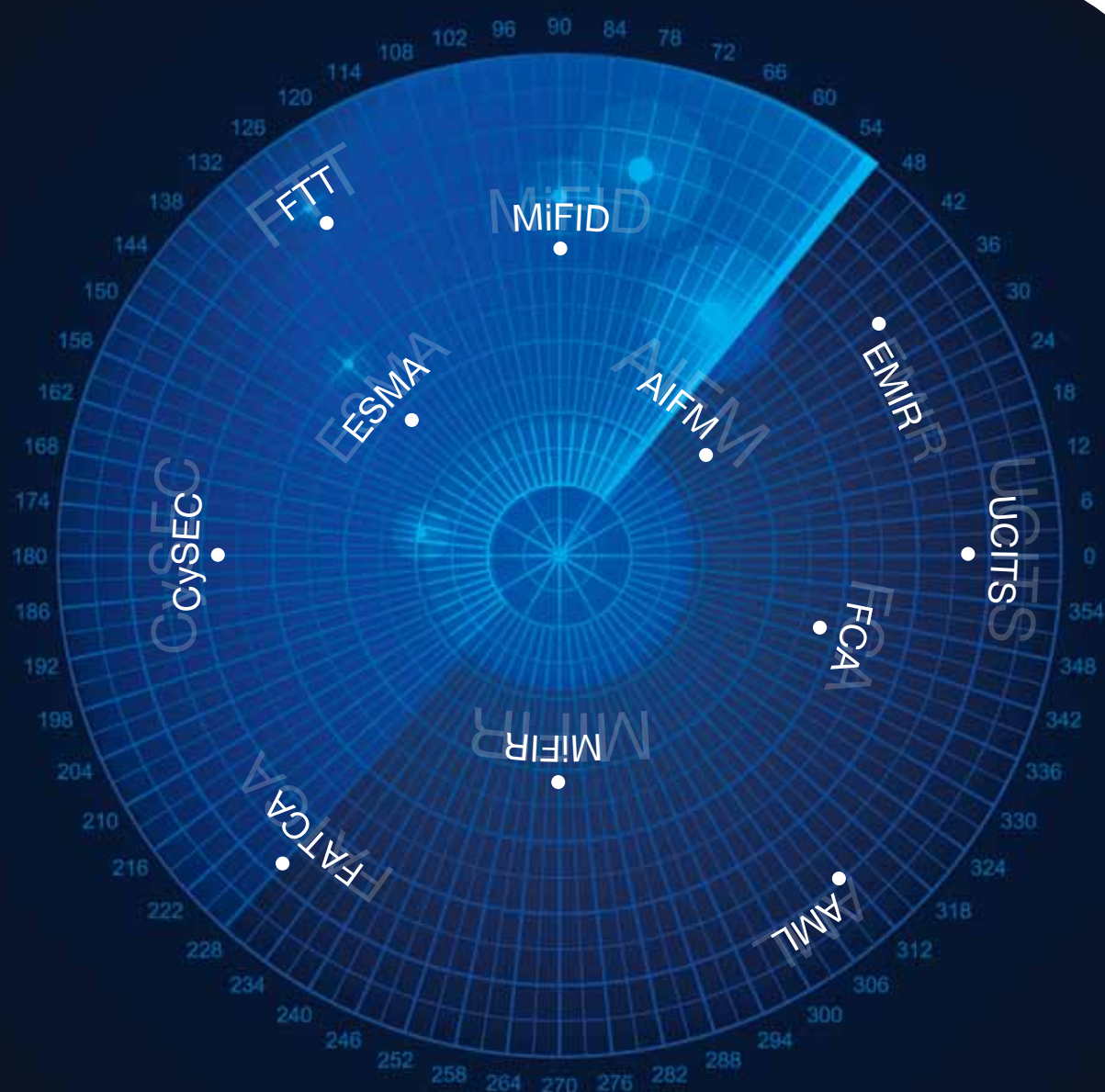




# REGULATORY RADAR

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 > **04**

Anti-Money Laundering > **08**

Regulatory Developments in the European FX Industry > **10**

EU Financial Transaction Tax (FTT) > **10**

Foreign Account Tax Compliance Act (FATCA) > **10**

Fund Regulation > **11**

UK FCA - Developments of Interest to Investment Firms > **12**

CySEC Developments > **12**

Acronyms & Definitions used > **17**

Remarks/Disclaimer > **19**

# 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 by the end of the year
- **EMIR**  
Staggered implementation continues: the clearing obligation is next; there may be further delays as the Commission looks likely to reject the draft Interest Rate Swaps RTS which ESMA sent to the Commission for endorsement
- **Other**
  - Securities Financing Transactions: Proposal in trilogue between the Commission, the Council and the European Parliament

