MAP S.Platis

Your Partner in Financial Services!

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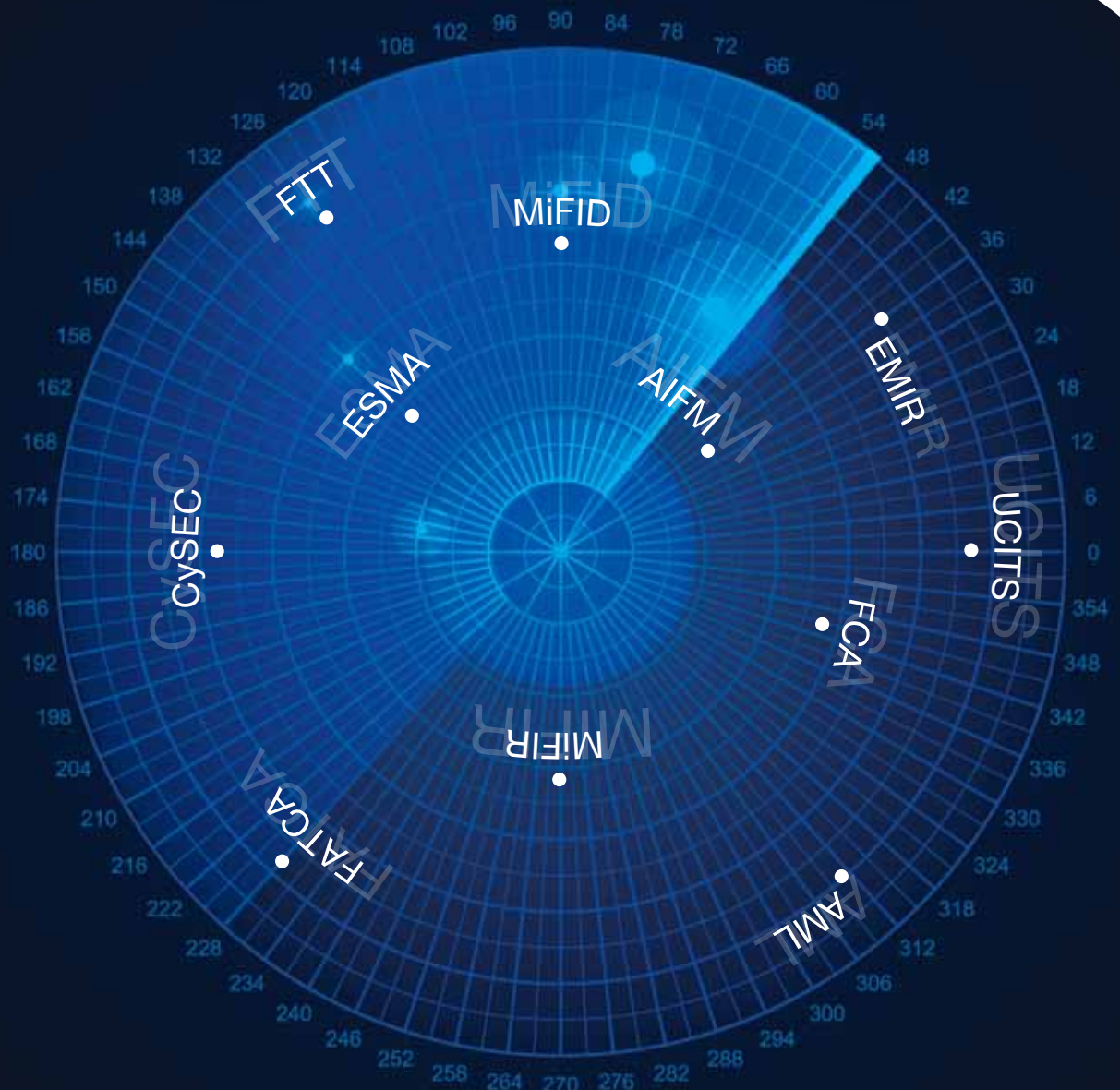
REGULATORY RADAR

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



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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 (TA) 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).

On 22 May 2014, ESMA published:

- a Consultation Paper on MiFID II/MiFIR Technical Advice; and,
- a Discussion Paper on MiFID/MiFIR draft RTS/ITS.

On 19 December 2014, ESMA published:

- final Technical Advice to the Commission on Delegated Acts; and,
- a Consultation Paper on draft RTS and ITS following on from ESMA's earlier Discussion Paper. (The draft RTS are in Annex B of the Consultation Paper.)

MiFID II to include most financial instruments, trading venues and techniques

MiFID II/MiFIR introduces changes to the functioning of secondary markets, including transparency requirements for a broad range of asset classes; the obligation to trade derivatives on trading venues; requirements for algorithmic and high-frequency-trading and new supervisory tools for commodity derivatives.

