

Italy: Financial Regulatory Bimonthly Newsletter

May - June 2023

In brief

This publication features the latest Financial Regulatory developments in Italy.

General Italian Law Applicable to Financial Entities

FinTech: published new law on the issuance and circulation of certain financial instruments in digital form and the simplification of FinTech experimentation (*Legge n. 52 del 10 maggio 2023*)

On 15 May 2023, the Law No. 52 of 10 May 2023 - which converted Law Decree No. 25 of 10 May 2023 into Law - was published on the Official Journal of the Republic of Italy (*Gazzetta Ufficiale*), ("**FinTech Law**"). The FinTech Law aims at aligning the Italian system to Regulation (EU) 2022/858, which established a pilot regime for market infrastructures based on the Distributed Ledger Technology (DLT pilot regime). The FinTech Law introduces a regulatory regime for the issuance and circulation of certain financial instruments, using Distributed Ledger Technology (DLT), also in order to prevent Italian operators from being placed at a competitive disadvantage *vis-à-vis* other operators established in other EU Member States.

The Fintech Law entered into force on 16 June 2023.

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Algorithmic trading and HFT: published the Operational Guide for companies that engage in algorithmic trading or use high-frequency algorithmic trading techniques (*Guida operativa Consob in materia di Algo Trading e HFT: definizione e obblighi informativi*)

On 23 June 2023, the Consob published an Operational Guide ("**Guide**") addressed to investment companies that engage in algorithmic trading ("**algo-trading**") or use high-frequency algorithmic trading techniques (HFT), as defined by Article 4, paragraph 39 and 40, of Directive (EU) 2014/65 ("**Mifid II**") as implemented by Article 1, paragraph 6-*quiquies* and 6-*septies* of the Legislative Decree No. 58 of 24 February 1998 ("**Italian Consolidated Law on Finance**", or TUF). In particular, the Guide aims at providing assistance to the addressees in relation to the:

- Notification of algorithmic trading operations and the implementation of HFT.
- Communications that investment firms and Italian banks engaged in algorithmic trading, as well as the entities referred to in Article 67-*ter*, paragraph 8, of the TUF, must file with the Consob.

The Operative Guide also specifies the modalities for complying with the above reporting obligations, also in the light of the clarifications provided by the European Securities and Markets Authority (ESMA) on this specific matter.

ADR: amendments to the Regulation implementing Article 32-ter, paragraph 2, of the TUF (*Delibera n. 22721*)

On 10 June 2023, the Consob Resolution No. 22721 of 1 June 2023, which amends the Consob Regulation No. 19602 of 4 May 2016 (implementing Article 32-ter, paragraph 2, of the TUF, relating to the *Arbitro per le Controversie Finanziarie* - the Italian investment services alternative dispute resolution mechanism (ACF)) -, was published on the Official Journal of the Republic of Italy (*Gazzetta Ufficiale*).

The amendments aim at confirming the jurisdiction of the ACF over the disputes between investors and crowdfunding service providers relating to breaches of duties of diligence, correctness, information and transparency.

The amendments entered into force on 11 June 2023.

CCPs: Consob and Bank of Italy adhere to the ESMA Guidelines on scenarios and indicators for CCP recovery plans under Regulation (EU) 2021/23 (*Avviso Consob del 18 maggio 2023*)

On 18 May 2023, the Consob issued a notice announcing the full adherence of the Consob and the Bank of Italy to the ESMA [Guidelines on CCP recovery plan indicators](#) (Article 9, paragraph 5, of the CCPRRR) (ESMA91-372-1702) and [Guidelines on CCP recovery plan scenarios](#) (Article 9, paragraph 12, of the CCPRRR) (ESMA91-372-1701) ("**ESMA CCPs Guidelines**").

The ESMA CCPs Guidelines aim at specifying the range of scenarios and the list of qualitative and quantitative indicators that central counterparties (CCPs) must take into account when developing and maintaining recovery plans, and that competent authorities must consider when assessing such plans.

POC: published a communication concerning capital strengthening operations reserved for a single investor (*Comunicazione n. 1/23*)

On 3 May 2023, the Consob published the Communication No. 1/2023 concerning capital strengthening operations reserved to a single investor (e.g., convertible bonds reserved to a single investor) as required under Article 11, paragraph 5, of the TUF ("**POC Communication**"). The POC Communication aims, in particular, at providing guidance on the:

- reporting obligations of issuers in relation to the POC non-standard operations (i.e., convertible bonds reserved to a single investor to be converted in several tranches, spread over a specified period of time, with a conversion price determined, from time to time, on the basis of the performance of the issuer's securities on the market); and
- capital increase transactions reserved to a single investor, known as Stand-by Equity Distribution Agreement (SEDA) and Step-Up Equity Financing (SEF).