## 2. Anti-Money Laundering Legislation

- The draft Fourth Anti-Money Laundering Directive and the draft Funds Transfers Regulation are still being finalised
- FATF updates its list of non-compliant jurisdictions and issues guidance on beneficial ownership

## 3. Regulatory Developments in the European FX Industry

- The delineation of MiFID FX financial instruments vs spot FX contracts has not been resolved; ESMA has not issued any guidance

## 4. EU Financial Transaction Tax

- Meetings but little real progress

## 5. FATCA

- Cyprus–US Inter Governmental Agreement signed on 2 December 2014; Cypriot Financial Institutions have until 31 December 2014 to register with the US IRS. However, if a Cypriot Financial Institution wants to be included in the list of registered companies for 2014 then it has to register until 22 December 2014

## 6. Fund Regulation

- ESMA has started work on whether to extend the passport to non-EU AIFMs and AIFs
- UCITS V Level 2 measures being worked on
- Money Markets Funds – still in trilogue
- PRIIPS approved by the Council

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

- Thematic review on customer complaints handling
- Three UK banks fined £56 million for IT failures

## 8. CySEC Developments

- CySEC communicates risks for Retail Clients investing in Contingent Convertible Instruments
- Issuance of Consultation Paper relating to the national discretions afforded under MiFID II/ MiFIR and relevant CySEC intentions
- Publication of practical guide regarding the current legal framework and market developments that led to the adoption of MiFID II and MiFIR by the European Parliament and the Council
- Issuance of guideline to adopt ESMA's Guidelines and Recommendations regarding the implementation of the CPSS-IOSCO Principles for Financial Market Infrastructures with respect of Central Counterparties
- Issuance of Directives on the authorisation of AIFs and AIFs with limited persons and application templates
- Issuance of new Directive on the authorisation of Tied Agents and application templates
- Issuance of announcement for the amendment of Directive regarding the Certification of employees providing investment services; Passing mark increased from 50% to 60%
- Issuance of Circular regarding the transition of existing ICIS under CySEC's supervision, in compliance with the AIF Law of 2014
- Issuance of new Directive on annual fees and other charges payable to CySEC by AIFs and AIFMs
- Issuance of Public Consultation Paper on proposed amendments to the AIF Law
- Amendment of CySEC Directives in order to adopt ESMA's guidelines on the issue of Client complaints handling
- Issuance of Directive for CIFs offering margin lending to clients for transactions in transferable securities
- An amendment of the AIF Law was submitted to the Ministry of Finance by CySEC regarding the extension of the deadline for ICIS, to register as AIFs
- Issuance of Circular regarding the electronic submission of information by ASPs relating to the development of the Risk Based Supervision Framework

# European Institutions Update

## *European Parliament*

The legislative work of the European Parliament has now resumed following the election of the new Parliament in May 2014.

## *Council of the EU*

Italy continues the Presidency of the EU Council till end of the year. Latvia will take over on 1 January 2015.

## *The European Commission*

Jean-Claude Juncker took office as Commission President in November 2014. The 28 new Commissioners have been selected. A new [Directorate-General for Financial Stability, Financial Services and Capital Markets Union](#) (DG FISMA) has been created. Jonathan Hill (UK) is the new Commissioner of DG FISMA.

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

### I. MiFID II

The MiFID II legislative proposal consists of an amending Directive (MiFID II) and a new regulation (the Markets in Financial Instruments Regulation = MiFIR). 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.

### 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). Regulatory 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. There has been no feedback to date.

We anticipate another consultation paper before the end of the year which will address issues raised in the discussion paper. This next consultation is expected to be limited to the markets area.

## 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). MAR will apply from 3 July 2016.

ESMA consulted with interested parties on Level 2 measures till mid-October and has now made available [consultations responses](#).

## 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 remains the opinion expressed by the Commission in a [letter](#) to ESMA dated 23 July 2014, explaining 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 suggested that ESMA should consider the option of further measures such as guidelines to promote harmonised practices among national competent authorities. ESMA has not issued any guidelines so far.

