

BANCA D'ITALIA

Measure of 24 November 2020

Application to Italian institutions participating in the systems managed by central counterparties LCH Limited and ICE Clear Europe Limited, governed by English law, of the provisions of Legislative Decree 210/2001, as amended, pursuant to Article 10(5) of the same legislative decree.

BANCA D'ITALIA

Having regard to Recital 7 of Directive 98/26/EC on settlement finality in payment and securities settlement systems, pursuant to which Member States may apply the provisions of the directive to their domestic institutions that participate directly in third-country systems and to collateral security provided in connection with participation in such systems;

Having regard to Article 10(5) of Legislative Decree 210/2001 ('Implementation of Directive 98/26/EC on settlement finality in payment and securities settlement'), as replaced by Article 1(508)(a) of Law 145/2018, pursuant to which Banca d'Italia can establish, via its own measure adopted in agreement with Consob, the application of the provisions of said legislative decree to Italian institutions that participate in systems of a non-European Union country as regards the execution of transfer orders as referred to in Article 1(1)(m)(2) of the same decree;

Having regard to the agreement for the withdrawal of the United Kingdom from the European Union concluded in accordance with Article 50 of the Treaty on European Union, and approved by the Council of the European Union on 30 January 2020 ('Withdrawal Agreement');

Having considered that, in accordance with the cited Withdrawal Agreement, since 1 February 2020 the United Kingdom has ceased to be part of the European Union and that the Agreement, in Part Four, provides for a transition period ending on 31 December 2020, during which time European Union law – including Directive 98/26/EC on settlement finality in payment and securities settlement systems, implemented in Italy with the cited Legislative Decree 210/2001 – continues to be applicable to and in the United Kingdom;

Having considered that as at 1 July 2020, the deadline established in the Withdrawal Agreement for extending the transition period, no such decision had been taken;

Having considered that the systems managed by LCH Limited and ICE Clear Europe Limited are governed by English law;

Having considered that the EU legislation on settlement finality of transfer orders referred to in Directive 98/26/EC shall apply until 31 December 2020 to the systems managed by LCH Limited and ICE Clear Europe Limited, designated by the Bank of England pursuant to said directive and in which institutions established in Italy participate;

Having considered that these systems, because they are governed by English law, will be systems of a non-European Union country pursuant to Article 10(5) of Legislative Decree 210/2001 once the transition period has ended;

Having considered the European Securities and Markets Authority's decision of 28 September 2020 to recognize LCH Limited and ICE Clear Europe Limited, on the basis of which they will be able to

provide clearing services to clearing members established in the European Union starting from the day after that on which the transition period ends until 30 June 2022;

Having considered the importance of the systems managed by LCH Limited and ICE Clear Europe Limited, including for the offering of clearing services for OTC derivative contracts pertaining to classes subject to the clearing obligation in accordance with Article 4 of Regulation (EU) No 648/2012;

Having considered therefore the need to guarantee to the systems managed by such central counterparties the protections envisaged by Legislative Decree 210/2001 in order to contain system risk and, in such a way, maintain access conditions for Italian institutions on an equal and non-discriminatory basis;

Having considered that Banca d'Italia and Consob participate in the CCP Supervisory Committee of the European Securities and Markets Authority, in which the competent European authorities assess the proper functioning of systems managed by the central counterparties of third countries, including LCH Limited and ICE Clear Europe Limited, for the purposes of receipt and maintenance of recognition within the European Union;

Having deemed, in light of the existing cooperation agreements and relationships, that it is not necessary to conclude specific agreements between Banca d'Italia, Consob and the Bank of England;

Being in agreement with Consob;

HEREBY PROVIDES THAT:

As of 1 January 2021, the provisions of Legislative Decree 210/2001, as amended, shall apply, in accordance with Article (10)(5) of said legislative decree, to Italian institutions that are clearing members in the systems managed by LCH Limited or the system managed by ICE Clear Europe Limited, governed by English law, provided that and until the central counterparty concerned is recognized in the European Union pursuant to a measure adopted in accordance with Article 25 of Regulation (EU) No 648/2012.

The Governor

I. Visco