The key proposals stemming from ESMA's TA/draft RTS cover the following issues:

- increased trade transparency, for non-equity instruments, in particular bonds, derivatives, structured finance products and emission allowances;

- a trading obligation for shares and a double volume cap mechanism for shares and equity-like instruments, introducing a major change to the framework for trading these instruments in the Union;
- an obligation to trade derivatives on MiFID venues (regulated markets, multilateral or organised trading facilities) only, in line with G20 requirements;
- newly introduced position limits and reporting requirements for commodity derivatives;
- rules governing high frequency trading, imposing a strict set of organisational requirements on investment firms and trading venues;
- provisions regulating access to central counterparties, trading venues and benchmarks, designed to increase competition in the Union; and
- requirements for a consolidated tape of trading data, including rules for tape providers, reporting, publication and sales of data.

MiFID II to improve investor protection

ESMA's TA proposes that the Commission adopts a number of measures that will further the protection of investors across the EU. The main proposals relating to the improved protection of investors, especially retail, include:

- clarifications about the circumstances in which portfolio managers can receive research from third parties;
- clarifications under which circumstances inducements meet the quality enhancement requirement for the provision of advice;
- requirements for investment firms manufacturing and/or distributing financial instruments and structured deposits to have product governance arrangements in place in order to assess the robustness of their manufacture and/or distribution;
- requirements for firms to provide clients with details of all costs and charges related to their investment, including cost aggregations, the timing of disclosure (ex-ante and ex-post); information to non-retail clients; the scope of firms subject to this obligation; information on the cumulative effect of costs on the return;
- organisational requirements for firms providing investments advice on an independent basis; and
- specification of powers for ESMA and national regulators with regards to prohibiting or restricting the marketing and distribution of financial instruments.

Next steps

The TA will now be sent to the European Commission. ESMA's draft RTS/ITS, already previously consulted upon, are open for public comment until 2 March 2015. In addition, an open hearing will be held in Paris on 19 February 2015.

ESMA will use the input received from the consultations to finalise its draft RTS which will be sent for endorsement to the European Commission by mid-2015, its ITS by January 2016. MiFID II/ MiFIR and its implementing measures will be applicable from 3 January 2017.

MiFID II speech by Verena Ross of ESMA

On 9 December 2014, Verena Ross, Executive Director, ESMA, gave a speech at ICI Global Trading and Market Structure Conference in London. The following inter-linked areas were covered reflecting the interests of the buy-side audience:

- transparency – calibration of liquidity thresholds/double volume cap mechanism;
- market data; and
- best execution.

ESMA will issue guidelines, questions and answers, opinions to assist with the implementation of MiFID 2 and technical standards and advice will contribute to the creation of a single rulebook.

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.

Following an earlier consultation, ESMA published its technical advice regarding MAR on 3 February 2014. ESMA was tasked by the Commission to provide the implementing details which will make MAR applicable to market participants and investors. These measures consist of technical advice and technical standards. MAR defines activities and behaviours that constitute market abuses, e.g. insider dealing or market manipulation. Compared to the current Market Abuse Directive, MAR extends the scope of market manipulation in order to cover new trading tactics and market realities and also provides non-exhaustive lists of indicators for market manipulation, such as the spreading of false or misleading signals, price securing, and the use of fictitious devices or any other form of deception or contrivance. MAR also defines the framework within which inside information has to be publicly disclosed.

ESMA's technical advice:

- specifies the MAR market manipulation indicators, by providing examples of practices that may constitute market manipulation as well as proposing "additional" indicators of market manipulation;
- suggests the way to determine to which regulator delays in disclosure of inside information needs to be notified;
- provides clarifications on the enhanced disclosure of managers' transactions. ESMA recommends disclosing any acquisition, disposal, subscription or exchange of financial instruments of the relevant issuer or related financial instruments carried out by managers, further illustrated through a non-exhaustive list of types of transactions subject to this obligation. ESMA also clarifies the transactions that can be allowed by the issuer during a closed period when normally managers are prohibited to trade; and

- proposes procedures and arrangements to ensure sound whistleblowing infrastructures – i.e. EU national regulators should allow the receipt of reports of infringements, including appropriate communication channels and guarantee the protection of reporting and reported persons, with respect to their identity and their personal data.

Next steps

ESMA will send its technical advice to the European Commission for its consideration in drafting its implementing standards regarding MAR. ESMA's regulatory technical standards regarding MAR will be delivered in July 2015.

II. EMIR

Scope - FX spot contracts

The FCA stated on 28 January 2015 at a conference on MiFID that the question of where the boundary between an FX financial instrument (i.e. an FX Forward) and a spot FX contract would be set would be dealt with by MiFID II Level 2 measures. No indication was given on whether ESMA would issue guidelines in the intervening period.