### 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.
- **Q3 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.
- **Q1 2016 (estimated)**, clearing obligation for certain non-clearing members will commence.

## The clearing obligation - ESMA draft IRS RTS delayed

The first Central Counterparties (CCPs) authorisation took place on 18 March 2014 and there are now 14 CCPs authorised. 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) ([IRS Consultation Paper](#) and [CDS Consultation Paper](#)). 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 ran till 6 November 2014.

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 appears that the Commission will not endorse the draft IRS RTS and that it will ask ESMA to re-submit an amended IRS RTS in order to resolve some of the issues raised by the Commission and the Parliament.

On 20 November 2014, [ESMA also wrote to the Commission](#) confirming that ESMA is delaying the submission of further draft regulatory technical standards, until the European Commission has assessed the first IRS RTS provided to the Commission by ESMA.

The timetable is now uncertain. From the moment the Commission formally notifies ESMA that it will not endorse the draft IRS RTS, ESMA would have 6 weeks to amend the draft RTS. Despite the delays, a final RTS may still be published in late Q1 2015. The timetable above reflects these estimates which may change. MAP S.Platis will continue to monitor all developments.

## “Frontloading”

ESMA proposes in its final draft RTS submitted to the Commission 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 counterparties only. However, the position on frontloading seems likely to be modified when the RTS is redrafted by ESMA. MAP S.Platis will continue to monitor all developments.



## ESMA updates Q&A

On 24 October 2014, ESMA issued its [11<sup>th</sup> update of its Q&A](#) on EMIR. This update includes further guidance on the trade reporting to trade repositories including a validation table.

## Revised RTS/ITS on reporting to trade repositories

On 10 November 2014, ESMA published a [consultation paper](#) on the revision of RTS ((EU) 148/2013) and ITS ((EU) 1247/2012) in relation to reporting to trade repositories under EMIR. The revised standards propose to clarify the interpretation of the data fields needed for the reporting to trade repositories and the most appropriate way of populating them. The consultation is open till 13 February 2015.

## Margin for non-cleared trades

The European Supervisory Authorities' (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. Securities Financing Transactions (SFT) proposal

This proposal is now 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.

## IV. Bankers' bonus cap under Capital Requirements Directive 4 - bonus cap is valid

Advocate General to the Court of Justice of the European Union considers the EU legislation limiting the ratio of bankers' bonuses compared to their basic salary to be valid suggesting that the court should dismiss the UK's challenge to the bonus cap. The court issued a [press release](#) on 20 November 2014.



## 2. Anti-Money Laundering

The first Financial Action Task Force (FATF) Plenary meeting of Plenary year FATF-XXVI was held on 22-24 October 2014. The main issues dealt with by this Plenary were:

- Issuing a statement to clarify the risk-based approach in the light of the de-risking phenomenon: [‘FATF clarifies risk-based approach: case-by-case, not wholesale de-risking’](#)
- Expressing concern with the financing generated by and provided to the terrorist group the Islamic State of Iraq and the Levant (ISIL): [‘FATF action on the terrorist group ISIL’](#)
- Producing two public documents identifying jurisdictions that may pose a risk to the international financial system:
  - [Jurisdictions with strategic anti-money laundering and combating the financing of terrorism \(AML/CFT\) deficiencies for which a call for action applies](#)
  - [Jurisdictions with strategic AML/CFT deficiencies for which they have developed an action plan with the FATF](#)
- Discussing the [fourth round mutual evaluation reports](#) on compliance with the FATF Recommendations of Norway and Spain
- Approving [Turkey’s exit from the targeted follow-up process](#) of the third round of mutual evaluations
- Welcoming Japan’s important progress in its legislative actions, and encouraging Japan to continue to address deficiencies, including through the adoption of relevant bills
- Receiving an update on [AML/CFT improvements](#) in Argentina, Cuba, Ethiopia, Tajikistan and Turkey
- Reviewing the [voluntary tax compliance programs](#) in several jurisdictions
- Adopting and publishing:
  - [Guidance on Transparency and Beneficial Ownership](#)
  - [Risk-based approach guidance for the Banking Sector](#)
- Receiving an update on FATF’s [membership expansion](#)
- Hearing a [briefing](#) by the Chair of the Egmont Group on recent developments in financial intelligence units and welcoming a closer co-operation with the Egmont Group.

