

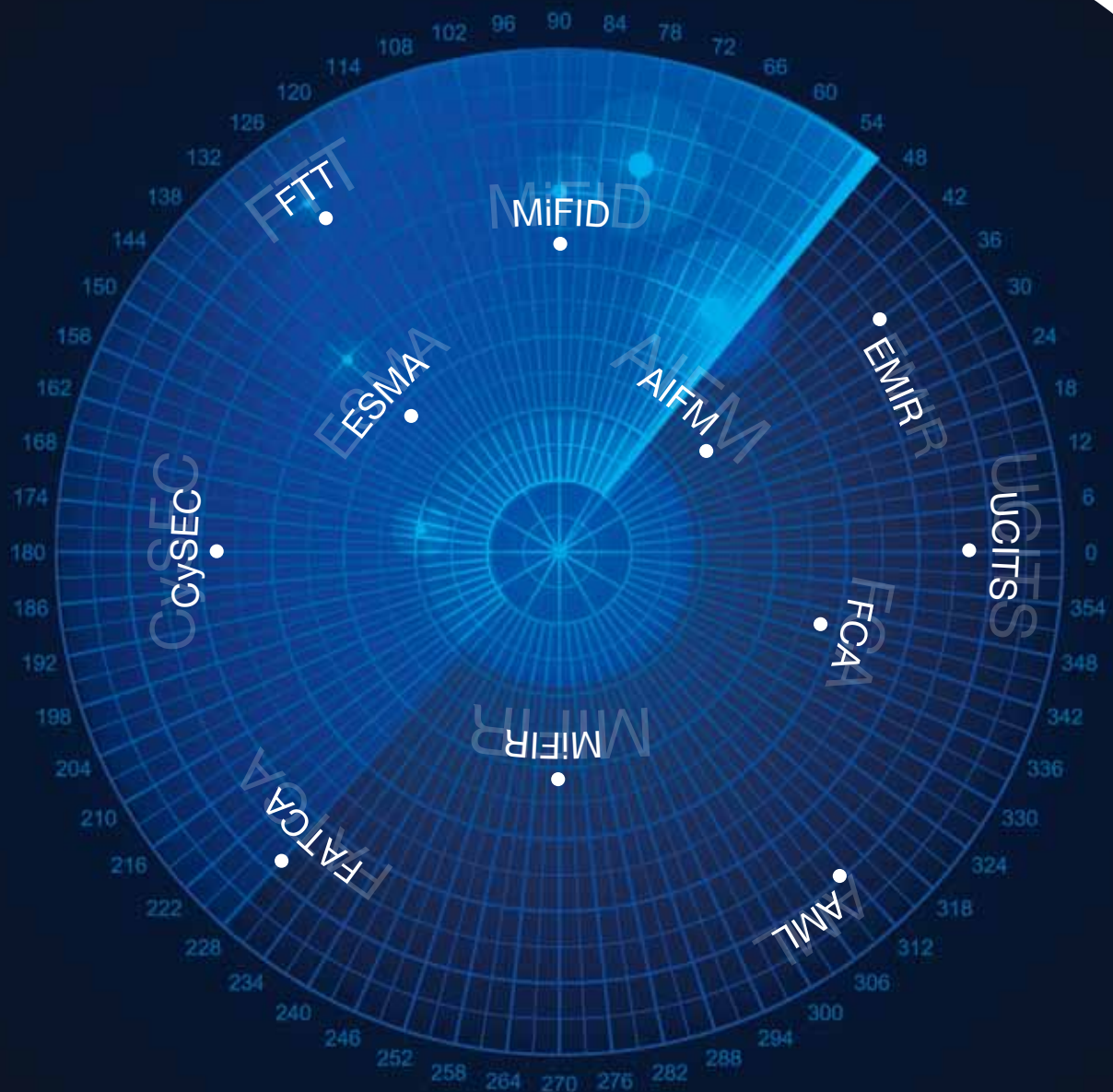


MAP S.Platis  
*Your Partner in Financial Services!*

Issue 002  
October 2014

# REGULATORY RADAR

Periodical round-up on major regulatory and legislative developments in the EU and Cypriot financial services sector





# Index

Developments in the EU Financial Services Legislation Affecting Investment Firms	>	<b>04</b>
Anti-Money Laundering Legislation	>	<b>08</b>
Regulatory Developments in the European FX Industry	>	<b>08</b>
EU Financial Transaction Tax (FTT)	>	<b>08</b>
Foreign Account Tax Compliance Act (FATCA)	>	<b>08</b>
Fund Regulation	>	<b>08</b>
UK FCA - Developments of Interest to Investment Firms	>	<b>10</b>
CySEC Developments	>	<b>12</b>
Acronyms & Definitions used	>	<b>18</b>
Remarks/Disclaimer	>	<b>20</b>