EMIR implementation timetable – next phase: the clearing obligation

TThe 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 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.
- **September 2015 (estimated)**, clearing obligation will commence for clearing members (Category 1 counterparties).

- **1 December 2015 (estimated)**, variation margin for non-cleared OTC derivatives and initial margin on a phased implementation timetable will begin.
- **March 2016 (estimated)**, clearing obligation for certain non-clearing members will commence (Category 2 counterparties).
- **September 2016 (estimated)**, clearing obligation for further category of non-clearing members will commence (Category 3 counterparties).
- **March 2016 (estimated)**, clearing obligation for further category of non-clearing members will commence (Category 4 counterparties).

The clearing obligation – ESMA draft IRS RTS delayed; CDS outstanding; NDFs will not be cleared for the moment

On 18 December 2014, the Commission notified ESMA that it would endorse the draft IRS RTS subject to the following amendments:

- postponing the starting date of the frontloading requirement;
- clarifying the calculation of the threshold for investment funds; and
- excluding from the scope of the clearing obligation non-EU intragroup transactions.

In accordance with the ESMA Regulation, within a period of six weeks from this notification, ESMA may amend the draft RTS and resubmit it in the form of a formal opinion to the Commission.

On 29 January 2015, ESMA published its opinion on the draft IRS RTS. ESMA supported the Commission's frontloading proposals but the exemption for non-EU intragroup transactions remains in discussion.

Despite the delays, a final RTS may still be published in March 2015. The timetable above reflects these estimates which may change. MAP S.Platis will continue to monitor all developments.

On 20 November 2014, ESMA had written to the Commission confirming that ESMA is delaying submitting further draft regulatory technical standards, until the issues arising in the first IRS RTS are resolved. The final report on the draft CDS RTS is still outstanding. However, on 4 February 2015, ESMA published a feedback statement summarising the responses to its consultation paper on the application of the clearing obligation under EMIR to non-deliverable foreign-exchange forwards (NDFs) and stated that it is not proposing a clearing obligation on the NDF classes at this stage. This is without prejudice to the possibility for ESMA to propose a clearing obligation on the NDF classes (by the submission of a final report to the European Commission including a draft RTS) at a later point in time to take into account further market developments.

Counterparty categorisation

Counterparties have been categorised into four categories:

- Category 1 counterparties are clearing members;
- Category 2 counterparties are "financial counterparties" and "non-financial counterparty +"

alternative investment funds (as both terms are defined in EMIR) not belonging to Category 1 which belong to a group whose aggregate month-end average of outstanding gross notional amount of non-centrally cleared derivatives for three months after the publication of the RTS in the OJ excluding the month of publication is above EUR 8 billion and which are any of the following: (i) financial counterparties; or (ii) alternative investment funds that are non-financial counterparties;

- Category 3 are "financial counterparties" and "non-financial counterparty +" alternative investment funds which are not included in Category 2;
- Category 4 are "non-financial counterparty +" which are not included in Categories 1, 2 or 3.

Counterparty categorisation determines the start date of the clearing obligation and the applicability of the frontloading requirement.

"Frontloading"

The current position is that the frontloading requirement would apply from two months after the entry into force of the RTS for clearing members (which are "Category 1" counterparties), five months after the entry into force of the RTS for "Category 2" counterparties; and it would not applicable to any other category of counterparty. MAP S.Platis will continue to monitor all developments.

Pension fund exemption from clearing to be extended

The European Commission has published a report recommending that pension funds be given a two-year exemption from central clearing requirements for their over-the-counter (OTC) derivative transactions. The report concludes that central counterparties need time to find solutions for pension funds. The current exemption from clearing for certain contracts expires in August 2015.

The report is accompanied by a report by external consultants.

This extension would take the form of a delegated act that would need to be adopted by the College of Commissioners.

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 still awaited on the consultation.

III. Securities Financing Transactions (SFT) proposal

This proposal is still 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

The Fourth Anti-Money Laundering Directive and the Funds Transfers Regulation were approved by the Justice and Home Affairs and Economic and Monetary Affairs Committees of the European Parliament.

The two deals still need to be endorsed by the full Parliament (March or April) and by the EU Council of Ministers. Member states will then have two years to transpose the anti-money laundering directive into their national laws. The European Parliament issued a press release on 27 January 2015.

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.

ESMA has considered the application of the clearing obligation under EMIR to non-deliverable foreign-exchange forwards (NDFs) and stated that it is not proposing a clearing obligation on the NDF classes at this stage. See Section 1 Part II (EMIR) above, for more details.