Particular attention is drawn to two issues from the above list. Firstly, as part of its on-going review of compliance with the AML/CFT standards, the FATF has to date identified jurisdictions which have strategic AML/CFT deficiencies for which they have developed an action plan with the FATF. The latest update is set out in [“Improving Global AML/CFT Compliance: on-going process”](#).

Secondly, FATF has issued [Guidance on Transparency and Beneficial Ownership](#) which is intended to assist countries to design and implement measures that will deter and prevent the misuse of corporate vehicles, such as companies, trusts and other types of legal persons and arrangements – for money laundering, terrorist financing and other illicit purposes.

The FATF Recommendations provide measures that address the transparency and beneficial ownership of legal persons (Recommendation 24) and legal arrangements (Recommendations 25). Countries should take measures to prevent the misuse of legal persons and arrangements from being misused for criminal purposes,

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including by:

- Assessing the risks associated with legal persons and legal arrangements;
- Making legal persons and legal arrangements sufficiently transparent; and
- Ensuring that accurate and up-to-date basic and beneficial ownership information is available to competent authorities in a timely fashion.

The draft Fourth Anti-Money Laundering Directive and the draft Funds Transfers Regulation are still being finalised. 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)

On 7 November 2014, the Finance Ministers of the eleven EU Member States participating in enhanced co-operation on the EU Financial Transaction Tax (FTT) met to review progress and to discuss outstanding issues. Following the meeting, the new EU Economic Affairs Commissioner, Pierre Moscovici, stated that “good progress is now being made towards an agreement by the end of the year, which would allow the FTT to enter into force by the beginning of 2016”. However, the [press release](#) issued after the meeting does not provide much detail.

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

On 2 December 2014, the Intergovernmental Agreement between Cyprus and the United States of America (IGA) for the purposes of the FATCA was signed.

Firms need to determine their FATCA status by reference to the IGA and the local Cyprus implementing legislation. This will help Firms to be in a position to communicate this to interested 3rd parties like Banking Institutions.

Firms established in Cyprus which are Foreign Financial Institutions (FFIs) have until **31 December 2014** to register with the US IRS on the FATCA registration portal. However, if a Cypriot Financial Institution wants to be included in the list of registered companies for 2014 then it has to register until the 22 December 2014. Firms should assess how to comply with any FATCA obligations applicable to them within the FATCA deadlines. Compliance with such obligations involve a review of on-boarding procedures (incl. due diligence), re-evaluation of existing clients' accounts, update of internal procedures and more.

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)

ESMA has started work on an opinion and advice to the European Commission on whether to extend the passport to non-EU AIFMs and AIFs, which is due July 2015. ESMA has issued a call for [evidence](#) on:

- the functioning of the EU passport under the AIFMD; and
- the functioning of the marketing of non-EU alternative investment funds (AIFs) by EU AIFMs in the EU and the management and/or marketing of AIFs by non-EU AIFMs in the EU.

### UCITS V

The [final text](#) of UCITS V published in the Official Journal, came 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 developed. On 28 November 2014, [ESMA submitted its final advice](#) to the Commission on the insolvency protection of UCITS assets when delegating safekeeping and on the independence requirement. The Commission will now draft delegated acts.

### Money Market Funds (MMFs)

This contentious proposal is still in the trilogue. An indicative date for the European Parliament plenary sitting to consider the proposed Regulation on MMFs has been set for 25 March 2015.

### Packaged Retail and Insurance-based Investment Products (PRIIPs)

On 10 November 2014, the Council adopted the PRIIPS regulation. The text covers Packaged Retail and Insurance-based Investment Products (PRIIPs), specifically investment funds, structured deposits and life insurance policies with an investment element.

The regulation requires key information documents to be drawn up for PRIIPs. It lays down uniform rules on the format and content of key information documents and on their provision to Retail Investors. The new requirements will be applicable two years after entry into force of the regulation. This will allow “manufacturers” of PRIIPs and those advising on or selling them, sufficient time to prepare for the new rules. Undertakings for collective investment in transferable securities (UCITS) will not be subject to the regulation for five years.

