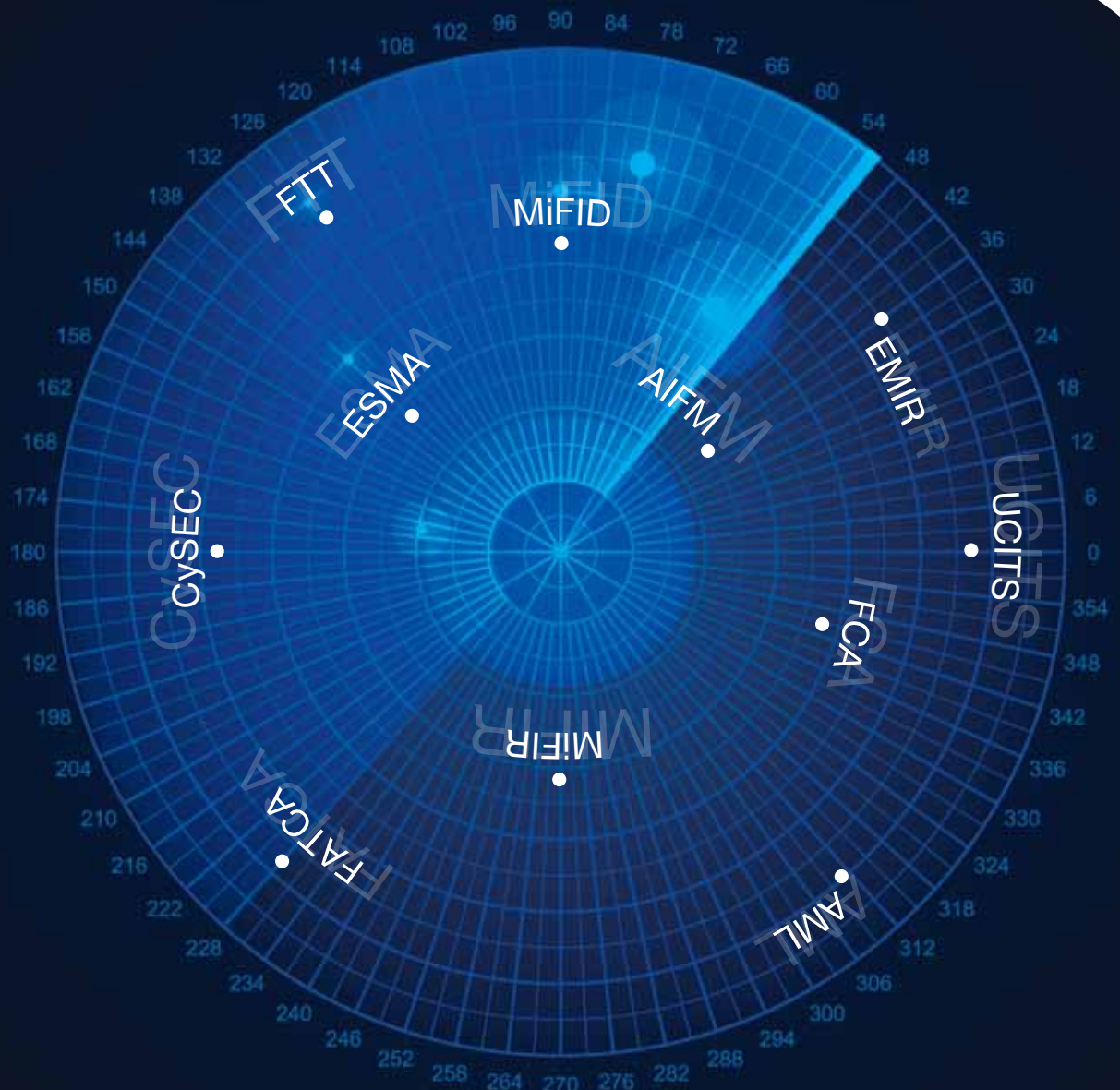
MAP S.Platis

Your Partner in Financial Services!

Issue 005
April 2015

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.)

Please refer to Issue 4 of MAP S.Platis Regulatory Radar for more information regarding ESMA's December 2014 Technical Advice and consultation.

