measures taken, or to be taken, in connection with Brexit and on the implications on their relations with these clients. Given the importance of the content and dissemination of this Statement, notice was given of its publication on the CONSOB website through a press release of December 20, 2018. The text of the press release in question can be found in the area of the CONSOB website dedicated to Brexit, where you can also find a link to a similar area of the ESMA website.

⁷ CONSOB warning notice is available at http://www.consob.it/web/consob-and-its-activities/other-regulatory-measures/documenti/english/resolutions/ra20190312_3.htm.

(iii) the main implications of Brexit, including as a result of changes to the operations of the intermediary, on the contractual relationship with the client, including the presumed time scale for terminating relations according to the specific service provided (administered savings vs managed savings) and contractual provisions on the advance notice required for the dissolution of the relationship.

In compliance with the contractual obligations and the rules applicable to the provision of the activities in question, each British intermediary is responsible for identifying the most appropriate channels to communicate this information, as well as the actual content of the notices to be issued. Solutions must always be adopted that enable the firm to demonstrate that the client has actually received the notice.

The notices must be drafted in the language chosen by the client in the contract or, in the absence of such a provision, in the language used in the contract. The same information must also be published on the website of the intermediary, both in Italian and in English.

*Notices to
CONSOB*

The intermediaries referred to in points **c)**, **d)** and **e)** shall send CONSOB a notice outlining the initiatives taken to ensure the orderly termination of activity with separated evidence of any cases whose impact is considered significant as regards the orderly termination of the provision of investment services and activities or clients' rights. These intermediaries shall also send - within 15 days following the date of withdrawal - details of existing relations with Italian clients according to the attached form (see Annex 3).

2.2 ITALIAN INTERMEDIARIES

Adequate information on the consequences and the measures adopted in a 'hard Brexit' scenario must also be provided by Italian banks and investment firms (SIMs), asset management companies, open-end investment companies (SICAVs), fixed capital investment companies (SICAFs), EuVECA, EuSEF and ELTIF fund managers that provide cross-border investment services in the United Kingdom⁸, with or without ancillary services, even in compliance with the relevant regulations established by the United Kingdom.

SIMs that, at the date of withdrawal, perform their activity in the United Kingdom may continue to operate during the transition period subject to notification sent to CONSOB at least 3 working days prior to the leave date.

SIMs may continue to operate in the United Kingdom beyond the transitional period, provided that, within the final deadline of six months from the start date of the transitional period, they submit to

⁸ The reference is, for SICAVs and SICAFs, to the marketing of UCIs.

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CONSOB the application for authorisation to practise their activities referred to in art. 26, paragraph 6 of the Consolidated Law on Finance.

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The notifications, applications and notices described in this communication must be sent to CONSOB at the following certified email address: tin.Brexit@pec.consob.it.

The Chairman
Paolo Savona

NOTIFICATION SHEET FOR BRITISH INVESTMENT COMPANIES THAT, AT THE DATE OF WITHDRAWAL, PROVIDE INVESTMENT SERVICES AND ACTIVITIES IN ITALY UNDER THE FREEDOM TO PROVIDE SERVICES

to be sent in an Excel file structured according to the table below

PART 1: INFORMATION

Company name	
LEI of the company	
Company trade name	
Company address	
Telephone	
Email	
Contact person	

PART 2: SERVICES THE COMPANY INTENDS TO PROVIDE IN ITALY UNDER THE FREEDOM TO PROVIDE

		INVESTMENT SERVICES AND ACTIVITIES									ANCILLARY SERVICES						
		A1	A2	A3	A4	A5	A6	A7	A8	A9	B1	B2	B3	B4	B5	B6	B7
FINANCIAL INSTRUMENTS	C1																
	C2																
	C3																
	C4																
	C5																
	C6																
	C7																
	C8																
	C9																
	C10																
	C11																

* Please mark the appropriate cell with an X

Legend:

Section A: List of investment services and activities:

A1	reception and transmission of orders in relation to one or more financial instruments
A2	execution of orders on behalf of clients
A3	dealing on own account
A4	portfolio management
A5	investment advice
A6	underwriting of financial instruments and/or placing financial instruments on a firm commitment basis
A7	placing of financial instruments without a firm commitment basis
A8	operation of a MTF
A9	operation of an OTF

Section B: List of ancillary services

B1	Safekeeping and administration of financial instruments for the account of clients, including custodianship and related services such as cash/collateral management and excluding maintaining securities accounts at the top tier level;
B2	Granting credits or loans an investor to allow them to perform a transaction in one or more financial instruments, where the firm granting the credit or loan is involved in the transaction
B3	Advice to undertakings on capital structure, industrial strategy and related matters and advice and services relating to mergers and the purchase of undertakings
B4	Foreign exchange services where these are connected to the provision of investment services
B5	Investment research and financial analysis or other forms of general recommendation relating to transactions in financial instruments
B6	Services related to underwriting
B7	Investment services and activities as well as ancillary services of the type included under sections A or B of this Annex related to the underlying of the derivatives included under points (5), (6), (7) and (10) of section C where these are connected to the provision of investment or ancillary services

Section C: List of financial instruments

C1	Transferable Securities
C2	Money market instruments
C3	Units in collective investment undertakings
C4	Options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, emission allowances or other derivative instruments, financial indices or financial measures which may be settled physically or in cash
C5	Options, futures, swaps, forwards and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties other than by reason of default or other termination event
C6	Options, futures, swaps and any other derivative contract relating to commodities that can be physically settled provided that they are