60

## Second Summary

### 1. Developments in the EU Financial Services Legislation Affecting Investment Firms

- **MiFID II**  
The new MiFID II rules come into force on 3 January 2017 (30 month implementation timetable); consultation on the Level 2 legislation has begun; a further consultation paper is expected later this year
- **EMIR**  
Staggered implementation continues: the clearing obligation is next; a new consultation on clearing of FX NDFs was launched on 1 October 2014 and runs till 6 November 2014. New CCP authorisations. ESMA submitted final Interest Rate Swaps RTS draft to the Commission for endorsement
- **Other**
  - T+2 settlement from 1 January 2015 for EU securities pursuant to the Central Securities Depository Regulation. Some EU securities markets switched to T+2 settlement from 6 October 2014
  - Securities Financing Transactions: Proposal in trilogue between the Commission, the Council and the European Parliament
  - ESMA is consulting on the Market Abuse Regulation Level 2 measures till 15 October 2014

### 2. Anti-Money Laundering Legislation

- The draft Fourth Anti-Money Laundering Directive and the draft Funds Transfers Regulation are still being finalised and work will resume under new Parliament
- FATF updates its list of non-compliant jurisdictions

### 3. Regulatory Developments in the European FX Industry

- In the discussion on the delineation of MiFID FX financial instruments vs spot FX contracts, the Central Bank of Ireland has updated its FAQs providing a temporary definition of an FX Forward for EMIR reporting purposes so that only FX transactions with settlement beyond seven days (T+7) are to be reported under EMIR

### 4. EU Financial Transaction Tax

- Still no progress

### 5. FATCA

- No further developments; Cyprus–US Inter Governmental Agreement treated as “in-effect”; Cypriot Financial Institutions have until 31 December 2014 to register with the US IRS

### 6. Fund Regulation

- Amendments to AIFMD to allow passporting allowed of restricted MiFID investment services
- UCITS V published in the Official Journal on 28 August 2014
- Money Markets Funds – still in trilogue

### 7. UK FCA – Developments of Interest to Investment Firms

- Continued focus on MiFID transaction reporting requirements: the FCA adds Deutsche Bank to its list of firms it has have fined for transaction reporting breaches: Deutsche Bank gets a £4.7 million fine
- Barclays receives a £37.7 million fine over failure to protect clients’ assets
- 12 month restriction on sale of convertible contingency securities to retail clients

## 8. CySEC Developments

- Issuance of announcement re the commencement of CySEC's examinations for the certification of persons providing investment services
- Issuance of circular re weakness identified during CySEC's on-site inspections concerning the prevention of money laundering and terrorist financing
- Issuance of circular re restrictive measures in view of Russia's actions in Ukraine
- Issuance of announcement re the new Alternative Investment Funds Law of 2014
- Issuance of circular providing further information on the development of a Risk Based Supervision Framework
- Issuance of announcement regarding the new Market Abuse legislation
- Issuance of circular concerning the European Council regulations concerning restrictive measures in respect of actions threatening Ukraine
- Issuance of announcement to remind Credit Institutions and Insurance Undertakings about Applicable Regulatory Requirements

# European Institutions Update

## European Parliament

The Parliamentary committees are still taking shape following the parliamentary elections and rapporteurs for individual dossiers are being designated. Legislative work should resume soon. Dossiers can be debated afresh by the new MEPs; they will not necessarily accept the position arrived at by the Parliament before the elections.

## Council of the EU

Italy took over the Presidency of the EU Council from Greece on 1 July 2014.

## The European Commission

Jean-Claude Juncker has been appointed as Commission President taking office in November 2014; the 28 Commissioners are still being selected.

# 1. Developments in the EU Financial Services Legislation Affecting Investment Firms

## I. MiFID II

The MiFID II legislative proposal consisting of an amending Directive (MiFID II) and a new regulation (the Markets in Financial Instruments Regulation = MiFIR), was approved by the European Parliament in plenary session on 15 April 2014 and was adopted by the Council of the EU on 13 May 2014. The final texts of [MiFID II](#) and [MiFIR](#) were published in the Official Journal on 12 June 2014. These texts are often referred to as “Level 1” texts; further detail is provided in subsequent, secondary legislation often referred to as “Level 2” text.

National transposition is required by 3 July 2016; the new rules will apply from 3 January 2017. This is a 30 month implementation period rather than the 24 months which the Commission wanted.

## Secondary legislation (known as “Level 2 measures”)

MiFID II/MiFIR contain over 100 requirements for ESMA to draft Regulatory Technical Standards (RTS) and Implementing Technical Standards (ITS). Technical standards drafted by ESMA and subject to approval by the European Commission, are to be submitted by mid-2015. ESMA is to provide Technical Advice to the European Commission, to allow it to adopt delegated acts (“delegated acts” are drafted by the European Commission on the basis of advice from ESMA; the Technical Advice is to be submitted by end 2014).

ESMA issued on 22 May 2014 a Consultation Paper on MiFID II/MiFIR Technical Advice and a Discussion Paper on MiFID/MiFIR draft RTS/ITS, both papers were open for comments till 1 August 2014. ESMA received [252 public responses](#) to the consultation paper and [175 public responses](#) to the discussion paper.

We anticipate another consultation paper later this year which will address issues raised in the discussion paper. The autumn consultation is expected to be limited to the markets area.