ESMA Consultation on complex debt instruments and structured deposits

On 24 March 2015, ESMA launched a consultation on draft guidelines on complex debt instruments and structured deposits. MiFID II permits investment firms to provide order-handling services (receipt and transmission and execution only on behalf of clients) without performing the appropriateness test set out in MiFID II provided the services relate to certain products known as "non-complex" as opposed to "complex". These guidelines are intended to enhance investor protection by offering further clarification on which types of financial instruments and structured deposits are considered "non-complex" and "complex" and sets out a classification of debt instruments for MiFID II purposes.

The consultation paper sets out the draft guidelines for the assessment of:

(i) bonds, other forms of securitised debt and money market instruments incorporating a structure which makes it difficult for the client to understand the risk involved; and

(ii) structured deposits incorporating a structure which makes it difficult for the client to understand the risk of return or the cost of exiting the product before term.

This consultation also covers the concept of embedded derivative for debt instruments.

Next steps

The TA will now be sent to the European Commission. The comment period on ESMA's draft RTS/ITS, already previously consulted upon, closed on 2 March 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.

The complex debt instruments/structured product consultation is open until 15 June 2015. ESMA expects to publish final guidelines in Q4 2015.

MiFID II speech by Verena Ross of ESMA

On 26 February 2015, Verena Ross delivered a keynote speech to the ABA/Law Society Capital Markets Conference in London. Her speech focused on MiFID II and in particular its implications for transparency and liquidity. Selected extracts:

On transparency – "When developing technical standards and advice ESMA needs therefore to ensure that pre- and post-trade transparency for equity, equity-like and non-equity instruments is increased, in particular for those instruments, such as derivatives, that are still far from being traded in a fully transparent market. There are endless debates about the relation between transparency and liquidity and whether there is a trade-off between them. We tend to see the MiFID II mandate as one aimed at increasing transparency in a manner that does not "damage", but instead improves, the functioning of the market."

On liquidity – "We are aware of the significant impact that our future regulatory work under MiFID II may have on liquidity within EU financial markets. This is not a completely new element of our work. We already monitor and assess securities markets in order to identify trends, potential risks and vulnerabilities and report comprehensively on these issues on a regular basis. In doing so we pay particular attention to liquidity risk, as this can easily be altered by drivers such as financial innovation, prudential regulation, the interest rate environment, regulatory standards and the business cycle to name just a few."

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. Please refer to Issue 4 of MAP S.Platis Regulatory Radar for more information regarding ESMA's Technical Advice.

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 question of where the boundary between an FX financial instrument (i.e. an FX Forward) and a spot FX contract would be set will be dealt with by MiFID II Level 2 measures. ESMA has not issued guidelines.

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

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

IRS

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.

On 16 February 2015, ESMA published a revised letter dated 29 January 2015 from the Commission. This corrigendum letter revises the Commission's earlier letter of 18 December 2014; the draft RTS remain unchanged.

On 9 March 2015, ESMA published a revised opinion dated 6 March 2015 on the draft RTS. The revised opinion does not introduce material changes compared to the original opinion nor was the actual draft IRS RTS modified.

Despite the delays, a final IRS RTS may be published in April 2015. The timetable above reflects this assumption but may change. MAP S.Platis will continue to monitor all developments.

CDS and NDFs

ESMA is delaying submitting the CDS RTS until the issues arising in the first IRS RTS are resolved.
MAP S.Platis will continue to monitor all developments.

ESMA has stated that it is not proposing a clearing obligation on the NDF classes at this stage. Please refer to Issue 4 of MAP S.Platis Regulatory Radar for more information. MAP S.Platis will continue to monitor all developments.

Counterparty categorisation

Counterparty categorisation is a new EMIR concept which first appeared in the draft IRS RTS.

Categorisation determines the start date of the clearing obligation and the applicability of the frontloading requirement. Please refer to Issue 4 of MAP S.Platis Regulatory Radar for more information on categorisation.

"Frontloading"

Please refer to Issue 4 of MAP S.Platis Regulatory Radar for more information. 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 can be given a two-year exemption from central clearing requirements for their over-the-counter (OTC) derivative transactions. Please refer to Issue 4 of MAP S.Platis Regulatory Radar for more information.

MAP S.Platis will continue to monitor all developments.

ESMA Q&As

On 31 March 2015, ESMA published updated Q&As.

Mandatory rules for margin for non-cleared trades

On 18 March 2015, the Basel Committee on Banking Supervision (BCBS) and the International Organisation of Securities Commissions (IOSCO) have published revisions to the framework for margin requirements for non-centrally cleared derivatives.