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	traded on a regulated market, a Multilateral Trading Facility, or an Organized Trading Facility, except for wholesale energy products traded on an OTF that must be physically settled
C7	Options, futures, swaps, forwards and any other derivative contracts relating to commodities , that can be physically settled not otherwise mentioned in point 6 of this section and not being for commercial purposes, which have the characteristics of other derivative financial instruments
C8	Derivative instruments for the transfer of credit risk
C9	Financial contracts for differences
C10	Options, futures, swaps, forward rate agreement and other derivative contracts relating to climatic variables, freight rates or inflation rates or other official economic statistics that must be settled in cash or may be settled in cash at the option of one of the parties other than by reason of default or other termination event, as well as any other derivative contracts relating to assets, rights, obligations, indices and measures, not otherwise mentioned in this section, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are traded on a regulated market, an Organised Trading Facility, or a Multilateral Trading Facility
C11	Emission allowances consisting of any units recognised for compliance with the requirements of Directive 2003/87/EC (Emissions Trading Scheme)

NOTIFICATION SHEET FOR BRITISH INVESTMENT COMPANIES THAT, AT THE DATE OF WITHDRAWAL, PROVIDE INVESTMENT SERVICES AND ACTIVITIES IN ITALY UNDER THE RIGHT OF ESTABLISHMENT

to be sent in an Excel file structured according to the table below

PART 1: INFORMATION

Company name	
LEI of the company	
Company trade name	
Company address	
Telephone	
Company email	
Contact person	
Branch name	
Branch address	
Branch telephone	
Branch email	
Branch contact person	

PART 2: SERVICES THE COMPANY INTENDS TO PROVIDE IN ITALY THROUGH A BRANCH

		INVESTMENT SERVICES AND ACTIVITIES									ANCILLARY SERVICES						
		A1	A2	A3	A4	A5	A6	A7	A8	A9	B1	B2	B3	B4	B5	B6	B7
FINANCIAL INSTRUMENTS	C1																
	C2																
	C3																
	C4																
	C5																
	C6																
	C7																
	C8																
	C9																
	C10																
	C11																

* Please mark the appropriate cell with an X

Legend:

Section A: List of investment services and activities:

A1	reception and transmission of orders in relation to one or more financial instruments
A2	execution of orders on behalf of clients
A3	dealing on own account
A4	portfolio management
A5	investment advice
A6	underwriting of financial instruments and/or placing financial instruments on a firm commitment basis
A7	placing of financial instruments without a firm commitment basis
A8	operation of a MTF
A9	operation of an OTF

Section B: List of ancillary services

B1	Safekeeping and administration of financial instruments for the account of clients, including custodianship and related services such as cash/collateral management and excluding maintaining securities accounts at the top tier level;
B2	Granting credits or loans an investor to allow them to perform a transaction in one or more financial instruments, where the firm granting the credit or loan is involved in the transaction
B3	Advice to undertakings on capital structure, industrial strategy and related matters and advice and services relating to mergers and the purchase of undertakings
B4	Foreign exchange services where these are connected to the provision of investment services
B5	Investment research and financial analysis or other forms of general recommendation relating to transactions in financial instruments
B6	Services related to underwriting
B7	Investment services and activities as well as ancillary services of the type included under sections A or B of this Annex related to the underlying of the derivatives included under points (5), (6), (7) and (10) of section C where these are connected to the provision of investment or ancillary services

Section C: List of financial instruments

C1	Transferable Securities
C2	Money market instruments
C3	Units in collective investment undertakings
C4	Options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, emission allowances or other derivative instruments, financial indices or financial measures which may be settled physically or in cash
C5	Options, futures, swaps, forwards and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties other than by reason of default or other termination event
C6	Options, futures, swaps and any other derivative contract relating to commodities that can be physically settled provided that they are

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	traded on a regulated market, a Multilateral Trading Facility, or an Organized Trading Facility, except for wholesale energy products traded on an OTF that must be physically settled
C7	Options, futures, swaps, forwards and any other derivative contracts relating to commodities , that can be physically settled not otherwise mentioned in point 6 of this section and not being for commercial purposes, which have the characteristics of other derivative financial instruments
C8	Derivative instruments for the transfer of credit risk
C9	Financial contracts for differences
C10	Options, futures, swaps, forward rate agreement and other derivative contracts relating to climatic variables, freight rates or inflation rates or other official economic statistics that must be settled in cash or may be settled in cash at the option of one of the parties other than by reason of default or other termination event, as well as any other derivative contracts relating to assets, rights, obligations, indices and measures, not otherwise mentioned in this section, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are traded on a regulated market, an Organised Trading Facility, or a Multilateral Trading Facility
C11	Emission allowances consisting of any units recognised for compliance with the requirements of Directive 2003/87/EC (Emissions Trading Scheme)

1. DATA ON EXISTING RELATIONS WITH ITALIAN CLIENTS AT THE DATE OF WITHDRAWAL

(to be sent in an Excel file structured according to the table below)

Full name of the company:					
LEI of the company:					
	Type of client				
	<i>Retail</i>	Opt-up professionals	Per se professionals	Eligible counterparties	<i>Total</i>
Number of existing relationships					
Total business volume related to the service of portfolio management*					
Total business volume related to the service of investment advice*					
Total business volume related to other investment services *					

* in millions of euro

2. INFORMATION NOTICE ON THE INVESTOR COMPENSATION SCHEME

Provide information on adherence to investor compensation schemes with adequate evidence, where appropriate, of delivery to the Italian compensation scheme of a declaration of the British scheme certifying that the Italian clients will continue to be protected for the period following the date of withdrawal.