On 3 September 2014, ESMA's Securities and Markets Stakeholder Group published 4 pieces of advice in connection with ESMA's consultations on implementing MiFID II. The advice is on [investor protection](#), [trading venues](#), [transparency and trading obligations \(equities\)](#) and [transparency for the trading of non-equity instruments](#).

## FCA MiFID II Conference

On 19 September 2014, the FCA held a day-long MiFID II conference and [some of the speeches](#) have been published on the FCA website. The key issues raised by the UK's regulator; There is a range of issues with MiFID II that need to be addressed urgently and that firms should not hold back on developing MiFID II implementation plans until all the details are available. The UK's regulator expects UK regulated firms to start planning for the upcoming changes in legislation in order to be fully compliant by January 2017.

## The new Market Abuse regime

The pre-existing Market Abuse regime (an EU-wide market abuse regime and a framework for establishing a proper flow of information to the market) has been extended and aligned with MiFID II. There is now a new Market Abuse Regulation (MAR) (which replaces the old Market Abuse Directive in its entirety and creates a single rule book for market abuse) and a supplementing Directive on Criminal Sanctions for Insider Dealing and Market Manipulation (MAD). ESMA is in consultations with interested parties on Level 2 measures till 15 October 2015. MAR will apply from 3 July 2016.

## II. EMIR

### Scope - FX spot contracts

With reference to the discussion on where the boundary between an FX financial instrument (i.e. an FX Forward) and a spot FX contract should be set, the latest position expressed by the Commission in a [letter](#) to ESMA dated 23 July 2014, explained that it is not possible to address the issue by way of a MiFID I implementing measure and suggests that the definition of an FX contract should be dealt by MiFID II Level 2 measures. The Commission further suggests that ESMA should consider the option of further measures such as guidelines to promote harmonised practices among national competent authorities.

The Central Bank of Ireland updated its [FAQ](#) providing guidance on a temporary definition of an FX Forward for EMIR reporting purposes. The FAQs state that, as a temporary measure, a reasonable operational definition is as follows:

- all FX transactions with settlement before or on the relevant spot date are not to be reported;
- all FX transactions with settlement beyond seven days are to be reported;
- all FX transactions with settlement between the spot date and seven days (inclusive) are to be reported only if, in a jurisdiction where one counterparty to the trade is located, local laws, rules or

guidance would deem the transaction reportable; and where one counterparty is located in another jurisdiction the Irish counterparty should rely on documentation from that counterparty to inform it that there is a requirement in their jurisdiction; and

- all FX transactions between two Irish counterparties with settlement between the spot date and seven days (inclusive) are not required to be reported – the Central Bank recommends that counterparties that have the capacity to report such trades do report them (notwithstanding that there is no obligation to report), and that counterparties build a capacity to report such trades in the future.

## EMIR implementation timetable – next phase: the clearing obligation

The EMIR Regulation was adopted 4 July 2012 and entered into force 16 August 2012.

EMIR is being implemented on a staggered basis with certain EMIR obligations already in force.

Staged implementation timetable:

- **As of 16 August 2012**, record keeping requirement for OTC derivatives and Exchange Traded Derivatives (ETD) entered on or after 16 August 2012.
- **As of 15 March 2013**, confirmation and daily valuation requirements for non-cleared OTC derivatives entered on or after 16 August 2012.
- **As of 15 September 2013**, portfolio reconciliation and compression and dispute resolution requirements apply to non-cleared OTC derivatives outstanding as of 15 September 2013.
- **As of 12 February 2014**, reporting to Trade Repositories for all derivatives relating to all asset classes with “Backloading” (i.e. trades outstanding on 16 August 2012 and live, or entered into on or after 16 August 2012 but not outstanding, need to be reported).
- **As of 12 August 2014**, reporting to Trade Repositories of data on exposure i.e. valuation and collateral for all derivatives.
- **Q2 2015 (estimated)**, clearing obligation will commence for clearing members.
- **Q4 2015 (estimated)**, margining for non-cleared OTC derivatives on a phased implementation timetable will begin.
- **Q2 2016 (estimated)**, clearing obligation for non-clearing members will commence.

## The clearing obligation

The first Central Counterparties (CCPs) authorisation took place on 18 March 2014 and there are now 12 CCPs authorised, the latest CCP having been authorised on 3 September 2014. ESMA maintains a [Public Register](#) of CCPs authorised to clear and the classes of OTC derivatives that CCPs have been authorised to clear as notified to ESMA.

ESMA launched a first round of consultations on 11 July 2014 in relation to the clearing of certain classes of Interest Rate Swaps (IRS) and Credit Default Swaps (CDS). The [IRS Consultation Paper](#) was open for feedback until 18 August 2014; the second [CDS Consultation Paper](#) was open until 18 September 2014. ESMA has issued a [list of responses](#) to this first consultation. Both these consultations are part of the EMIR process which will determine the first “batch” of IRS and CDS which will be subject to the clearing obligation and



the timelines for conformance in particular the application of phase-in dates for different types of counterparties. On 1 October 2014, ESMA submitted the [final draft IRS RTS](#) to the Commission for its endorsement.