The framework was originally published in September 2013. Recognising the complexity of implementing the framework, the Basel Committee and IOSCO have agreed to (i) delay the implementation of requirements to exchange both initial margin and variation margin by nine months; and (ii) adopt a phase-in arrangement for the requirement to exchange variation margin.

Relative to the 2013 framework, the revisions

- delay the beginning of the phase-in period for initial margin from 1 December 2015 to 1 September 2016 (the full phase-in schedule has been adjusted to reflect this nine-month delay)
- delay the requirement to exchange variation margin beginning from 1 December 2015 to 1 September 2016 and introduce a new six-month phase-in.

A summary table accompanies the revised framework.

The European Supervisory Authorities' 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 Legislation

The FATF Plenary meeting of Plenary year FATF-XXVI was held on 25-27 February 2015.

The meeting was opened by Mr. Michel Sapin, French Minister of Finance and Public Accounts who stressed the importance of a united global front in the fight against terrorism, and urged the FATF Global Network to continue its important work (Speech by Mr. Sapin available in French only).

The main issues dealt with by this Plenary were:

- Issuing a statement on FATF action on terrorist finance.
- Adopting and publishing a report on the financing of the terrorist organisation Islamic State in Iraq and the Levant (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.
- Receiving an update on AML/CFT improvements in Albania, Cambodia, Kuwait, Namibia, Nicaragua, Pakistan and Zimbabwe.
- Discussing the fourth round mutual evaluation reports on compliance with the FATF Recommendations of Australia and Belgium.
- Increasing collaboration between FATF and the Egmont Group of Financial Intelligence Units, including a briefing by the Chair of the Egmont Group on recent developments in financial intelligence units.
- Reviewing the voluntary tax compliance programmes in several jurisdictions.
- Continuing its work on the issue of 'de-risking', in line with the effective implementation of a risk-based approach.
- Building on the 2014 report on virtual currencies, the FATF wants to progress this issue for a decision at the June 2015 Plenary.

On 10 March 2015, the vice-president of the Financial Action Task Force (FATF), Je-Yoon Shin, gave a keynote speech on the FATF's current agenda and priorities focussing on the following key areas:

- the global regulatory arena, including the FATF's focus on its recommendations relating to anti-money laundering and countering the financing of terrorism;
- the FATF's recommended "risk-based approach";
- de-risking in accordance with the FATF's standards;
- the FATF's mutual evaluation process of FATF member countries; and

- the FATF's action on terrorist finance, including its recently published report on financing Islamic State in Iraq and the Levant.

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.

Binary options: Under current UK legislation binary options (i.e. a form of financial contract which pay a fixed sum if the option is exercised or expires in the money, or nothing at all if the option is exercised or expires out of the money) are classified as bets and are supervised by the Gambling Commission rather than the FCA. However, in the context of MiFID II implementation, the UK Government is considering treating binary options as financial instruments under the existing MiFID. See Section 7 below for the link to the UK HM Treasury consultation (27 March 2017).

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; there is no progress report yet.

5. Foreign Account Tax Compliance Act (FATCA)

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

After the determination of firms' FATCA status, the reporting Financial Institutions have to file the first FATCA report to the Cyprus Inland Revenue Department (IRD) by the 30th of June 2015 (this is interpreted to be the reporting of Preexisting High Value Accounts). The reporting guidelines are still pending and subject to change by the Cyprus IRD.

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

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

Thematic review of how asset management firms control the risk of committing market abuse TR 15/1

On 18 February 2015, the FCA findings from its thematic review of how asset management firms control the risk of committing market abuse. The review considered how firms control the risks of insider dealing, improper disclosure and market manipulation, with a primary focus on equities and insider dealing. The review focused on the key aspects of an effective framework to manage market abuse risk including how to:

- minimise the risk of receiving but not identifying inside information
- control access to inside information when it has been received
- use pre-trade controls to reduce the risk of market manipulation and insider dealing
- conduct post-trade surveillance to monitor and investigate potentially suspicious trades
- control personal account dealing, and
- train staff to ensure awareness of market abuse issues.

There are examples of "Good practice" and "Poor practice" in each case.