DLT regulations: Consob and Bank of Italy adhere to ESMA Guidelines on standard forms, formats, and templates to apply for authorizations to operate a DLT market infrastructures (*Avviso del 3 maggio 2023*)

On 3 May 2023, the Consob issued a notice announcing the full adherence of the Consob and the Bank of Italy to the ESMA [Guidelines on standard forms, formats and templates to apply for authorisation to operate a DLT market infrastructure](#) (ESMA70-460-213) ("**ESMA DLT Guidelines**").

The ESMA DLT Guidelines apply to standard forms, formats, and templates, to be used for applying for any authorization to operate a DLT market infrastructure, namely a DLT Multilateral Trading Facility (DLT MTF), a DLT Settlement System (DLT SS) and a DLT Trading and Settlement System (DLT TSS).

MIFID II/MiFIR: 1) Consob adheres to ESMA Guidelines on certain aspects of the MiFID II suitability requirements; 2) Consob adheres to ESMA Guidelines on certain aspects of the MiFID II remuneration requirements; 3) public consultation concerning amendments to the Italian Markets' Regulation

On 25 May 2023, the Consob issued a [notice](#) announcing the full adherence to the ESMA [Guidelines on certain aspects of the MiFID II suitability requirements](#) (ESMA35-43-3172) ("**ESMA Suitability Guidelines**"). The ESMA Suitability Guidelines aim at providing clarifications on the applications of the suitability requirements in relation to Article 25, paragraph 2, of the Mfid II, and Articles 54 and 55 of the Delegated Regulation (EU) 2017/565, and apply to the provision of investment services consisting in investment advice and portfolio management. The Consob clarified that intermediaries subjects to its supervision will be required to comply with the ESMA Guidelines as of 3 October 2023.

On 5 June 2023, the Consob issued a **notice** announcing the full adherence to the ESMA **Guidelines on certain aspects of the MiFID II remuneration requirements**, (ESMA35-43-3565) ("**ESMA Remuneration Guidelines**"). The ESMA Remuneration Guidelines define the remuneration policies and practices of intermediaries in relation to business rules and conflict of interest obligations, with particular reference to the need to ensure the pursuit of the best interest of the client.

Intermediaries supervised by the Consob will have to comply with the ESMA Remuneration Guidelines as of 3 October 2023.

On a final note, on 15 June 2023, the Consob launched a **public consultation** concerning amendments to the Consob Regulation No. 20249 of 28 December 2017 ("**Italian Markets' Regulation**"). The amendments aim at aligning the national legal system with the developments introduced by:

- Regulation (EU) 2019/2175, amending Regulation (EU) 2014/600 (MiFIR), which establishes the competence of the ESMA for the authorisation and supervision of entities which provide transmission data services (i.e., Approved Reporting Mechanisms, "ARM", Approved Publication Arrangements, "APA", and Consolidated Tape Provider, "CTP"), with some exceptions though.
- Directive (EU) 2021/338, amending Directive (EU) 2014/65 (MiFID) as part of the so-called Capital Markets Recovery Package, which simplifies the rules on position limits for agricultural commodity derivatives and critical or significant commodity derivatives.

In particular, the amendments aim at:

- Limiting the application of the Italian Markets' Regulation to the Approved Publication Arrangements (APAs) and Approved Reporting Mechanisms (ARMs), which are of limited relevance to the internal market.
- Adapting the regulation of commodity derivatives to the new scope of application of position limits regime introduced by the so-called Capital Markets Recovery Package, as well as simplifying the reporting obligations requirements *vis-à-vis* the Consob.

The deadline for the submission of observations expired on 5 July 2023.

Crowdfunding: 1) consultation on guidelines on specialized crowdfunding service providers; 2) Consob Regulation on crowdfunding services; 3) Consob and Bank of Italy's memorandum of understanding

On 17 May 2023, the Bank of Italy launched a **public consultation** concerning guidelines on specialized crowdfunding service providers ("**Crowdfunding Guidelines**"). The Crowdfunding Guidelines, which implement Regulation (EU) 2020/1503 of 7 October 2020 on European crowdfunding service providers for business ("**Crowdfunding EU Regulation**"), regulate the Bank of Italy's expectations as regards how specialized crowdfunding service providers should comply with the provisions set forth in the Crowdfunding EU Regulation, in terms of corporate governance, internal controls, assessment on the suitability of the company's representative (i.e., the natural persons responsible for the management of the crowdfunding service providers), and due diligence on project owners (i.e., those who raise funds via a crowdfunding platform). The Bank of Italy specifies that the Crowdfunding Guidelines are not legally binding, and in case specialized crowdfunding service providers decide to apply measures other than those contained in the Crowdfunding Guidelines, they must inform the Bank of Italy (i) when submitting the application for authorisation as well as subsequently, and (ii) as part of the periodic reporting to the authority, by submitting the report on the organisational structure.