Thereafter:

- The Commission has 3 months to endorse the RTS.
- The Council/the European Parliament can object within 1 month of adoption, extendible by a further month (or 3+3 months if the Commission amends ESMA's draft).
- The RTS must be published in the Official Journal and will specify the start date and any phase-in period.

It is on the basis of this process that the estimated timelines for clearing set out above have been estimated. However, this timeline will only apply to this first “batch” of IRS and CDS.

On 1 October 2014, ESMA published a third [consultation paper](#) on draft regulatory technical standards concerning the clearing of foreign exchange non-deliverable forwards. The consultation runs till 6 November 2014.

## “Frontloading”

In its final report on the clearing of IRS, ESMA proposes that the frontloading requirement would apply from the date of publication of the relevant RTS in the Official Journal to the date of application of the clearing obligation and in relation to certain categories of counterparty only.

## Margin for non-cleared trades

The ESAs' [Consultation Paper](#) on the draft RTS on bilateral margin for non-cleared trades closed on 14 July 2014 and feedback is awaited on the consultation.

## III. Central Securities Depositories Regulation

The [Central Securities Depositories Regulation](#) (CSDR) was published on 28 August 2014. The CSDR mandates the introduction of a shorter, harmonised, T+2 settlement cycle. This means that securities transactions will settle two business days after trade date rather than three. The provisions in CSDR which relate to settlement apply from 1 January 2015.

Technically and functionally, some Central Securities Depositories (CSDs) are ready now to settle on a T+2 basis. Euroclear has effected T+2 settlement from 6 October 2014 in advance of the CSDR deadline of 1 January 2015.

## IV. Securities Financing Transactions (SFT) proposal

This proposal is in trilogue negotiations between the Commission, the Council and the European Parliament.

Please refer to [Issue 1 of MAP S.Platis Regulatory Radar](#) for more information regarding the SFT proposal.



## 2. Anti-Money Laundering Legislation

At its third plenary meeting, the Financial Action Task Force (FATF) produced a FATF [public statement](#) on jurisdictions with strategic anti-money laundering (AML) and combatting the financing of terrorism (CFT) deficiencies and a [public document](#), “Improving Global AML/CFT Compliance: on-going process”.

The draft Fourth Anti-Money Laundering Directive and the draft Funds Transfers Regulation are still being finalised and work will resume under new Parliament. Please refer to [Issue 1 of MAP S.Platis Regulatory Radar](#) for more information regarding the draft Fourth Anti-Money Laundering Directive and the draft Funds Transfers Regulation.

## 3. Regulatory Developments in the European FX Industry

The issue of where the boundary between an FX financial instrument (i.e. an FX Forward) and a spot FX contract should be set remains unresolved for the time being. See Section 1 Part II (EMIR) above, for more details. MAP S.Platis shall continue to monitor all developments.

## 4. EU Financial Transaction Tax (FTT)

There are no substantive developments to report; there was a further Council meeting on 25 September 2014 to discuss this proposal.

## 5. Foreign Account Tax Compliance Act (FATCA)

Foreign Financial Institutions (FFIs) resident in Cyprus have until 31 December 2014 to register with the US IRS on the FATCA registration portal.

Please refer to [Issue 1 of MAP S.Platis Regulatory Radar](#) for more information regarding FATCA.

## 6. Fund Regulation

### Alternative Investment Fund Managers Directive (AIFMD)

Some Member States are still in process of transposing the Directive. The transitional provisions of AIFMD expired on 22 July 2014.

On 8 August 2014, ESMA published official translations of their [guidelines on reporting obligations under Articles 3 and 24\(1\), \(2\) and \(4\) of AIFMD](#). Publication triggers a period of two months within which competent authorities must notify ESMA of their compliance position.

On 30 September 2014, ESMA released [updated Questions and Answers on the Application of AIFMD](#).

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## Passporting of restricted MiFID investment services under Art 6(4) of AIFMD

MiFID II (Art. 92) has amended AIFMD (Art. 33) to clarify that the restricted MiFID services which AIFMs are allowed to provide (i.e. portfolio management; investment advice, safekeeping of assets and receipt and transmission of orders) can be passported into other Member States.

Member States must apply the passporting regime from 3 July 2015 but ESMA has recommended that national competent authorities accept passport notifications before 3 July 2015. The Central Bank of Ireland has indicated that it accepts AIFM passport notification from other national competent authorities and process notification from Irish AIFMs with immediate effect. This is identical to the UK FCA's position.

## UCITS V

The [final text](#) of UCITS V was published in the Official Journal on 28 August and comes into force on 17 September 2014. Member States must transpose UCITS V into national law by 18 March 2016. UCITS V contains provisions relating to depository functions, remuneration policies and administrative sanctions. Level 2 measures are being consulted on. The depository provisions mirror those of AIFMD albeit go beyond AIFMD in some respects. The remuneration rules seek to ensure that remuneration policies are aligned with sound and effective risk management. Member States must introduce administrative sanctions for certain infringements of UCITS regulations.