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

### Handling of customer complaints – FCA publishes thematic review

On 18 November 2014, the FCA published its [thematic review of complaint handling](#). Financial firms collaborated with the FCA on the thematic review and, as a result, agreed to make improvements to the way they deal with consumer complaints. The FCA will be consulting on possible changes to its dispute resolution rules later this year. In the interim the FCA has suggested that all firms should consider how their findings relate to their own complaint-handling operating models, policies and practices. In particular, firms should focus on:

- Whether their complaint-handling policies and processes fully consider whether their approach to complaints have the interests of consumers at their heart, avoiding a tick-box approach to compliance
- Reviewing their definition of ‘complaint’ and training their staff where the definition is not properly understood
- Whether their systems and processes could inhibit accurate recording of complaints (and further consider how this impacts on their ability to conduct root cause analysis)
- The observations made about consistency of redress and distress and inconvenience payments
- Considering their approach to root cause analysis
- Whether they can make any improvements to their MI (messaging, interpretation, quality metrics and use of targets).

### IT failures – first financial fine by the Prudential Regulation Authority

The Prudential Regulation Authority (PRA) and FCA have fined RBS, NatWest and Ulster Bank a total of £56 million (including 30 per cent early settlement discounts) for an IT failure in June 2012 that resulted in 6.5 million customers being unable to access banking services. The PRA found that the banks failed to have proper systems and controls in place to detect and manage their exposure to IT risks. The FCA found that the banks failed to implement robust systems that could endure, or reduce the risk of IT failures.

This is the first PRA and FCA joint investigation and the first financial penalty imposed by the PRA since it was established in April 2013.

## 8. CySEC Developments

### Risks for Retail Clients investing in Contingent Convertible Instruments

On 3 October 2014, CySEC [alerted](#) the investing public of ESMA's [statement on the Potential Risks Associated with Investing in Contingent Convertible Instruments](#). While ESMA published the above statement addressed to institutional investors, CySEC advised private investors (Retail Investors) to take notice.

Convertible Contingent Instruments are a form of debt that can be converted into common equity or, written down completely if a certain trigger event (described in the instrument's contractual agreement) occurs.

## Issuance of Consultation Paper on the intended use of National Discretions by CySEC afforded under MiFID II/MiFIR

On 9 October 2014, CySEC launched a public consultation paper [CP\(2014-07\)](#), on the national discretions afforded by the upcoming [MiFID II](#) and [MiFIR](#) legislation. Specifically, CySEC provided a list of national discretions afforded to Competent Authorities under the new [MiFID II](#) and [MiFIR](#) legislation requesting feedback on the Commission's intentions towards the discretions. The Commission invited interested parties to opine on whether they agree or disagree with CySEC's intentions. Among the national discretions CySEC intends to use are:

- In exceptional circumstances impose additional requirements for the safekeeping of clients' assets
- Provide information to clients in a standardised format
- Require from a third country Investment Firm intending to provide investment services to Retail Clients or to Retail Clients who want to be categorised as Professional Clients, to establish a Branch in the Republic of Cyprus
- Empower CySEC to impose sanctions with maximum administrative fines not exceeding 5 million Euros, the maximum fine under the MiFID II Directive.

The consultation was open till 10 November 2014.

## CySEC publishes Practical guide to Markets in Financial Instruments Directive ('MiFID II') and Markets in Financial Instruments Regulation ('MiFIR')

On October 9 2014, CySEC published the [Practical guide to Markets in Financial Instruments Directive \('MiFID II'\)](#) and [Markets in Financial Instruments Regulation \('MiFIR'\)](#). The guide describes in brief the current legal framework and market developments that led to the adoption by the European Parliament and the Council of MiFID II and MiFIR. CySEC lists the following as some of the main changes introduced with the upcoming legislation:

- Emission Allowances are brought in scope of MiFID II
- Stricter control on remuneration of employees of Investment Firms
- Introduction of a new multilateral trading venue: the Organized Trading Facility (OTF)
- Additional organisational requirements for Investment Firms
- Enhanced supervision and new administrative powers to regulators.

## Guidelines and Recommendations regarding the implementation of the CPSS-IOSCO Principles for Financial Market Infrastructures in respect of Central Counterparties

On 14 October 2014, through the issuance of [Guidelines GD-IF-08](#), CySEC announced the adoption of ESMA's [Guidelines and Recommendations](#) regarding the implementation of the CPSS-IOSCO Principles for Financial Market Infrastructures in respect of Central Counterparties.

These [Guidelines and Recommendations](#) apply to competent authorities designated under [Regulation \(EU\) No 648/2012](#), article 22, for carrying out the duties of authorisation and supervision of CCPs. The said

Guidelines and Recommendations concern the implementation of the CPSS-IOSCO [Principles for Financial Market Infrastructures](#) (PFMIs), that provide guidance for addressing risks and efficiency in Financial Market Infrastructures (FMIs).