The FCA found that overall firms had put in place some practices and procedures to control the risk of market abuse. However these are only comprehensive in a small number of firms. The FCA noted:

"In many firms further work is required to ensure these operate effectively and cover all material risks. In particular, firms need to pay more attention to the possibility of receiving inside information through all aspects of the investment process and take steps to manage this risk. Firms generally also need to improve the effectiveness of post-trade surveillance. Only a minority of firms had appropriate controls for these matters."

"Senior management of asset management firms need to satisfy themselves that their firm's practices to manage the risk of market abuse are appropriate. We will follow up on this through our routine supervision."

FCA Feedback statement on the discussion on the use of dealing commission regime

On 19 February 2015, the FCA published its Feedback statement. The FCA supports ESMA's proposal:

"Overall, we believe it will address long-standing concerns from our supervisory work that current market practice – even with our specific dealing commission rules and disclosure requirements – is not delivering a good outcome for investors. The combination of improved cost control and scrutiny over research purchasing

and execution decisions by investment managers, with more effective competition in the market for research, should lead to improved outcomes for investors."

The FCA's preference remains to implement any further changes to our domestic inducements and use of dealing commission rules in line with the final reforms under MiFID II. Subject to the Commission's progress in finalising the delegated acts, the FCA intends to publish a consultation on its overall implementation of MiFID II, including inducements requirements, by late Q4 2015. The FCA does envisage any further, separate publications on our dealing commission rules at this stage.

FCA fines Aviva Investors £17.6m for systems and controls failings that led to its failure to manage conflicts of interest fairly

On 24 February 2015, the FCA issued a Final notice to Aviva Investors.

The FCA found that Aviva Investors breached Principle 3 by failing to exercise adequate and effective control over its side-by-side management of funds whereby funds that paid differing levels of performance fees were managed by the same desk. Aviva Investors operated a 'three lines of defence model' of risk management. Aviva Investors primarily relied upon the first line of defence, the business, to identify, assess and manage risk. The business failed to do so in relation to the inherent conflicts of interest and risks associated with the side-by-side management of funds. Weaknesses in compliance oversight and monitoring, along with flaws in the approach to closing audit issues meant that the business's failure to address the risks went unaddressed.

The FCA also found that Aviva Investors breached Principle 8 by failing to manage fairly the inherent conflicts of interest between itself and its customers, and between customers and other clients, that arose from managing funds that paid differing levels of performance fees on a side-by-side basis.

Aviva Investors sought to ensure that none of the funds it managed were adversely impacted by this conduct and compensation of £132,000,000 was paid to eight impacted funds.

FCA fines Bank of Beirut £2.1 million and places restrictions on the bank for misleading the regulator

On 5 March 2015, the Bank of Beirut (UK) Ltd (Bank of Beirut) was fined £2.1m by the FCA and stopped from acquiring new customers from high-risk jurisdictions for 126 days. In addition, the FCA has fined two approved persons at the bank. The Bank of Beirut repeatedly provided the regulator with misleading information after it was required to address concerns regarding its financial crime systems and controls.

Concerns about the culture within Bank of Beirut became apparent following supervisory visits to the firm in 2010 and 2011. In particular, the regulator believed too little consideration was being given to the risk that the firm be used for financial crime. Bank of Beirut was required to take a number of actions to address these concerns.

However, Bank of Beirut repeatedly provided misleading information to the regulator indicating that it had completed remedial actions when it had not.

This is the second time the FCA has used its suspension or restriction powers to punish a firm for serious misconduct. The sanction is intended to send a message of deterrence to the rest of the industry, and serve as a reminder that the FCA is able to respond with sanctions that target the business activities of the firm where the misconduct occurred.

FCA MiFID II implementation update

On 10 March 2015, the FCA updated it MiFID II implementation webpage sets out the following key implementation dates:

- publication of a discussion paper in March 2015
- publication of its main consultation paper in December 2015
- publication of the subsequent policy statement and final rules in June 2016

On 26 March 2015, the FCA issued a discussion paper seeking views on the following topics:

- The extent to which the FCA should apply MiFID II provisions to insurance-based investment products and pensions.
- How the FCA should incorporate MiFID II's investor protection measures for structured deposits into its Handbook.
- Whether the FCA should ban third party rebating for discretionary investment management firms.
- Options for the assessment of local authorities requesting to be treated as professional clients.
- Details on MiFID II's approach to adviser independence, and how this could be implemented for advice on shares, bonds, derivatives and structured deposits.
- Whether and how the FCA might apply sales-staff remuneration rules to firms not covered by MiFID II, in light of domestic and European policy developments.
- How the FCA might apply recording of telephone conversations and electronic communications requirement to firms which fall within MiFID's Article 3 exemption, which includes independent financial advisers and corporate finance boutiques; and whether to remove the current recording exemptions for discretionary investment managers in our domestic regime.
- How MiFID II's requirements on costs and charges disclosure could be implemented practically.
- Exploring potential MiFID II inducement rules for advisers, discretionary investment managers and other firms.