4. EU Financial Transaction Tax (FTT)

On 27 January 2015, ten of the eleven participating Member States (Greece was a missing signatory) issued a Joint Statement reiterating their commitment to the introduction of a multilateral FTT. The participating Member States have "decided that the tax should be based on the principle of the widest possible base and low rates" and aim to implement the European financial transaction tax on 1st January 2016. The statement is short and there are no further details. The Commission's February 2013 proposal is still officially on the table. The next Council meeting is scheduled for 17 February 2015, at which a progress report is expected.

5. Foreign Account Tax Compliance Act (FATCA)

The Cyprus–US Inter Governmental Agreement signed on 2 December 2014. Cypriot Financial Institutions should proceed and register with the US IRS, if not done so already.

Please refer to Issue 1 of MAP S.Platis Regulatory Radar and Issue 3 of MAP S. Platis Regulatory Radar for more information regarding FATCA.

6. Fund Regulation

Alternative Investment Fund Managers Directive (AIFMD)

On 9 January 2015, ESMA published an updated version of its questions and answers on the application of AIFMD.

Money Market Funds (MMFs)

This 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 28 April 2015.

7. UK FCA – Developments of Interest to Investment Firms

MiFID II – FCA implementation update

The FCA has provided an update to its MiFID II implementation webpage.

The FCA notes the biggest practical challenges to be in issues of transaction reporting, commodities position reporting and provision of information to ESMA. The FCA states that much more detail will be provided in the course of 2015.

With respect to changes to the FCA Handbook, the FCA states that it is likely that a formal consultation on changes will not take place until the end of 2015, but engagement will occur before then. In particular, the FCA expects to issue a discussion paper towards the end of Q1 2015 which will seek views on various issues relating to conduct of business. The FCA will, among other things, ask about how it should approach the fact that the conduct of business rules for investment business currently cover insurance-based investment business as well as business relating to MiFID financial instruments.

The FCA also commits to working with HM Treasury to agree the legislative changes required to implement MiFID II. It is noted that HM Treasury is proposing to consult on the changes in Q1 2015. The topics to be covered include: changes to the boundaries of UK regulation through amendments to the Regulated Activities

Order; an authorisation regime for data reporting service providers; changes to the FCA's supervisory powers (including position limits); implementing the third country branching provisions in MiFID II; and changes to the requirements to be met by recognised investment exchanges.

EMIR - FCA supervisory approach to risk mitigation requirements

The FCA has updated its webpage setting out what it expects from firms implementing plans to achieve compliance with risk mitigation requirements for non-cleared trades. The webpage also provides information regarding the areas of focus for the FCA's supervisory work on EMIR compliance in 2015.

Conflicts of interest – Tribunal upholds FCA decision

The Upper Tribunal (Tribunal) has upheld the decision of the FCA to issue a public censure against Arch Financial Products LLP (Arch), and to prohibit its chief executive, and a senior partner and former compliance officer, from performing any role in regulated financial services. The judgment was issued by the Tribunal on 19 January 2015 after a hearing during May 2014.

In its judgment, the Tribunal found that:

"We have found serious failings to act with integrity on the part of Mr Farrell and Mr Addison…Mr Farrell and Mr Addison can no longer be regarded as fit and proper persons to be involved in any regulated activities."

"We characterise the failures with regard to the management of conflicts of interest generally and in respect of the Four Transactions as being particularly serious. The failings demonstrated fundamental flaws in AFP's [Arch's] business model which allowed it to take a position of trust as a fiduciary and a manager of large amounts of money raised from retail investors without any proper thought being given as to how to establish effective arrangements for conflict management in light of AFP's different business strands."

The Tribunal also commented on the standards of behaviour it expected of firms when managing conflicts of interest.

FCA bans former managing director of asset manager

The FCA has banned Jonathan Paul Burrows, a former managing director at Blackrock Asset Management, as no longer fit and proper due to conduct outside his employment.

In November 2013, Mr Burrows was stopped at a train station in London when he had failed to purchase a valid ticket to cover his entire train journey. Mr Burrows admitted that he had knowingly evaded the fare for his train journey on many occasions. As a result, the FCA held that Mr Burrows' behaviour showed a lack of honesty and integrity, and that he had failed to meet the fit and proper test for approved persons.

8. CySEC Developments

Issues related to the applications for CIF authorisation

On 10 December 2014, through the issuance of Circular CI144-2014-32 (In Greek), and following the issuance of Circular CI144-2014-23 and the upcoming modifications of the Investment Services and Activities and Regulated Markets Law of 2007 and 2009 (the 'Modified Law'), CySEC has drawn the attention of Cyprus Investment Firms ('CIFs') to issues related to the applications for a CIF's authorisation.