On 1 August 2014, ESMA published an update of its [Guidelines on ETFs and other UCITS issues](#). The guidelines are an update of the guidelines originally published in 2012. The new version of the guidelines modifies the original provision on diversification of collateral received by UCITS in the context of efficient portfolio management techniques and OTC financial derivative transactions.

## Money Market Funds (MMFs)

This contentious proposal is in the trilogue phase with no agreement having been reached before the dissolution of the previous Parliament. The new Parliament is under no obligation to pick up where the previous Parliament left off. An updated indicative date for the European Parliament plenary sitting to consider the proposed Regulation on MMFs has been set for 25 March 2015.

# 7. UK FCA – Developments of Interest to Investment Firms

## Transaction reporting for MiFID firms FCA fine for reporting failings

On 28 August, the FCA published a [final notice](#) (dated 21 August 2014) it has issued to Deutsche Bank AG, imposing a fine of £4,718,800 for failures by its London branch to accurately report all of the equity swap contract for difference transactions that it executed between 5 November 2007 and 19 April 2013. The final notice relates to a breach of chapter 17 of the Supervision manual (SUP) (which is the chapter in the FCA Handbook in which

the MIFID transaction reporting requirements have been transposed into UK regulation). The FCA said that they were particularly concerned because it had provided extensive guidance to firms on how to submit and check these reports, had already taken action against several other firms, and had previously issued Deutsche with a private warning in relation to other similar transaction reporting failures. To date, the FCA (and its predecessor the Financial Services Authority) have fined ten other firms for transaction reporting breaches: Barclays, Credit Suisse, Instinet, Getco, Commerzbank, Société Générale, City Index, James Sharp & Co, and others with total fines imposed of almost £20 million.

Tracey McDermott, the FCA's director of enforcement and financial crime, said:

*“Effective market surveillance is critical to maintain the integrity of our markets and depends on accurate and timely reporting of transactions. Deutsche is a major market participant responsible for reporting millions of transactions every year. We have repeatedly highlighted the importance of accurate transaction reporting and taken enforcement action against a number of firms. There is simply no excuse for Deutsche’s failure to get this right. Other firms should be in no doubt about our continued focus on this issue.”*

## Client assets – highest ever FCA fine

On 23 September 2014, the FCA published the [final notice](#) it issued to Barclays Bank PLC (Barclays). Barclays was fined £37,745,000 for client assets breaches, reflecting ‘significant weaknesses’ in the systems and controls in Barclays’ Investment Banking Division between November 2007 and January 2012. This is the highest fine ever imposed by the FCA (or its predecessor the Financial Services Authority) for client assets breaches.

The FCA’s Client Asset Rules are there to protect client assets if a firm becomes insolvent. Barclays failed to properly apply these rules when opening 95 custody accounts in 21 countries. As a result, Barclays’ records did not correctly reflect which company within its Investment Banking Division was responsible for the assets in the accounts. Barclays also failed to set up appropriate legal arrangements with these companies.

These failings were compounded by flaws in account naming or incorrect data that suggested assets belonged to Barclays instead of its clients.

This breached the FCA’s Client Asset Rules and requirements that firms should have adequate management, systems and controls (Principle 3) and properly safeguard clients’ assets (Principle 10).

Tracey McDermott, FCA director of enforcement and financial crime, said:

*“Barclays failed to apply the lessons from our previous enforcement actions, numerous industry-wide warnings, and exposed its clients to unnecessary risk. All firms should be clear after Lehman that there is no excuse for failing to safeguard client assets.”*

## FCA restricts distribution of “CoCos” to retail investors – 5 August 2014

In the first use of new consumer protection powers, the FCA will restrict firms from distributing contingent convertible securities (CoCos) to retail clients from 1 October 2014. These temporary rules will be the prelude to more permanent restrictions on the promotion of these instruments to retail clients.

## FCA use of attestations confirmed as formal supervisory tool

The FCA has published an exchange of letters between Graham Beale, the Chairman of the FCA Practitioner Panel and Clive Adamson, the FCA Director of Supervision, concerning the use of attestations.

Mr Beale wrote to Mr Adamson asking him to clarify the broad principles under which attestation powers operate. The Practitioner Panel had raised misgivings about the FCA's practice of asking senior managers to attest that they would take certain actions. The Panel called on the FCA to be more transparent about the criteria for the use of attestations and to monitor their use.

Mr Adamson's reply made the following points:

- attestations have been introduced as a formal supervisory tool;
- attestations are a personal commitment from an approved person that a specific action has been taken or will be taken;
- the aim of attestations is to ensure there is clear accountability and senior management focus;
- attestations are focussed on firms putting things right;
- the FCA usually asks for attestations to be given by the most relevant significant influence function holder; and
- the most usual scenarios for the use of attestations will normally be:
  - Notification: the FCA is notified of changes to emerging risks at firms,
  - Undertaking: that the firm takes a specific action within a particular timescale
  - Self-certification: that risks have been mitigated or resolved
  - Verification: that there has been verification that issues have been resolved or risks have been mitigated.

The FCA will issue revised internal guidance and supporting materials to its supervisors and require all attestations to be signed off at the Head of Department level at the FCA and that they will be reviewed by a central quality assurance function. Data on attestations will be published on a quarterly basis.