Under the said [Guidelines and Recommendations](#), when carrying out the duties resulting from EMIR for the authorisation and supervision of CCPs, competent authorities should ensure that CCPs established in their territory comply with these requirements in accordance with the PFMIs and operate in a manner that is consistent with them.

## **Issuance of Directives re procedures for the granting of an operational license for AIFs and AIFs with limited number of persons and operating conditions for AIFs with limited number of persons**

On 17 October 2014 CySEC issued Directive [DI131-2014-01](#) on the “The process of authorisation of AIF Directive” that contains information for interested parties wishing to apply for an AIF authorisation with unlimited number of unit holders. The content of the application to be submitted to CySEC for authorisation is defined in the template document F131-2014-02 attached as Annex I of the said Directive.

CySEC has also issued Directive [DI131-2014-02](#) “The terms and operating conditions and the authorisation process of an AIF with limited number of persons Directive” that contains information to parties interested to apply for an AIF authorisation with up to 75 unit holders. The content of the application to be submitted to CySEC for authorisation is defined in the template document F131-2014-01 attached as Annex I of the Directive.

## **Issuance of Directive in relation to Cyprus Tied Agents**

Following Consultation Paper CP (2014-06) which we reported in [Regulatory radar issue 1 of August 2014](#); CySEC issued Directive [D144-2007-13](#) on “Tied Agents” that describes the authorisation process for registering a CIF’s Tied Agent established in the Republic or, a CIF’s Tied Agent established in a member state that does not allow the appointment of Tied Agents or, establishment of a Tied Agent of a member state’s Investment Firm in the Republic. The content of the application to be submitted to CySEC for registering a Tied Agent are attached to the said Directive.

## **Amendment of Directive regarding the Certification of employees and the public register**

On 21 October 2014, through the issuance of an [announcement](#), CySEC informed all interested parties that the [Directive](#) regarding the Certification of employees and the public register has been amended in regards to the passing grade of the exams.

The passing grade has changed from 50 points to 60 points and is in force since 17 October 2014.





## Compliance of ICIS with the AIF Law of 2014

On October 22 2014, through the issuance of Circular [CI131-2014-30](#), CySEC clarified procedural issues concerning the transition of existing International Collective Investment Schemes (ICIS) under the Commission's supervision and under the AIF Law. CySEC instructed that existing ICIS which opt to continue their operations, may convert into any of the following four categories of AIFs/AIFMs:

- **Category A**, existing ICIS that opt to convert into AIFs with limited number of persons will not be required to apply for a new license from CySEC, provided they comply with the relevant provisions of the AIF Law and submit to CySEC the forms listed in the Circular.
- **Category B**, existing ICIS that wish to convert into AIFs. ICIS that opt to convert into AIFs will have to apply for a licence with CySEC complying with Directive [DI131-2014-01](#) (see above) and the provisions of the [AIF Law of 2014](#).
- **Category C**, existing ICIS that opt to convert into AIF Management Companies as per the AIFM Law of 2013. ICIS that opt to convert into AIF Management Companies will have to apply for a licence with CySEC complying with Directive [DI56-2013-01](#) and the provisions of the [AIFM Law of 2013](#).
- **Category D**, pending ICIS applications with the Central Bank of Cyprus that were transferred to CySEC will be examined by CySEC. The applicants shall need to submit to CySEC the draft instruments of incorporation and the Offering Memorandum accompanied by the checklists referred in the Circular and CySEC will then contact them for further information.

## Fees payable to CySEC by AIFs and AIFMs

On 7 November 2014, CySEC issued Directive [DI131/56-2014-01](#) "Fees payable and annual contribution of AIFs and AIFMs". The Directive lists, among others, fees payable for the authorisation of an AIF or of an AIFM, annual contributions paid to CySEC by AIFs and AIFMs as well as fees for marketing non-EU or EU AIFs in the Republic or for marketing AIFs to Retail Investors.

## Consultation Paper for proposed amendment of the AIF Law

On 11 November 2014, CySEC launched a public consultation paper [CP\(2014-08\)](#) requesting feedback on the proposed amendments to the AIF Law. The proposed amendments, among others, include:

- The creation of a new category of companies (other than AIFMs and CIFs) whose sole purpose is to manage AIFs - these companies will be subject to licencing by CySEC.
- The appointment of a Depositary to be mandatory for all AIFs and a distinction between cases where the Depositary performs the function of safekeeping of assets and monitoring cash flows.