The deadline for the submission of observations expired on 16 June 2023.

On 10 June 2023, the **Consob Resolution n. 22720** of 1 June 2023, concerning the adoption of the Consob's Regulation on crowdfunding services, implementing the Crowdfunding EU Regulation, and Articles 4-*sexies*.1 and 100-*ter* of the TUF, was published on the Official Journal of the Republic of Italy (*Gazzetta Ufficiale*) ("**Crowdfunding Consob Regulation**"). The Crowdfunding Consob Regulation regulates, amongst others, the:

- Issuance and suspension of the authorization to provide crowdfunding services.
- Disclosure requirements for crowdfunding service providers.
- Italian legislation applicable to marketing communications.
- Identification of additional obligations arising from the Italian civil law regime.

In order to continue to provide services after 10 September 2023, crowdfunding service providers authorised under Italian law, are required to submit the application for the authorization with the competent authority, using the template published on the Consob's website and available [here](#).

The Crowdfunding Consob Regulation repeals the Consob Resolution No. 18592 of 26 June 2013 (the Regulation on the fund raising via online platforms).

On a side note, on 20 June 2023, the Consob and the Bank of Italy published a [memorandum of understanding](#) regulating the exercise of the joint supervision on crowdfunding service providers.

Payment and Banking Services - Bank of Italy's Supervision

Supervisory reporting: Bank of Italy's Provisions on the reporting of outsourcing agreement (*Segnalazione in materia di esternalizzazione di funzioni aziendali per gli intermediari vigilati*)

On 1 June 2023, the Bank of Italy issued the Provisions on the reporting of outsourcing agreements relating to internal functions of supervised entities ("**Outsourcing Provisions**"). The Outsourcing Provisions introduce a reporting framework applicable to the outsourcing agreements of less significant banks, parent companies of less significant banking groups, Italian investment firms (*società di intermediazione mobiliare*, SIM) of class 2 or class 3, parent companies of groups of SIMs, financial intermediaries, parent companies of financial groups, trust companies (*società fiduciarie*), payment institutions, electronic money institutions, asset management companies (*società di gestione del risparmio*, SGR), investment companies (Italian variable-capital investment companies - *società di investimento a capitale variabile* – SICAV, and Italian fixed-capital investment companies - *società di investimento a capitale fisso* – SICAF), crowdfunding services providers and, subject to certain conditions, to the depositary activities of Italian branches of EU banks and investment firms.

The Outsourcing Provisions entered into force on 14 June 2023. The deadline for the first reporting obligation, which refers to the outsourcing agreements that were in place on 31 December 2022, is set at 31 December 2023.

Credit intermediaries: OAM's Communication on the verification of the professional requirements of employees dealing with the public (*Comunicazione n. 33/2023*)

On 12 June 2023, the OAM (*Organismo Agenti e Mediatori*) published the OAM Communication No. 33/2023, clarifying the controls that credit intermediaries (such as agents in financial activities and credit brokers) must carry out on their employees who deal with the public, pursuant to Article 128-*novies* of Legislative Decree No. 385 of 1 September 1993 (the Italian Consolidated banking Law, or TUB), for the purpose of verifying that they meet the required professional standards. The OAM clarified that the possession of an adequate degree can be attested by the employee through a self-declaration, drafted in compliance with the Decree of the President of the Republic No. 445 of 28 December 2000, which must be gathered and verified by the relevant credit intermediary. In any case, by 3 months as of the starting of the employment relationship credit intermediaries are required to obtain the actual degree from the relevant employee.

Bail-in: Bank of Italy adheres to EBA Guidelines on the publication of the write down and conversion and bail-in exchange mechanic (*Attuazione degli Orientamenti dell'Autorità bancaria europea destinati alle autorità di risoluzione*)

On 1 June 2023, the Bank of Italy issued a notice announcing its intention to adhere to the European Bank Authority (EBA) [Guidelines to resolution authorities on the publication of the write down and conversion and bail-in exchange mechanic](#) (EBA/GL/2023/01) ("**EBA Guidelines on Bail-In**").