The paper also details the FCA's expectations of the likely restrictions on products that can be classified as "non-complex" and the practical application of the appropriateness test to a wider range of "complex" products. Comments on the discussion paper can be submitted until 26 May 2015.

The FCA also committed to working with HM Treasury to agree the legislative changes required to implement MiFID II.

On 27 March 2015, HM Treasury published a consultation paper on the transposition of MiFID II. Changes to the current UK legislative regime required by MiFID II will be enacted by amendments to the Financial Services and Markets Act 2000, the Regulated Activities Order and related statutory instruments. Transposition should mirror as closely as possible the original wording of a directive and go no further than the requirements of MiFID II, except where there is a clear justification and authority to do otherwise. The UK is providing draft secondary legislation as early as possible to provide stakeholders with the opportunity to review and comment. The deadline for comments to the consultation paper is 18 June 2015.

FCA business plan 2015/2016

On 24 March 2015, the FCA published its business plan and risk outlook for 2015. The Business Plan 2015/16 sets out the following areas which the FCA will be working on in the coming year:

- to examine whether the sales practices of pension providers have improved since the 2014 review into annuities sales
- to look at how firms were helping consumers make the right choice in relation to their pension given the options soon to be available to people as part of the Government's pensions reforms
- to look at how the mortgage market is working, in particular any barriers to competition and the ability of consumers to switch provider or access credit
- to implement and review the consumer credit regime and the firms and practices within the sector
- to take forward the announced wholesale market study into competition in investment and corporate banking
- to monitor developments in technology and how that affects firms and consumers, including a market study on the use of Big Data in the insurance market
- to contribute to international benchmark reform
- to work with firms preparing for the implementation of MiFID II and the Market Abuse Regulation updates
- to launch a market study on asset management that will examine charges paid by investors and what drives those charges
- from April, powers to enforce against unlawful anti-competitive behaviour in the financial services industry concurrent with the Competition and Markets Authority come into effect.

This year's Business Plan also included the FCA's Risk Outlook which sets out the top seven high-level risks the financial services sector should consider in the coming years.

The FCA will continue to look at:

- technology developments and its impact on firms' investment, consumers and regulators
- how poor culture and control continues to threaten market integrity
- impact of large back-books on how firms deal with existing customers
- consumer outcomes for pensions and retirement income products

Specifically on consumer credit and complex terms and conditions the FCA will monitor:

- poor culture and practice in consumer credit affordability assessments that could result in unaffordable debt
- impact of the Consumer Rights Act coming into force in the autumn

There is one new area of forward looking focus:

- firms' systems and controls in relation to financial crime

Annex 1 sets out current and planned market studies and thematic work.

Annex 2 sets out the FCA's summary of "Current EU initiatives".

8. CySEC Developments

Amending of the Prevention and Suppression of Money Laundering and Terrorist Financing Laws of 2007 to 2013

On 12 December 2014, CySEC announced the amendment of the Prevention and Suppression of Money Laundering and Terrorist Financing Laws of 2007 to 2013 with Amending Law 184(I)2014 (In Greek) by the house of Parliament. The most relevant change in the said amendment, is that financial institutions do not need to collect from 3rd parties (on which they rely for the performance of KYC) evidence that the aforementioned 3rd parties are subject to supervision regarding their compliance with the requirements of the EU Directive. Please note that this change is applicable only for 3rd parties who operate in countries outside the European Economic Area and impose equivalent AML measures and procedures to those laid down by the EU Directive, following common understanding between Member States on third country equivalence under the Anti-Money Laundering Directive.

