

**Amendments to the Service Regulations: implementation of EU provisions relating to penalty mechanisms and buy-in procedures contained in Article 7(2) and (3) CSDR**

In view of the entry into force of the European provisions on penalty mechanism set forth in Regulation (EU) 909/2014 (CSDR), as implemented by the Commission Regulation (EU) 122/2018 ("Settlement Discipline Regulation"), Monte Titoli's Service Regulations are amended as follows.

The amendments will become effective on the **1<sup>st</sup> of February 2022**.

The amendments are subject to the approval of the Authority.

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With reference to the changes relating to the buy-in procedure, taking into account the ESMA statement of the 17<sup>th</sup> December 2021 (<https://www.esma.europa.eu/press-news/esma-news/esma-calls-deprioritise-buy-in-supervision>) the application of the regulatory changes for the implementation of the relevant EU regulations is suspended pending the finalization of the regulatory framework. Specific information will be provided as soon as the regulatory framework will be updated.

The amendments to the Service Regulations and relating Instructions are described below.

**❖ Rules of the Settlement Service**

**Penalty mechanisms**

In accordance with Article 7(2) CSDR, Monte Titoli is required to adopt a penalty mechanism for fails within its settlement service. By the way the discipline on penalty mechanisms already in place within Monte Titoli Settlement System is based on calculation of payment procedure different from the one provided at European level. Monte Titoli rules are therefore fully revised amended, to this end the mechanism for the calculation collection and redistribution of penalties are

specified within the Regulations. The rules are then supplemented by Instructions for the related operational and procedural aspects, taken from the operating model adopted by Monte Titoli and in line with market practices identified within the European Central Securities Depositories Association Framework.

#### Suspension procedures

Taking into account provision referred to in article 7(10) of CSDR and article 39 of SDR, it is introduced a specific provision (article 63-bis) into the Regulations in order to implement the requirement to establish procedures for the suspension of systematically failing participants.

#### ❖ **Amendments to the rules of the Cross-border Settlement Service**

Within the foreign settlement service, Monte Titoli does not manage directly the penalty mechanism but receives amounts to be debited and credited and related information form by other central securities depositories it has a link with. It is therefore necessary to specify within the Regulations that Monte Titoli shall debit and credit the participants for the amounts of the penalties calculated by the central depository with which it has established a link.

With regard to the amounts of any debit penalties, Monte Titoli will debit those amounts from the participants according to the ordinary procedures. With regard to the amounts of the credit penalties, it is specified that they shall be credited up to the amount received by the central depository that manages the penalty mechanism.

## **REGULATIONS**

[Omissis]

### **Article 4 – Definitions**

**«Penalties Business Day»: within the penalty mechanism of the Settlement Service and in particular with reference to the process of sending monthly reporting, editing and payment of penalties every day of the year except January 1, December 25 and Saturdays and Sundays. In the case a Penalty Business Day coincides with a non-business day of Monte Titoli, the processes foreseen for that Penalty Business Day are carried out on the previous day.**

[omissis]

## **Article 63 – Penalty mechanisms<sup>1</sup>**

- ~~1. In order to guarantee the proper use of the settlement process and minimise uncovered positions, Monte Titoli has the right to impose penalties on participants other than public authorities, which originated transactions which remained unsettled at the end of the settlement date due to a lack of either cash and/or securities.~~
- ~~2. The definition of the penalty system is contained in the Instructions.~~