The consultation was open till 14 November 2014.



## Amendments to Directives and application of ESMA guidelines for complaints handling

On 11 November 2014, CySEC [announced](#) the amendment of Directives [DI144-2007-01](#) for "The Authorisation and Operating Conditions of CIFs" and [DI78-2012-03](#) "On the Organisational Requirements of UCITS Management Companies". The said amendments implement [ESMA's guidelines for complaints handling for the Securities Sector](#). The amendments apply to CIFs, UCITS management companies and to Managers of AIFs and include among others the following:

- Regulated entities are required to submit on a trimonthly basis information regarding received complaints. The details and submission dates will be notified by means of a Circular at a later stage
- Establish a complaint handling process that has to be communicated upon receiving a complaint to the complainant or upon request
- Provide details on their complaints handling process in an easily accessible manner either on the website, on brochures, or in contractual documents.

## **Directive for CIFs offering margin lending to Retail Clients for transactions in transferable securities**

Following Consultation Paper [CP \(2014-04\)](#) (in Greek) which we reported in [Regulatory radar issue 1 of August 2014](#); on 14 November 2014, CySEC issued Directive [DI144-2007-14](#) (in Greek) “for offering margin lending to Retail Clients for carrying out transactions”. CySEC, with this Directive, standardises the process by which CIFs may offer credit to Retail Clients in respect to transactions with transferable securities on the Regulated Markets of Cyprus and Greece. The Directive instructs CIFs to apply the following measures:

- The provision of credit for transactions in transferable securities in Regulated Markets must be documented in a predefined contract between the CIF and the Retail Client
- In the contract the CIF will clearly disclose any costs such as interest rates, fees and commissions charged by the CIF and or third parties relating to the service of granting credit
- Retail Clients are to submit collateral (the clients’ stock portfolios can be used for collateral) in exchange for credit. In any case that collateral shall not be less than 50% of the total credit the client has received from the CIF
- CIFs to update their records on a daily basis on the outstanding credit given and the valuation of the collateral
- CIFs must keep a record on the credits given for five years.

## **Extension of deadline for ICIS to register as AIFs from the 25 November 2014 to 25 March 2015**

On 21 November 2014, CySEC [announced](#) that it has filed with the Ministry of Finance a bill for amending the [AIF Law](#) that will extend the deadline to 25 March 2015 for concerned ICIS, that are required to register as AIFs. The previous deadline was 25 of November 2014.

## **Electronic submission of information relating to the development of the Risk Based Supervision Framework**

On 25 November 2014, CySEC, through the issuance of [Circular CI144-2014-31](#), informed Administrative Services Providers (‘ASPs’) of the following:

- Risk Based Supervision Framework: In order to proceed with the implementation of the Risk Based Framework, ASPs will be required to submit various information from time to time. CySEC will publish in due course, a Directive regulating the above.
- Information requested by CySEC: ASPs that are authorised or will be authorised until 31 December 2014, are required to complete Form RBS-F\_ASPTS\_01 (‘the form’) in the Appendix and submit it electronically via the Transaction Reporting System between January 5 and January 16, 2015. The form will only be available in English and must be completed for the reporting period 01/01-31/12/2014.

# Acronyms & Definitions used

ASPs	Administrative Service Providers
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
CCP	Central Counterparty
CDS	Credit Default Swap
CIF	Cyprus Investment Firm
Commission	European Commission
CP	Consultation Paper
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
FMI	Financial Market Infrastructures
FTT	Financial Transaction Tax
FX	Foreign Exchange
ICIS	International Collective Investment Schemes
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
PFMIs	Principles for Financial Market Infrastructures
PRA	UK Prudential Regulation Authority
PRIIPs	Packaged Retail and Insurance-Based Investment Products
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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## ► Contact Us

### **Mailing Address:**

P.O. Box 59521, CY-4010, Limassol, Cyprus

### **Main Offices in Cyprus**

#### **Limassol:**

74 Archiepiskopou Makariou C'

Amaranton Court, 3rd Floor, Mesa Geitonia

4003 Limassol, Cyprus

Tel: +357 2535 1335

Fax: +357 2535 1330

#### **Nicosia:**

25 Demostheni Severi Avenue

Metropolis Tower, 4th Floor

1080 Nicosia, Cyprus

Tel: +357 2287 7744

Fax: +357 2287 7780

**[www.mapsplatis.com](http://www.mapsplatis.com)**