

## **Communication no. 4 of 14 March 2019<sup>1</sup>**

### ***Contract-continuity of OTC derivatives and operations of trading venues***

In case of a leave of the European Union by the United Kingdom in the absence of a bilateral agreement, the lack of adoption of transitional measures at the national level to ensure the continuity of markets and intermediaries in a no-deal scenario<sup>2</sup> will have an impact on OTC derivatives not cleared by a CCP entered into with counterparties established in the UK, as well as on the operations of Italian and UK trading venues.

#### **OTC derivatives**

As regards OTC derivatives not cleared by a CCP, we remind that on 13 March 2019 two Delegated Regulations of the European Commission<sup>3</sup> have been published in the Official Journal of the European Union. On the basis of such Regulations, OTC derivatives entered into with UK counterparties can be novated to a counterparty established in the European Union (while maintaining their exempted status from clearing and margining requirements under EMIR), provided that the novation is effected within 12 months following the Brexit date.

During the 12-month term granted by the aforementioned Regulations, in the supervision over the servicing on OTC derivatives Consob will apply its powers in a proportionate manner, also with a view to facilitating the contract-continuity.

#### **Trading venue operations**

In the lack of adoption of transitional measures at the national level, Italian trading venues wishing to extend their operations in a non-EU country shall notify Consob of their intention pursuant to Articles 26 and 70, para. 2, of the Consolidated Law on Finance, in order to acquire Consob's non-objection.

Analogously, any trading venue established in a non-EU country intending to extend its operations in Italy shall be duly recognised pursuant to Article 70, para 1, of the Consolidated Law on Finance.

---

<sup>1</sup> This communication is to be considered outdated, see [Consob Communication no. 10 of 1<sup>st</sup> August 2019](#).

<sup>2</sup> On 24 January 2019, the Ministry of Finance published a press release in connection with the scenario whereby the United Kingdom leaves the European Union in the absence of a bilateral agreement. It announced that it has drafted transitional measures to ensure the continuity of both markets and intermediaries in the event of a no deal ([http://www.mef.gov.it/en/ufficio-stampa/comunicati/2019/comunicato\\_0015.html](http://www.mef.gov.it/en/ufficio-stampa/comunicati/2019/comunicato_0015.html)). The drafting of transitional measures was also mentioned by the Presidency of the Council of Ministers in its document "*Prepararsi al recesso senza accordo del Regno Unito dall'UE il 29 marzo 2019*" ([http://www.governo.it/sites/governo.it/files/201902151\\_BREXITsenzaAccordo\\_info.pdf](http://www.governo.it/sites/governo.it/files/201902151_BREXITsenzaAccordo_info.pdf)).

<sup>3</sup> See Commission Delegated Regulation (EU) 2019/396 of 19 December 2018 amending Delegated Regulation (EU) 2015/2205, Delegated Regulation (EU) 2016/592 and Delegated Regulation (EU) 2016/1178 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council as regards the date at which the clearing obligation takes effect for certain types of contracts and Commission Delegated Regulation (EU) 2019/397 of 19 December 2018 amending Delegated Regulation (EU) 2016/2251 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council as regards the date until which counterparties may continue to apply their risk-management procedures for certain OTC derivative contracts not cleared by a CCP, published in the Official Journal of the European Union on 13 March 2019 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L:2019:071:TOC>. See also the Communication from the European Commission of 19 December 2018 <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52018DC0890&qid=1547033754831&from=IEN>.

So far, Consob has been notified by three operators of Italian trading venues of their intention to extend their operations in the United Kingdom. It has also been notified by the operator of an Italian trading venue of its intention to extend its operations in Israel. Consob has also received an application for the recognition in Italy of a UK regulated market.

On February 27<sup>th</sup>, Consob released a statement of non-objection to the operations in Israel of the MTF “MTS Cash Domestic–Israel Segment” pursuant to Article 70, para 2, of the Consolidated Law on Finance, upon notification by MTS SpA, following a decision by the market operator to relocate in Italy the activity carried on by the MTFs “EBM” and “MTS Cash Domestic”, in light of the leave of the European Union by the United Kingdom.

Consob keeps on working on the further proceedings aimed at the adoption of the statements of non-objection and recognition, which will be concluded as soon as possible, in order to warrant the continuity of the activity by UK and Italian operators on Italian and UK trading venues, respectively, in compliance with the applicable provisions of law.

The Acting Chair  
*Anna Genovese*