CySEC expects that the application for a CIF's authorisation submitted to CySEC, will comply with the relevant provisions of the Modified Law, as they are clarified in Part B and C of Circular CI144-2014-23. Attention should also be drawn to Article 4 of the Modified Law, related to the upcoming amendments of the initial capital of CIFs. Additionally, CySEC mentions that the application folder of the Applicant CIF (the 'Applicant') should include all necessary details and information regarding the overall composition of the Applicant's Board of Directors.

Considering applications that will be submitted to CySEC before the application of the Modified Law, the engaged parties should within reasonable time, make sure that the said applications will include all necessary information regarding the Applicant's Directors. Applications in the final stage shall be exempted from the abovementioned, but should comply before activation.

In order the review of the said applications not to be delayed, the following should apply:

- The information that is included in the application, and the supporting documents and details, to be completed.
- The clarifications and/or any further information being requested by CySEC for the full review of the application should be submitted within the set deadlines.
- The proposed shareholders of the Applicant should have the intention to maintain the percentage of their participation to the Applicant, within the foreseeable future.

CySEC, emphasised that CIFs should notify CySEC regarding any changes of the persons who effectively direct their business, along with all information needed to assess whether the new persons to be appointed are of sufficiently good repute and experience, at least one month before the change. CIFs should take all the necessary measures in order the Board of Directors to be sufficient and whole at all times.

CySEC highlights that based to the abovementioned the following policies should be applied during CIFs' applications:

- In case important information and/or documents are missing from the application folder during the review of the application, then the Applicant will be notified in writing to resubmit its application fully completed.
- In case the Applicant does not submit to CySEC the additional information being requested, the Applicant will be notified in writing and a reasonable deadline of not less than five working days will be given for the said submission.
- If during the review of the application the majority of the proposed shareholders or the proposed exclusive shareholder of the Applicant will change, the application should be submitted again.

If prior to its activation the CIF intends to propose changes to its shareholders, the CIF must notify CySEC at least within six months from the date of its authorisation.

Content of the Compliance Officer's Annual Report on the prevention of money laundering and terrorist financing

On 18 December 2014, through the issuance of Circular C033, CySEC reminded Cyprus Investment Firms, UCITS Management Companies, Alternative Investment Fund Managers and Administrative Services Providers, of the obligation of the compliance officer for the prevention of money laundering and terrorist financing to prepare an Annual Report, under paragraph 9(1)(q) and 10 of the Directive DI144-2007-08 of 2012 for the Prevention of Money Laundering and Terrorist Financing (the 'Directive').

The purpose of the said Annual Report is to inform the board of directors of the Company for the effectiveness of the policy, practices, measures, procedures and controls applied by the Company for the prevention of money laundering and terrorist financing, and for the measures to be decided for the improvement or correction of any weaknesses, setting a timeframe for implementation. The Annual Report, after its approval by the board of directors, is submitted to CySEC, together with the minutes of the meeting, during which the Annual Report has been discussed and approved.

Paragraph 10(4) of the Directive, specifies the issues that the Annual Report should at least contain:

- Regulatory framework and information from relevant international organisations
- Inspections and reviews by the AML Compliance Officer
- Internal reporting
- External reporting
- Customers' cash deposits
- High risk customers
- Ongoing monitoring of customers' accounts and transactions
- Branches and subsidiaries outside the European Economic Area
- Communication, Education and Training of Staff
- AMLCO Department

Maintaining merchant accounts with payment service providers for the clearing/settlement of payment transactions

On 18 December 2014, through the issuance of Circular C034, CySEC informed CIFs to take every possible measures to protect their clients' interest in case they hold clients' funds, as per section 18(2) of the Law 144(I)2007 and to minimise the risk of the loss or diminution of clients' assets, as a result of misuse, fraud, poor administration, inadequate record keeping or negligence, as per paragraph 18(1)(f), Directive DI144-2007-12 of 2012.

CIFs maintaining merchant accounts with payment service providers for the clearing/settlement of their clients' payment transactions should adopt with immediate effect the following:

- CIFs' merchant accounts must not, under any circumstances, be used by their connected persons, or third persons, and/or the clients of those persons, for the clearing/settlement of their payment transactions as this does not comply with the provisions of the legislation. Merchant accounts must be used only and exclusively by CIFs.
- CIFs must ensure that clients' funds are transferred to clients' bank accounts held by CIF on their behalf, immediately after the clearing/settlement of the payment transactions.
- CIFs must exercise all due skill, care and diligence in the selection, appointment and periodic review of the payment service providers with whom merchant accounts are maintained.
- For purposes of transparency and full information of investors, **CIFs are requested to post on their websites a list with the names of the payment service providers they cooperate, as well as the competent authority/country that supervise them.**

It may be considered that CIFs have taken every possible measures and introduced adequate organisational arrangements to protect their clients' funds, only if they maintain a merchant account with payment service providers which are licensed/regulated by a competent authority of a Member State or of a third country, which it is considered that it imposes equivalent arrangements to those of the European Union and in particular, to those of the European Directives 2005/60/EC and 2007/64/EC.