The EBA Guidelines on Bail-In will be implemented by 1 January 2024 through the publication, on the Bank of Italy's website, of a document detailing the Bank of Italy's approach to the write down and conversion and bail-in exchange mechanic.

Anti-Money Laundering

Remote onboarding: 1) Bank of Italy adheres to EBA Guidelines on the use of remote customer onboarding solutions even to non-recipients; 2) public consultation concerning the extension of the EBA guidelines to

other subjects supervised by the Bank of Italy; 3) amendments to the Bank of Italy provisions on customer due diligence

On 13 June 2023, the Bank of Italy issued a **notice** announcing the full adherence of the Authority to the EBA **Guidelines on the use of remote onboarding solutions, under Article 13, paragraph 1, of Directive (EU) 2015/849 (EBA/GL/2022/15)**, ("**EBA Onboarding Guidelines**"). The EBA Onboarding Guidelines regulate the modalities for the use of distance techniques, including the use of qualified electronic signature and digital identity tools, for the onboarding of the clients.

The EBA Onboarding Guidelines will apply starting from 2 October 2023.

On 15 June 2023, the Bank of Italy launched a **public consultation** concerning the extension of the EBA Onboarding Guidelines to the subjects which do not fall under the supervision of the EBA, but are subjects to the supervision of the Bank of Italy, namely the:

- Intermediaries enrolled on the register held by the Bank of Italy pursuant to Article 106 of the TUB, including trust companies
- Micro-credits providers
- *Cassa Depositi e Prestiti S.p.A.*
- *Poste Italiane S.p.A., for postal banking activities*

On a final note, on 29 June 2023 the **Bank of Italy's Provision of 13 June 2023**, concerning amendments to the Bank of Italy's Provisions on customer due diligence to combat money laundering and terrorist financing of 30 July 2019, was published on the Official Journal of the Republic of Italy (*Gazzetta Ufficiale*). The amendments aim at aligning the secondary provisions issued by the Bank of Italy with the EBA Onboarding Guidelines, and they will apply as of 2 October 2023

Affiliated subjects and agents: press release on reporting requirements (*Circolare OAM n. 47/2023*)

On 12 June 2023, the OAM (*Organismo Agenti e Mediatori*) published a circular concerning provisions on the Register of affiliated subjects, agents of payment service providers and e-money institutions, held by the OAM, ("**OAM Circular**"). The OAM Circular applies to (i) payment service providers, (ii) e-money institutions, (iii) Italian branches of EU payment service providers and e-money institutions, (iv) *Poste Italiane S.p.A.*, and (v) credit institutions authorized to provide payment services, which, for the exercise of their activities in Italy, avail themselves of affiliated subjects and agents. In particular, the OAM Circular regulates, amongst others, the reporting obligations *vis-à-vis* the OAM in connection with the use of affiliated subjects and agents, including the identification data of the agent/affiliated subject, the date of start and termination of the relationship with the same, as well as the requirements for making such communications.

SARs: published the UIF provision regulating anomalous indicators (*Provvedimento del 12 maggio 2023*)

On 24 May 2023, the Provision of the Financial Intelligence Unit (*Unità d'Informazione Finanziaria per l'Italia presso la Banca d'Italia*, the UIF) of 12 May 2023, regulating anomalous indicators, was published on the Official Journal of the Republic of Italy (*Gazzetta Ufficiale*) ("**UIF Provision**"). The UIF Provision contains 34 anomalous indicators designed to assist obliged entities in the identification of suspicious transactions in the context of the prevention of money laundering and terrorist financing.

The provision will enter into force on 1 January 2024.

Insurance Products - IVASS's Supervision

Reporting: public consultation on a draft IVASS regulation on the digital transmission of information (*Documento di consultazione n. 6/2023*)

On 28 June 2023, the IVASS launched a public consultation concerning a draft regulation on the digital transmission of personal and corporate information. In particular, the draft regulation aims at:

- Implementing national provisions and European principles relating to the digital transfer of personal and corporate information
- Ensuring the integration and the digital processing of the information

- Improving the quality of the personal data
- Promoting the transparency of the process and decisions by formalizing the transmission procedures.

The consultation will be open until 28 August 2023.