Graham Beale's letter and Clive Adamson's letter are available [here](#).

## 8. CySEC Developments

### Commencement of CySEC's examinations for the certification of persons providing investment services

On 31 July 2014, CySEC [announced](#) the acceptance of applications for the examinations leading to registration in the [Public Register of Certified Persons](#) employed by Cyprus Investments Firms, Credit Institutions, Management Companies and Investment Companies of Variable Capital.

Individuals who have been granted an exemption under Article 52(2) of the [Investment Services and Activities and Regulated Markets Law](#), must pass the examination within one year, during which they can take the examination up to two times. If not, they must cease to provide the services in respect of which they were granted an exemption.

## Findings of CySEC's on-site inspections regarding the prevention of money laundering and terrorist financing

On 04 August 2014, CySEC informed Cyprus Investment Firms, UCITS Management Companies and Administrative Services Companies (the 'Regulated Entities') through the issuance of [Circular CI144-2014-25](#) of the following:

- **Weaknesses identified in Regulated Entities with their obligations relating to the prevention of money laundering and terrorist financing**

Further to CySEC's on-site inspections during the years 2013-14, several weaknesses have been identified in relation to the compliance of Regulated Entities with their obligation deriving from the [Prevention and Suppression of Money Laundering and Terrorist Financing Law](#) and CySEC's [Directive DI144-2007-08](#) such as: i) insufficient inclusion of the Directive's provisions in the client acceptance policy; ii) failure to execute the appropriate client categorisation policy; iii) insufficient procedures for the performance of client identification and due diligence on high-risk clients (particularly PEPs); iv) insufficient procedures for the implementation / management of financial sanctions imposed against persons; v) failure to obtain all required documents for the determination of a client's identity, and to properly certify and/or translate the documents obtained in this respect; vi) failure to properly construct clients' economic profiles; vii) failure to update client records and conduct frequent monitoring of clients' accounts and transactions; viii) failure to meet legal requirements when relying on third parties for performing due diligence and client identification; and ix) failure to include in AML manuals all relevant procedures required by the aforementioned Law and Directive.

In relation to the above, CySEC urges all Regulated Entities to:

- i. Urgently revisit the adequacy and effectiveness of policies, regulations and procedures implemented and maintained for compliance with their legal obligations in relation to the prevention of money laundering and terrorist financing, and take remedial measures where the need arises.
- ii. Urgently re-examine all client files so as to ensure that all required documents, data or information are contained therein, as per the provisions of the aforementioned Law and Directive.

- **Weaknesses identified in the Annual Reports of Anti-Money Laundering Compliance Officers**

Following an assessment carried out by CySEC in relation to the Annual Reports of Anti-Money Laundering Compliance Officers and the relevant minutes of the Board of Directors, several weaknesses have been identified such as: i) the Annual Reports have been found to be of a moderate to poor quality, while they do not reference or make sufficient reference to the matters set out in the respective Directive; ii) minutes of the Board of Directors meetings during which the Annual Report of the Anti-Money Laundering Compliance Officer is discussed and approved, do not include measures decided for the correction of any weaknesses identified and the relevant implementation timeframe for such measures.

In relation to the above, CySEC urges Anti-Money Laundering Compliance Officers to prepare their Annual Report as per the requirements of the respective Directive. In addition, the content of the Board of Directors' meetings, in which the Annual Report is discussed and approved, must be consistent with the requirements of the Directive.



- **Relevant persons liability and administrative sanctions**

CySEC urges all members of the Board of Directors of Regulated Entities to devote sufficient time in the performance of their duties with respect to matters relating to the prevention of money laundering and terrorist financing and to monitor and evaluate the effectiveness of the systems and procedures in place, to ensure compliance of the Regulated Entity with its obligations under the aforementioned Law and Directive.

Further to the above, CySEC emphasises that according to the [Prevention and Suppression of Money Laundering and Terrorist Financing Law](#), where a Regulated Entity fails to comply with its obligations, strict administrative sanctions can be imposed.

#### Fines imposed by CySEC in 2014 relevant to failures to apply appropriate measures for the prevention of money laundering and terrorist financing

Given the above, we would like to draw your attention to the fact that during 2014, CySEC imposed administrative sanctions of €59,000 in total to five (5) Cyprus Investment Firms for non-compliance with the requirements relating to the prevention of money laundering and terrorist financing. For the most part, the fines were imposed on violations relating to i) inadequate/inappropriate application of customer identification and due diligence procedures; ii) failures of Anti-Money Laundering Compliance Officers to perform their duties; and iii) failures of Board of Directors to ensure compliance with the aforementioned Law and Directive and to ensure the establishment of appropriate, effective and sufficient systems and controls for achieving compliance with the respective obligations.

## Restrictive measures in view of Russia's actions in Ukraine

On 04 August 2014, CySEC informed Cyprus Investment Firms, Management Companies, Administrative Services' Companies and Regulated Markets through the issuance of [Circular CI144-2014-26](#), of the publication in the Official Journal of [Regulation \(EU\) No 833/2014](#) regarding restrictive measures in view of Russia's actions, destabilising the situation in Ukraine.