Amending Law 193(I)-2014

On 19 December 2014 CySEC announced the amendment of Law 144(I)2007 (the 'Law') with Amending Law 193(I)-2014(In Greek) by the House of Parliament. The major amendments/changes are as follows:

- **Initial Capital of CIFs**: Please refer to 'Prudential supervision – Implementation of CRD IV' package' section below
- **Persons who effectively direct the CIF**: (a) all members of the board of Directors must be of good repute, honest and have sufficient knowledge, skills and experience for the performance of their duties; (b) all members of the Board should devote sufficient time for the performance of their duties; (c) members of the Board are prohibited from holding more than a position of Executive Director and two positions of Non-Executive Directors or more than four positions of Non-Executive Directors.
- **Governance Arrangements**: A CIF which is important in terms of size, internal organisation, nature, scope and complexity of activities has to establish a nomination committee, consisting of the Non-Executive members of the Board of Directors. The said committee will be responsible to keep the Board's skill and experience base under continued review to conduct search and selection processes for new directors and to recommend new appointments to the Board.
- **Own Funds**: Own Funds of a CIF should not decrease below its initial capital requirements.
- **Large Exposures**: CIFs are no longer allowed to have exposures to a person or group of connected persons that exceed the limits laid down by CySEC.
- **Administrative fines/administrative sanctions**: Stricter in cases where CIFs violate the provision and directives issued pursuant to the Law. The administrative sanctions may include suspension or withdrawal of the CIF licence, issuance of public notice stating the CIF, physical person and nature of the violation, administrative fine or temporary prohibition of the physical person to exercise his duties, administrative fines to the CIF.

Prudential supervision – Implementation of CRD IV package

On 9 January 2015, through the issuance of Circular C038, CySEC informed CIFs regarding the transposition of the Regulation 575/2013 ('the Regulation') and the European Directive 2013/36/EU ('the European Directive') as follows:

- The Investment Services and Activities and Regulated Markets Law has been amended in order to accommodate a number of articles of the European Directive.
- The new Directive DI144-2014-14 for the Prudential Supervision of Investment Firms has been released in order to incorporate all the remaining relevant articles of the European Directive.
- The new Directive DI144-2014-15 on the discretions of CySEC has also been released, arising from Regulation No 575/2013. The Regulation is binding in its entirety and directly applicable in all Member States. However, a number of discretions are included in the Regulation and for this purpose CySEC has drafted the said Directive which states how the Commission has exercised these discretions.

As a consequence of the aforementioned legislative changes, CySEC's Directives DI144-2007-05 on the capital adequacy of Investment Firms and DI144-2007-06 on large exposures of Investment Firms have been revoked.

Due to the above changes in the legal framework, CySEC has prepared new forms for the calculation of capital adequacy ('the Forms'). The new Forms are divided as follows:

- Form 144-14-06.1 - Calculation of own funds and capital adequacy ratio;
- Form 144-14-07 – Leverage (is a new regulatory and supervisory tool. The CRD IV framework requires leverage ratio reporting to allow appropriate review and calibration, with a view to migrating to a binding measure in 2018);
- Form 144-14-08.1 - Large exposures to institutions and non-institutions;
- Form 144-14-08.2 - Exposures to Directors;
- Form 144-14-08.3 - Exposures to Shareholders; and
- Form 144-14-09 – Geographical breakdown of exposures (geographical distribution of exposures by country).

Together with the Forms, CIFs must submit to crdsubmission@cysec.gov.cy their Trial balance, Balance sheet and Profit and Loss Accounts.

The Forms and the documents must be submitted to CySEC at the following dates:

CySEC new Supervisory forms	Reporting frequency	Reporting reference dates	Reporting Submission dates
Form 144-14-06.1	Quarterly	31 March (Q1); 30 June (Q2); 30 September (Q3); 31 December (Q4)	12 May (Q1); 11 Aug (Q2); 11 Nov (Q3); 11 Feb (Q4)
Form 144-14-07			
Form 144-14-08.1			
Form 144-14-08.2			
Form 144-14-08.3			
Form 144-14-09			

CIFs which fulfil the definition of Investment Firm in Article 4(1), point (2) of the Regulation are covered by the requirements of the CRD IV package. The aforementioned definition **excludes** firms which are not authorised to provide "safekeeping and administration of financial instruments for the account of clients, including custodianship and related services such as cash/collateral management", which provide only one or more of the following investment services and activities:

(i) Reception and transmission;
(ii) Execution of orders on behalf of clients,
(iii) Portfolio management,
(iv) Investment advice;

and are not permitted to hold money or securities belonging to their clients.