- 1. Monte Titoli establishes the penalty mechanism referred to in Article 7, paragraph 2 CSDR to facilitate the settlement of unsettled transactions within the Settlement System. The penalty mechanism is adopted jointly with the other CSDs in T2S pursuant to Article 20 of SDR Regulations. This mechanism includes cash penalties to be charged to Participants that have not settled transactions by the end of the intended settlement date. The cash penalties are redistributed in full to the Participants that suffered the settlement fails, up to the amount collected.**
- 2. The mechanism referred to in Paragraph 1, shall apply to all Settlement Instructions matched or unsettled after the intended settlement date, including Settlement Instructions subject to the suspension mechanism set out in Article 71 of these Regulations, in accordance with Article 16 of the SDR Regulations. The cash penalties are calculated at the end of each settlement day starting from the intended settlement date.**
- 3. On a daily basis, Monte Titoli sends the Participants a specific report highlighting the Settlement Instructions subject to the application of penalties and the related amounts, calculated according to the provisions of Article 16 of the SDR. If the intermediaries find any discrepancies in data relating to transactions subject to penalties reported in the daily report, they can report them by the 10th (tenth) penalties business day of the calendar month following the date of receipt of the report, in the manner set out in the Instructions. In the**

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<sup>1</sup> This provision shall be the object of subsequent amendments so as to bring it into line with the provisions regarding settlement discipline.

**absence of such notification, the daily reports shall be deemed to be tacitly approved.**

- 4. The penalty collection and redistribution procedures are carried out on a monthly basis. Monte Titoli informs the Participants of the amounts of the penalties applied in the previous month, aggregated in net balances calculated based on the criteria set out in the Instructions. The Participants found to have a net debit balance must pay the cash penalty amounts within the term specified in the Instructions.**
- 5. In the event of non-payment of the amounts indicated at paragraph 5, Monte Titoli implements the contingency procedures envisaged in the Instructions under which it recalculates the net balances for each Participant, excluding the amounts pertaining to the failing Participant. The failing Participant must pay the penalties to the creditor counterparties by the last penalties business day of the month of payment and notify Monte Titoli accordingly. Monte Titoli charges the costs of management of the contingency procedure to the failing Participants.**
- 6. In the case of a failing Participant, Monte Titoli:**
  - a) excludes the amounts pertaining to the defaulting Participant and recalculates the net balances for each Participants;**
  - b) suspends the application and calculation of penalties with reference to instruction that have not been detected or settled by the failing Participant.**
- 7. The procedures described in paragraphs 4 and 5 do not apply for penalties relating to transactions guaranteed by a Central Counterparty for which the collection and redistribution of the amounts are managed by the Central Counterparties, in accordance with Article 19 SDR. To this end, Monte Titoli shall provide the Central Counterparties the information described in paragraph 3 in relation to the guaranteed transactions and receives, each month, information on the penalties collected and redistributed by them.**

**Article 63-bis – Procedures for the suspension of Participants systematically failing**

- 1. Monte Titoli calculates and monitors the settlement efficiency rate of in accordance with the provisions of Article 39 of Regulation (EU) no. 1229/2018. If the settlement efficiency rate falls below the percentage indicated in the same article, Monte Titoli notifies the Participant concerned the of the commencement of the suspension procedure provided for in Article 7 (9) CSDR and the deadline within which the Participant may submit comments.**
- 2. The suspension referred to in paragraph 1 is ordered after consultation with Consob and the Bank of Italy.**
- 3. Monte Titoli communicates the suspension measure to the Markets and Central Counterparties, to the participants, to Consob and to Bank of Italy. The measure is published on Monte Titoli's website.**
- 4. The provisions of Article 11 of the Rules shall apply to the extent applicable.**

[omissis]

**TITLE IV – INCIDENTAL SERVICES TO THE SETTLEMENT SERVICES**

**CHAPTER I – THE FOREIGN SETTLEMENT SERVICE**

[omissis]

**Article 81 – Operations of the Foreign Settlement Service**

1. [omissis]
5. **Monte Titoli debits and credits the participants for the amounts of the penalties calculated by the central depository with which it has established a link. The amounts of the penalties are credited up to the amount received by the central depository that manages the penalty mechanism referred to in Article 7, paragraph 2 CSDR.**

## **1.5 PENALTY SYSTEM**

*[The following amendments replace in full paragraph 1.5 of the Instructions currently in force]*