Motor vehicle liability: public consultation concerning amendments to the IVASS Regulation No. 36/2017 (*Documento di consultazione n. 5/2023*)

On 22 June, the IVASS launched a public consultation concerning amendments and integrations to the IVASS Regulation No. 36/2017, on the introduction of new methods and deadlines for the transmission of flows relating to the survey on the actual prices of motor third-party liability for cars, motorbikes, and mopeds, limited to private uses ("**IPER Survey**"). The proposed amendments aim at improving the quality of the regulation on the transmission of data relating to the IPER Survey.

The consultation will be open until 22 July 2023.

Solvency II: IVASS's Order concerning amendments to the IVASS Regulation No. 18/2016 (*Provvedimento IVASS n. 132 del 6 giugno 2023*)

On 20 June 2023, the IVASS Order No. 132/2023 of 6 June 2023 concerning amendments to the IVASS Regulation No. 18/2016 on the rules for determining technical provisions pursuant to Article 36-*bis* of the Legislative Decree No. 209 of 7 September 2005 (the "Italian Code of Private Insurance", CAP), was published on the Official Journal of the Republic of Italy (*Gazzetta Ufficiale*). The amendments aim at aligning the IVASS Regulation No. 18/2016 with the European Insurance and Occupational Pensions Authority (EIOPA) [Guidelines on valuation of technical provisions](#) and [Guidelines on contractual boundaries](#).

AML: consultation concerning amendments to IVASS regulation on anti-money laundering provisions (*Documento di consultazione n. 4/2023*)

On 14 June, the IVASS launched a public consultation concerning amendments to IVASS Regulation No. 44/2019, concerning provisions to prevent the use of insurance undertakings and insurance intermediaries for the purposes of money laundering and terrorism financing in relation to the organisation, procedures, internal controls and customer due diligence obligations, pursuant to article 7, paragraph 1, letter a), of the Legislative Decree No. 231 of 21 November 2007. The amendments aim at aligning the IVASS Regulation No. 44/2019 to the EBA [Guidelines on policies and procedures in relation to compliance management and the role and responsibilities of the AML/CFT Compliance Officer under Article 8 and Chapter VI of Directive \(EU\) 2015/849](#) (EBA/GL/2022/05). In particular, the amendments relate to, amongst others, the:

- Anti-Money Laundering Officer (*consigliere responsabile dell'antiriciclaggio*), acting as liaison between the anti-money laundering function and the management body;
- Anti-Money Laundering Function, as to the relationship between the Anti-Money Laundering Officer (*consigliere responsabile dell'antiriciclaggio*) and the AML/CFT Compliance Officer;
- conditions that apply to the outsourcing of the AML function; and
- organisational requirements for groups.

The consultation will be open until 14 July 2023.

Insurance distribution: notice concerning internet domains and sub-domains (*Avviso del 9 giugno 2023*)

On 9 June 2023, the IVASS published a notice reminding intermediaries that the deadline for notifying IVASS the internet domains and sub-domains used to promote or offer insurance products, expired on 5 June 2023.

Furthermore, the IVASS informed insurance intermediaries that:

- The internet domains and sub-domains that were communicated will be published soon.
- Some domains and sub-domains will be excluded from the publication (e.g., domains and sub-domains which are inaccessible).

- They are required to ensure that their websites contain the (i) information regulated by Article 79, paragraph 1, of the IVASS Regulation No. 40/2018 and, only for the EU insurance intermediaries (ii) a declaration of possession of the authorisation to carry out insurance intermediation in Italy and the home-country authority exercising the supervision.

SFDR: IVASS's Order concerning amendments to several IVASS Regulations (*Provvedimento IVASS n. 131 del 10 maggio 2023*)

On 22 May 2023, the IVASS Order No. 131/2023 concerning amendments to several IVASS Regulations, was published on the Official Journal of the Republic of Italy (*Gazzetta Ufficiale*). In particular, the amendments relate to the following IVASS regulations:

- IVASS Regulation No. 24/2016 on investments and assets covering technical provisions
- IVASS Regulation No. 38/2018 laying down provisions on the system of governance
- IVASS Regulation No. 40/2018 laying down provisions on insurance and reinsurance distribution
- IVASS Regulation No. 45/2020 laying down provisions on insurance product oversight and governance requirements

("IVASS Regulations").

The proposed amendments aim at aligning the IVASS Regulations with the provisions on sustainability finance set forth in Regulation (EU) 2019/2088 of 27 November 2019, on sustainability-related disclosures in the financial services sector ("**Sustainable Finance Disclosure Regulation**", or "SFDR") and in Regulation (EU) 2020/852 of 18 June 2020, on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 ("**Taxonomy Regulation**").

The amendments entered into force on 23 May 2023.

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