The scope of CRD IV package for investment firms therefore depends on the type of investment services and/or investment activities and any ancillary services for which the CySEC has granted authorisation.

CySEC's Circular C038 also included a Guide which details on the new supervisory reporting templates which CIFs must submit which are illustrated in the table below:

Investment Firm type	Minimum Capital Requirements	Details	Reporting requirements
Full Scope CIFs (Article 4(2))	€730.000	CIFs as defined by the amended Law 144(I)/2007-2014 and for which no exclusions apply	• Own Funds requirements • Leverage • Large Exposures • Exposures to directors and shareholders • Geographical breakdown of exposures
Out of Scope CIFs (Article 4(2)(c))	€50.000	CIFs which are excluded from the CRD IV definition of an investment firm	• Fully exempted
Out of Scope CIFs which provide certain services (Article 95(2))	€50.000	CIFs which are excluded from the CRD IV definition of an investment firm that provide: • Execution of orders on behalf of client, and • Portfolio Management	• Own Funds requirements based on Fixed Overheads
Limited License CIFs (Article 95(1))	€125.000	CIFs which are not authorized to provide: • Dealing on Account, and • Underwriting of financial instruments and/or placing of financial instruments on firm commitment basis	• Own Funds requirements based on Fixed Overheads • Exposures to directors and shareholders

Limited Activity CIFs (Article 96(1))	€730.000	CIFs, which hold minimum initial capital of €730,000 and fall under one of the following two categories: Category 1 • Deal on own account only for the purposes of fulfilling or executing a client order, or for the purpose of gaining entrance to a clearing and settlement system or a recognised exchange when acting in an agency capacity or executing a client order Category 2 • Investment Firms that meet all the following conditions: • They do not hold client money or securities • They undertake only dealing on own account • They have no external customers • Their execution and settlement takes place under the responsibility of a clearing institution and are guaranteed by that clearing institution.	• Own Funds requirements based on Fixed Overheads • Exposures to directors and shareholders

DI144-2014-14 - Prudential supervision of Investment Firms

CySEC issued Directive DI144-2014-14 to the CIFs by which Directives DI144-2007-05 and DI144-2007-06 are repealed. This Directive lays down rules concerning:

- supervisory powers and tools for the prudential supervision of CIFs by CySEC;
- the prudential supervision of CIFs by CySEC in a manner that is consistent with the rules set out in Regulation (EU) No 575/2013; and
- publication requirements for CySEC in the field of prudential regulation and supervision of CIFs.

Directive DI144-2014-15 on the discretions of the CySEC has also been released,arising from the Regulation

Among the major issues defined in the above Directive are:

- Increased quantity and quality of capital
- Risk weighting and prohibition of qualifying holdings outside the financial sector
- Grandfathering provisions
- Limits to large exposures.

Issuance of announcement on implementing rules for MiFID II

On 13 January 2015, CySEC through an announcement, informed supervised entities, stakeholders and the investing public regarding ESMA's press release referring to the publication of its final Technical Advice (TA), and to the launching of a consultation on its draft regulatory technical and implementing standards (RTS/ITS), regarding the implementation of the Markets in Financial Instruments Directive (MiFID II) and Regulation (MiFIR). The deadline for the submission of comments on the said consultation paper is 2 March 2015.

Recent move on the Swiss Franc

On 16 January 2015, through the issuance of Circular C040, CySEC requested from CIFs to report, by 20 January 2015, whether the recent move on the Swiss Franc caused by the Swiss Central Bank had, in any way, an impact on their business/liquidity/funds, and/or their client's funds, and if so a detailed analysis of the nature of the estimated impact, an estimated impact on monetary terms and the measures/actions that will be taken in order to rectify the situation.

Amendment of Regulation concerning restrictive measures in response to the illegal annexation of Crimea and Sevastopol

On 19 January 2015, through the issuance of Circular C041, CySEC informed the Regulated Entities for the publication of the Regulation (EU) N. 1351/2014, amending Regulation (EU) No. 692/2014 concerning restrictive measures in response to the illegal annexation of Crimea and Sevastopol.

Notification of shareholders with qualifying holding, according to section 33(7) of the Services and Activities and the Regulates Markets Law

On 19 January 2015, through the issuance of Circular C042, CySEC informed Cyprus Investment Firms, as per section 33(7) of the Investment Services and Activities and Regulated Markets Law of 2007, to notify CySEC by 31 January 2015, all the shareholders possessing, directly or indirectly, qualifying holdings in the CIF, resulting to the ultimate beneficiary owners. Furthermore, CIFs were requested to submit their group shareholding structure.