Amending of Law 131(I)/2014 regulating the Alternative Investment Funds

On 6 February 2015 CySEC announced the amendment of Law 131(I)/2014 regulating the Alternative Investment Funds, with Amending Law 11(I)/2015 (In Greek) by the house of Parliament. The most relevant amendments are the below:

An international collective investment scheme ('ICIS') authorised in accordance with the International Collective Investment Schemes Laws may continue its operations, either as Alternative Investment Fund ('AIF') with limited number of persons, or as AIF of Part II of the Alternative Investment Funds Law of 2014 ('the Law'), or as AIFM, under the following conditions, as appropriate:

- As an AIF with limited number of persons, where within 8 months (instead of 4) from the date of application of the Law, comply with sections 114 to 118 and submit to CySEC all the relevant information, data and documents provided for regarding the submission of an application for authorisation, where they operate on the basis of the authorisation granted, without requiring new authorisation by CySEC.

- As an AIF or an AIFM where the required authorisation is granted by CySEC; in such case, an ICIS shall comply with the Law or with the Alternative Investment Fund Managers Law, as appropriate and shall submit an application to CySEC for the granting of the respective authorisation, within 8 months (instead of 4) from the dated of application of the Law.

In case an ICIS, does not follow the prescribed procedure within 8 months (instead of 4) from the date of the application of the Law, shall be dissolved in accordance with the ICIS Laws, without prejudice to the provisions of section 122 of the Law regarding their repeal.

Furthermore, the same applies for an ICIS that follows the above mentioned procedure, but it does not fulfil the conditions of the Law regarding its operation as an AIF with limited number or persons, or is not authorised as an AIF of Part II of the Law or an AIFM in accordance with the AIFM Law.

The above law was put into effect, retrospectively, on 24 November 2014.

The Alternative Investment Fund Managers (Amending) Law of 2013

On 6 February 2015 CySEC announced the amendment of Law for Alternative Investment Fund Managers of 2013 the 'Law' with Amending Law 8(I)/2015 (In Greek). The most relevant amendments of the Law of Alternative Investment Fund Managers of 2013 & 2015 are the following:

- Section 14 (1) (c); AIFMs shall establish and apply remuneration policies and practices which apply to those categories of staff whose professional activities have a material impact on the risk profiles of the AIFMs or of the AIFs they manage;
- Section 16 (2); AIFMs shall establish and implement adequate risk management systems in order to identify, measure, manage and monitor appropriately all risks relevant to each AIF investment strategy and to which each AIF is or may be exposed;
- Section 27 (4) (b); In case of a loss of financial instruments held in custody by a third party, the depositary may discharge itself of liability if it can prove that a written contract between the depositary and the third party transfers the liability of the depositary to that third party, and makes it possible for the AIF or the AIFM acting on behalf of the AIF, or the depositary acting on behalf of the above mentioned AIF or AIFM, to make a claim against the third party in respect of the loss of financial instruments;
- Section 31 (1) (b); AIFMs of the Republic shall include, in their reporting obligations to CySEC, information on the markets of which it is a member or where it actively trades;
- Section 36 (1) (a); When an AIF acquires, individually or jointly control of a non-listed company, the AIFM managing such AIF shall request and use tis best efforts to endure that the annual report is made available by the Board of Directors or any other management body of the non-listed company to the employees' representatives or, where there are none, to the employees themselves within the period such annual report has to be drawn up in accordance with the applicable national law.

The Takeover Bids (Amending) Law of 2015

On 6 February 2015 CySEC announced the amendment of Law for PUBLIC TAKEOVER BIDS of 2007 & 2009, with the Law of Public Takeover Bids Laws of 2007 to 2015. The major amendment/change is the addition of Section 15A, referred to as "Exemption due to the application of Directive 2014/59/EU", which states that the provisions of section 13(1) of the present Law do not apply in the case that the acquisition (or possession) of titles arises due to the application of resolution tools, powers and mechanisms provided for in Title IV of Directive 2014/59/EU.

Treatment of risks, especially those related to currencies

On 11 February 2015, through the issuance of Circular C048, CySEC drawn the attention to CIFs for both the establishment and/or evaluation of strategies and policies for taking up, managing, monitoring and mitigating the risks the firm is or might be exposed.

Furthermore, taking into account the recent developments in the global markets, CIFs must monitor exposures related to currencies and take all possible actions to minimise potential losses.

Compliance with the regulatory framework in relation to compliance function

On 24 February 2015, through the issuance of Circular C050, and following the issuance of Circular CI144-2013-23 and Circular C030, CySEC reminded the Regulated Entities for their obligations in relation to the compliance function, under the Directive DI144-2007-01 of 2012.