### **1.5.1 Amendment of daily penalty reports**

**The request for amendment of the daily penalty reports must be sent by 6:00 p.m. on the 10th (tenth) business day of the month of payment, by email to the following address [mt-penaltyappealperiod@lseq.com](mailto:mt-penaltyappealperiod@lseq.com) using the template available on Monte Titoli's web site. Monte Titoli shall acknowledge the request within 2 business days of its receipt. The central depositories participating in Monte Titoli may request amendments to the daily reports by 6:00 p.m. on the 11th (eleventh) business day of the month of payment.**

### **1.5.2 Monthly reporting (bilateral balances)**

**By the 14th (fourteenth) penalties business day of each calendar month, Monte Titoli sends the Participants specific reports showing the amounts of the penalties applied in the previous month, aggregated into bilateral balances by counterparty and broken down by settlement currency.**

**In the case of penalties applied to cross-CSD Settlement Instructions, the bilateral balances show the CSD of the counterparty of the Settlement Instruction as the counterparty.**

### **1.5.3 Collection and redistribution of penalties**

**Monte Titoli uses a dedicated account in TARGET 2 for the collection of penalties in euro or a dedicated account in commercial bank money for the collection of penalties in currencies other than the Euro. For the debiting and crediting of penalties in currencies other than euros, the opening calendar of the payment system of the settlement currency shall be taken into account.**

**The Participants must pay the cash penalty amounts by the 17th (seventeenth) penalties business day of the following month for TARGET**

**2 payments or by 11 a.m. on the same day for non-euro currency payments made in commercial bank money. If the 17th penalties business day is a closing day of the payment system for the currency other than the Euro, the penalties must be settled by 11 a.m. on the next business day.**

**For the debiting and crediting of penalties in euros the Participants may choose to use either:**

- a) a DCA account associated with the proprietary securities account, or with the third-party account, already used for the settlement of transactions within the Settlement System;**
- b) a dedicated DCA account to be set up directly through the CLIMP platform.**

**The debiting and crediting of penalties in currencies other than euros takes place on the accounts used to manage corporate actions other than euros.**

**By the 15th penalties business day of each month, Monte Titoli:**

- 1. calculates the net multilateral balances aggregated by Participant/CSD/Currency;**
- 2. enters pool PFOD settlement instructions for the collection of debit penalties with a settlement date equal to the 17th penalties business day of the month;**
- 3. enters the (non-pooled) PFOD instructions in "suspended" settlement status for the distribution of the credit penalties.**

**The PFOD settlement instructions related to "intra-CSD" transactions are entered as already acknowledged.**

**The PFOD "cross-CSD" settlement instructions are entered as to be acknowledged.**

**The Participants can check the settlement status of the credit and debit PFOD instructions via a web platform. The DCP Participants may also consult the T2S platform.**

**The debiting and crediting of penalties in currencies other than the euro takes place according to the procedures used for amounts deriving from the management of corporate actions in currencies other than the euro.**

**Monte Titoli provides for the redistribution of penalties only if the collection has been completed in full.**

#### **1.5.4 Contingency procedure in the event of non-payment**

**In the event of non-payment of amounts by one or more Participants, Monte Titoli under the terms of paragraph 1.5.3 recalculates the multilateral net balances for each Participant, excluding the debit and credit amounts of the Participant for which payment has not been made, and sends a new report to the Participants.**

**For the purpose of the collection and distribution of unpaid penalties, the Participants enter PFOD Settlement Instructions with a settlement date on or before the last penalties business day of the month of payment and notify it to Monte Titoli.**

#### **1.6 Information on buy-in procedures**

**Information regarding the execution of the buy-in procedure must be reported in the following manner:**

- **U2A mode: via .csv file, using the template available on the web platform. Several buy-in execution notifications may be entered through a specific bulk upload function;**
- **SWIFT messaging via a dedicated MT530 message**