Restrictions on access to the capital market for certain financial institutions are applied (Sberbank, VTB Bank, Gazprombank, Vnesheconombank, Rosselkhozbank). In particular, it is prohibited, among others, to directly or indirectly purchase, sell, provide brokering or assistance in the issuance of, or otherwise deal with, transferable securities and money market instruments with a maturity exceeding 90 days, issued by the abovementioned Russian financial institutions.

## Alternative Investment Funds (AIFs) Law

On 13 August 2014 CySEC, through the issuance of an [announcement](#), informed all interested parties that the [Alternative Investment Funds Law of 2014](#) ("AIF Law") came into force on 27 July 2014. The AIF Law regulates the establishment and operation of AIFs in Cyprus and replaces the International Collective Investment Schemes Laws of 1999 and 2000.

The transitional provisions of the AIF Law, will allow existing private International Collective Investment Schemes, including those whose application remains pending before the Central Bank of Cyprus upon enactment of the AIF Law, to continue their operation as light-touch regulated AIFs. Existing private International Collective



Investment Schemes must within four months from enactment of the AIF Law (i.e. 27 November 2014) to either:

- i. Submit the necessary documents, that will allow them to operate as light-touch regulated AIFs (no license required; only additional information); or
- ii. Apply for a licence to operate as a public AIF or an experienced investor AIF; or
- iii. Opt-in to the AIFM Law regime as self-managed AIFs, where applicable.

The relevant application documents and the Directive regarding the amount of the fees payable are under preparation by CySEC and it is expected to be concluded soon.

Please refer to [Issue 1 of MAP S.Platis Regulatory Radar](#) for more information regarding the new AIF Law.

## Development of a Risk Based Supervision Framework

Further to Circular CI144-2014-05 issued in January 2014 informing the Regulated Entities about the establishment of a Risk Based Supervision Framework, CySEC issued [Circular CI144-2014-27](#) to provide additional information regarding the development of a Risk Based Supervision Framework ('RBS-F'), as part of CySEC's efforts to increase efficiency and effectiveness in supervising Regulated Entities.

The RBS-F is designed to ensure that risks are managed at a relevant level. This involves ensuring appropriate review, challenge and oversight of the risks borne by the Regulated Entities. The aim is to give more focus to those entities which are of greatest importance, in terms of the impact their possible failure will have and those which are considered to have the greatest risks. Consequently, CySEC's judgement of the risk that each Regulated Entity poses to its statutory objectives, will determine the overall intensity of the regulatory approach to be followed.

Significant benefits exist to both the entities regulated by CySEC and CySEC itself, such as: (i) making better risk-based judgments; (ii) prioritising regulatory activities; (iii) improving oversight and reporting on high risk regulated firms; and (iv) providing clarity of the risks posed by each Regulated Entity.

A risk assessment will be performed for all entities at least on an annual basis, the results of which will be used to define each entity's monitoring program. CySEC will assess the risk for each Regulated Entity based on the impact and probability of failure. CySEC will score each entity in four (4) risk categories: Low (L), Medium-Low (ML), Medium-High (MH), High (H).

Impact is designed to capture the size of a Regulated Entity and the potential harm that it could do to CySEC's responsibilities and reputation. Probability will be assessed based on the evaluation categories applicable to the regulated entity, distinguished in four (4) main categories: (i) Anti-Money Laundering; (ii) Prudential; (iii) Conduct; and (iv) Governance.

It is noted that CySEC is currently working towards preparing a more detailed documentation with respect to the approach to be followed.

## Application / Implementation of Market Abuse Regulation

On 09 September 2014, CySEC informed all interested parties through an [announcement](#), of the publication of [Regulation \(EU\) No 596/2014](#) on market abuse (Market Abuse Regulation) (MAR) which is related to [Directive 2014/57/EU](#) on criminal sanctions for market abuse (Market Abuse Directive) (MAD). The legislative package MAR/MAD will enter into force on July 3rd 2016. Cyprus needs to amend/repeal its national laws, regulations and statutory provisions to make sure the MAR is ready to enter into force and amend/enhance its national criminal Law regime for the transposition of MAD.

The upcoming changes in relation to MAR are summarised as follows:

### > **Scope**

- Expanded to financial instruments admitted to trading or traded in Multilateral Trading Facilities, financial instruments traded on Organised Trading Facilities, spot commodity contracts, emission allowances and auction products that are not financial instruments.
- Additional financial instruments are brought into scope following MIFID II.

### > **Inside information, insider dealing, Unlawful Disclosure, Market Manipulation**

- Inside information, dealing and manipulation have been redefined, unlawful disclosure is now codified.
- Codification of certain market practices and legitimate behaviour.

### > **Disclosure Requirements**

- Disclosure requirements are being expanded.
- Insiders list are redefined.
- Exceptions are granted to Small and Medium Enterprises.
- Establishment of new regime for publication of management transactions.
- New provisions on the delay of publication of inside information.