The purpose of the said reminder is to inform Regulatory Entities to take all possible measures in order to fully and continuously comply with their obligations as required by the relevant legislation.

CySEC addresses the following list of possible measures:

1. **Detecting, recording and assessing compliance risks**
   - The Compliance Officer must identify/assess the level of compliance risk that the Regulated Entity faces
2. **Monitoring the CO**
   - > The Compliance Officer must establish and apply during the year, a monitoring program that includes the following:
   - > Takes into account all the services/activities/operations of the Regulated Entity;
   - > Establishes priorities determined by the compliance risk assessment, ensuring that compliance risk is comprehensively monitored;
   - > Determines the frequency of monitoring activities performed by the compliance function, based on the priorities set.
3. **Compliance function records**
   - The Compliance Officer must record all audits carried out, supported by documentary evidence;
   - All relevant documents must be kept in appropriate records, which are available for inspection by the CySEC;
   - Records must be kept at the headquarters of the Regulated Entity.
4. **Compliance function Report ('the Report')**
   - The Compliance Officer must prepare a Report, at least annually, which it is addressed to the persons who effectively direct the business of the Regulated Entity on the effectiveness and adequacy of policies, procedures and measures put in place in relation to compliance function and on the actions to be taken to address any deficiencies. The Report should be written according to paragraph 26 of Circular 030;
   - Where the Report does not cover all the services/activities/operations of the Regulated Entity must clearly state the reasons;

- The Report is a standalone document and cannot be part of another report that the Regulated Entity is obliged to prepare.

5. **Responsibilities of the Board of Directors**
   - The Board of Directors is ultimately responsible for the failure of the Regulated Entity to comply with the obligations under the legislation governing its operations;
   - The Board of Directors must:
     > Study the Report carefully and seek clarifications on issues raised in it, where necessary;
     > Make decisions to improve / rectify the weaknesses identified in the Report and set a timetable for implementing its decisions;
     > Oversee and monitor the implementation of its decisions.
6. **Responsibilities of the Compliance Officer**
   - The Compliance Officer is, inter alia, responsible for the compliance function, and for any reports prepared;
   - In case of outsourcing the compliance function, the responsibility lies with the service provider (physical person) and in no case the responsibility is limited through the outsourcing agreement;
   - The Compliance Officer must immediately disclose to the CySEC every important development that may substantially affect his ability to effectively perform the compliance function, and/or any major weakness identified and for which no corrective measures have been taken by the Board of Directors of the Regulated Entity.
7. **Effectiveness of the compliance function**
   - The Regulated Entity must ensure that the Compliance Officer has sufficient knowledge and experience for his responsibilities;
   - The Regulated Entity must ensure that the Compliance Officer has the necessary authority to exercise his duties effectively.
8. **Permanence of the compliance function**
   - The Regulated Entity must ensure that the Compliance Officer performs his tasks and responsibilities on a permanent basis;
   - The Regulated Entity must establish adequate arrangements to ensure that the responsibilities of the Compliance Officer are fulfilled when the Compliance Officer is absent.
9. **Submission of the Report to the CySEC**
   - The Regulated Entity must submit to CySEC the Report and the minutes of the Board of Directors' meeting during which the Report has been discussed within twenty days from the date of the relevant meeting and not later than four months from the end of the calendar year;
   - The minutes of the Board of Directors' meeting must clearly state the corrective measures to be taken with respect to the deficiencies mentioned in the Report, as well as a timetable for their implementation

Memorandum of Understanding between CySEC and the Central Bank of the Russian Federation

On 25 February 2015, CySEC announced the signing of an updated Memorandum of Understanding (MoU) with the Central Bank of the Russian Federation. The signing develops a stronger link between the two supervisory authorities, aiming an enhanced examination of potential violations, of the legislation governing the securities market. Furthermore, the updated MoU strengthens the relationship between the two countries to the benefit of both national securities markets.

Use of market data reported by a trading venue

On 2 March 2015, through the issuance of Circular C053, CySEC informed CIFs that in order to use market data to provide investment, and/or provide market data to their clients, they must sign a direct agreement with a person who has the intellectual property rights of the market data. Furthermore, CIFs are requested to review their processes established in relation to market data use and ensure that all necessary actions will be taken in order to become compliant with respect to market data usage when providing investment services.