CRDIV – European Commission's decision on the equivalence of the supervisory and regulatory requirements of certain third countries

On 23 January 2015, through the issuance of Circular C043, CySEC informed CIFs regarding the implementing decision (the 'Decision') of the European Commission on the equivalence of the supervisory and regulatory requirements of certain third countries and territories, for the purposes of the treatment of exposures according to Regulation (EU) No 575/2013 of the European Parliament and of the Council.

The Decision entered into force on 1 January 2015, with the sole purpose being to determine equivalence for the purposes of assigning risk weights under the following articles of Regulation (EU) No. 575/2013:

- Article 107 – Approaches to credit risk
- Article 114 – Exposures to central governments or central banks
- Article 115 – Exposures to regional governments or local authorities
- Article 116 – Exposures to public sector entities
- Article 142 – Definitions.

CIFs that were adversely affected were requested to inform CySEC via their CRD reports, and with a separate letter sent to CySEC stating the impact of the Decision.

Impact of Swiss franc on Cyprus Investment Firms

In response to recent developments surrounding the Swiss franc, and following Circular C040, CySEC proceeded with the collection of data from all Cyprus Investment Firms, in order to determine the impact on capital adequacy and/or in their operations.

On 23 January 2015, through an announcement, CySEC informed all interested parties that 158 of the 182 licensed CIFs, had no negative impact on their capital adequacy and/or in their operations. The remaining 24 CIFs said that they have suffered some damage, but this either had no or limited effect on their capital adequacy. Total losses for affected CIFs were around EUR 42.5m, and were raised mainly for CIFs' negative balances in the accounts of their customers due to leverage and balances/differences with their liquidity providers. Finally, according to CySEC, because of the problems of Investment Firms in other countries faced, there has been a slight increase in the work of the CIFs.

Inclusion of Cyprus in the list of countries which implement equivalent legislation on the prevention of money laundering in the Cayman Islands

On 27 January 2015, through an announcement, CySEC informed supervised entities, stakeholders and the investing public of the inclusion of Cyprus in the Third Schedule of the 'Guidance Notes on the Prevention and Detection of Money Laundering and Terrorist Financing in the Cayman Islands', which lists the Countries and Territories which are considered by the Cayman Islands Monetary Authority to implement equivalent legislation on the prevention of money laundering.

Pursuant to the provisions mentioned in the Guidance Notes, a mutual fund may delegate a function to others who are subject to the anti-money laundering regime of the Cayman Islands or are included in the list of countries applying equivalent legislation to that of the Cayman Islands. CySEC's opinion is that the inclusion of Cyprus in this list creates opportunities for cooperation with financial service providers in the Cayman Islands.

Convergence of supervisory practices relating to the consistency of supervisory coordination arrangements for financial conglomerates

On 27 January 2015, through the issuance of Circular C044, CySEC informed Cyprus Investment Firms that it adopts ESMA's publication the Joint Guidelines on the convergence of supervisory practices relating to the consistency of supervisory coordination arrangements for financial conglomerates (JC/GL/2014/01).

The said guidelines aim to clarify and enhance cooperation between competent authorities on a cross-border and cross-sectoral basis and to supplement the functioning of sectoral colleges (if any) where a cross-border group has been identified as a financial conglomerate under Directive 2002/87/EC. These guidelines also aim at enhancing the level playing field in the internal market by ensuring that there is consistent supervisory coordination.

Initial Capital Requirements for CIFs

On 05 February 2015, through the issuance of Circular C046, CySEC informed CIFs that the minimum initial capital requirements are as follows:

Minimum initial capital	Article of the Law	Investment Services
€730,000	10(1)	A CIF that provides one or more of the following investment services: • Dealing on own account; • Underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis; • Placing of financial instruments without a firm commitment basis; • Operation of Multilateral Trading Facility.
€125,000	10(2)	A CIF that provides one or more of the following investment services and holds clients' money and/or client's financial instruments: • The reception and transmission of orders in relation to financial instruments; • The execution of orders on behalf of clients; • Portfolio management; • Provision of investment advice.
€50,000 or professional indemnity insurance or combination of both	10(4),(6)	A CIF that provides the investment services of reception and transmission of orders in relation to financial instruments and/or provision of investment advice and does not hold clients' money or/and clients' financial instruments.

Acronyms & Definitions used

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
CIFs	Cyprus Investment Firms
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
ESMA	European Securities and Markets Authority
ETD	Exchange-Traded Derivative
EU	European Union
FATCA	Foreign Account Tax Compliance Act
FCA	UK Financial Conduct Authority
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)
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
PRA	UK Prudential Regulation Authority
PRIIPs	Packaged retail and insurance-based investment products
RTS	Regulatory Technical Standards

SFT	Securities Financing Transaction
TA	Technical Advice
US IRS	United States Internal Revenue Service

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