### > **Powers of Competent Authorities**

- Cooperation between Member States, third countries and ESMA is enhanced.
- Competent authorities increased supervisory powers.
- Revised administrative sanctions (incl. reporting of infringements and publication of decisions).

### > **Criminal Offences**

- Irrespective of administrative sanctions the existence of criminal sanctions is mandatory under MAD which complements MAR.

## European Council regulations concerning restrictive measures in respect of action undermining or threatening the territorial integrity, sovereignty and independence of Ukraine

On 17 September 2014, CySEC, through the issuance of [Circular CI144-2014-29](#), informed Cyprus Investment Firms, Management Companies, Administrative Services Companies and Regulated Markets about the

publication in the Official Journal of the following:

1. [Council Regulation \(EU\) No.959/2014](#) of 8 September 2014 amending [Regulation \(EU\) No. 269/2014](#) concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (see [Circular 144-2014-10](#)).

The said regulation concerns restrictive measures expanded to individuals or entities conducting transactions with the separatist groups in the Donbass region of Ukraine.

2. [Council Regulation \(EU\) No.960/2014](#) of 8 September 2014 amending [Regulation \(EU\) No. 833/2014](#) concerning restrictive measures in view of Russia's actions de-stabilising the situation in Ukraine (see [Circular 144-2014-26](#)).

The said regulation imposes further restrictions on:

- (a) Access to the capital market for certain financial institutions;
  - (b) Russian established legal persons/entities/bodies in the defense sector;
  - (c) Russian established legal persons/entities/bodies whose main activities relate to the sale or transportation of crude oil or petroleum products.
3. [Council Regulation \(EU\) No.961/2014](#) of 8 September 2014 implementing [Regulation \(EU\) No.269/2014](#) concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (see [Circular 144-2014-10](#)).

The said regulation relates to additional persons and entities added to the list of natural and legal persons subject to restrictive measures.

## Reminder to Credit Institutions and Insurance Undertakings about Applicable Regulatory Requirements

On 23 September 2014, through an [announcement](#), CySEC informed its supervised entities, stakeholders and investment public of the joint reminder of the three European Supervisory Authorities, [EBA](#), [ESMA](#) and [EIOPA](#), titled [Placement of financial Instruments with depositors, retail investors and policy holders](#).

The three European Supervisory Authorities are concerned about the practices used by some financial institutions to comply with enhanced prudential requirements under CRD/R IV, the pending BRRD, and Solvency 2, as well as the ongoing EBA stress test and the ECB's comprehensive assessment.

These practices include financial institutions selling to their own client base financial instruments that they themselves have issued and that are eligible to comply with the above requirements, whereas such practice may breach a number of rules governing the conduct of these institutions. The 'loss bearing' features of many of these products mean that consumers are exposed to significant risks that do not exist for other financial instruments. The relevant ESMA announcement can be accessed [here](#).

# Acronyms & Definitions used

AIF	Alternative Investment Fund
AIFM	Alternative Investment Fund Manager
AIFMD	Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers
AML	Anti-Money Laundering
CCP	Central Counterparty
CDS	Credit Default Swap
CoCos	Contingent Convertible Securities
Commission	European Commission
CP	Consultation Paper
CSD	Central Securities Depository
CSDR	Regulation on improving securities settlement in the European Union and on central securities depositories
CySEC	Cyprus Securities and Exchange Commission
EMIR	European Market Infrastructures Regulation – Regulation (EU) 648/2012 of the European Parliament and Council on OTC derivatives, central counterparties and trade repositories
ESA	European Supervisory Authorities
ESMA	European Securities and Markets Authority
ETD	Exchange-Traded Derivative
EU	European Union
FATCA	Foreign Account Tax Compliance Act
FATF	Financial Action Task Force
FAQs	Frequently Asked Questions
FCA	UK Financial Conduct Authority
FFI	Foreign Financial Institutions
FTT	Financial Transaction Tax
FX	Foreign Exchange
IRS	Interest Rate Swap
ITS	Implementing Technical Standards
MAD	Directive no.2014/57/EU of the European Parliament and of the Council on criminal sanctions for market abuse
MAR	Regulation no. 596/2014 of the European Parliament and of the Council on insider dealing and market manipulation (market abuse)
MEP	Member of the European Parliament
MiFID	Markets in Financial Instruments Directive – Directive 2004/39/EC of the European Parliament and the Council
MiFID II	Directive no. 2014/65/EU of the European Parliament and of the Council on markets in financial instruments repealing Directive 2004/39/EC of the European Parliament and of the Council (compromise reached, number to be assigned)

MiFIR	Regulation no. 600/2014 of the European Parliament and of the Council on markets in financial instruments and amending Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories [EMIR]
MMF	Money Market Fund
NDF	Non-deliverable forwards
Official Journal	The Official Journal of the European Union
OTC	Over-the-Counter
PEP	Politically Exposed Person
RTS	Regulatory Technical Standards
SFT	Securities Financing Transaction
UCITS	Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009, on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)
UCITS V	Directive of the European Parliament and of the Council amending Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards depositary functions, remuneration policies and sanctions
US IRS	United States Internal Revenue Service

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