Guidelines ESMA/2013/201 on sound remuneration policies under the AIFMD

On 3 March 2015, through the issuance of Circular C054, CySEC announced the adoption of ESMA's guidelines regarding the sound remuneration policies and practices under the AIFMD. The purpose of the said guidelines it to ensure common, uniform and consistent application of the provisions on remuneration in articles 13 and 22(2)(e) and (f) of Annex II, of the AIFMD.

Guidelines ESMA/2014/869 on reporting obligations under the AIFMD

On 3 March 2015, through the issuance of Circular C055, CySEC informed Alternative Investment Fund Managers that ESMA has published guidelines on reporting obligations under Articles 3(3)(d) and 24(1), (2) and (4) of Directive 2011/61/EU (the AIFMD) (ESMA/2014/869).

The purpose of these guidelines is to ensure common, uniform and consistent application of the reporting obligations to national competent authorities (NCAs). These guidelines achieve this goal by providing clarifications on the information that alternative investment fund managers (AIFMs) must report to NCAs, the timing of such reporting together with the procedures to be followed when AIFMs move from one reporting obligation to another.

CySEC announced that in accordance with article 31 of the Law of Alternative Fund Managers and 24 of the AIFMD, it adopts the said guidelines.

Internal Audit function

On 10 March 2015, through the issuance of Circular C056, CySEC informed Cyprus Investment Firms, UCITS Management Companies, Alternative Investment Fund Managers about their obligations on certain aspects of the Internal Audit function, as per section 18(2)(f) of the Investment Services and Activities and Regulated Markets Law of 2007 ('the Law'), paragraph 8 of the Directive DI144-2007-01 of 2012, section 109(6) of the

Open-Ended Undertakings for Collective Investment Law and section 6(8) of the Alternative Investment Fund Managers Law.

The Internal Audit function should act independently and unrestricted towards the examination and the evaluation of various risk that a Regulated Entity faces. It should be noted that the independence and objectivity of the Internal Audit function may be undermined if the Internal Auditor's remuneration is linked to the financial performance of the business lines for which they exercise Internal Audit responsibilities. The Internal Auditor is responsible for the establishment of an audit plan that should, inter alia, include the following key functions:

- Risk management functions
- Regulatory capital adequacy functions
- Regulatory and internal reporting functions
- Regulatory Compliance function
- Finance function

The Internal Auditor should promptly inform the Senior Management about his findings; issue recommendations to these persons based on the results of the work carried out and verify compliance with these recommendations.

Moreover, the Internal Auditor must, at least annually, prepare an audit report that must contain at least the following:

i. An overall description of the internal control, risk management and governance systems and process established by the Regulated Entity.
ii. A description of the audit plan and the risk-based approach followed.
iii. A summary of:
    - Regular and/or extraordinary audits (on-site or desk-based) carried out.
    - Major audit findings/weaknesses identified.
    - Recommendations made in relation to audit findings/weaknesses identified.
    - Management response including the actions taken on the major audit findings/weaknesses and recommendations.
    - Any outstanding issues for which the management response was not satisfactory or no actions have been taken.
iv. A follow up on the outstanding issues of the last report.
v. Other significant Internal Audit issues that have occurred since the last report.

The Regulated Entity's Board of Directors has the ultimate responsibility for ensuring that an adequate, effective and efficient internal control system has been established and maintained. Furthermore, the Senior Management should inform the Internal Audit function of new developments, initiatives, projects etc. and ensure that all associated risks are identified and communicated at an early stage.

Regardless of whether Internal Audit activities are outsourced, the Board of Directors remains ultimately responsible for the Internal Audit function. At least once a year, the Board of Directors should review the effectiveness and efficiency of the internal control system and review the performance of the Internal Audit function.

Finally, it should be noted that the Internal Auditor's responsibilities extend towards their relationship with other functions (i.e. Compliance and Risk Management functions), while an open, constructive and co-operative relationship between the Internal Auditor and CySEC should be in place.

New reporting procedure in place for submission of Reports to the Unit for Combating Money Laundering (MOKAS)

On 11 March 2015, through the issuance of Circular C058, CySEC informed the Regulated Entities that the reporting procedure to MOKAS has change. The hard copy submission of Suspicious Activities Reports and Suspicious Transactions Reports has now been replaced by an online IT system, called "goAML Professional Edition (PE)". The new system will go live on 2 April 2015 and hard copies will no longer be accepted by MOKAS.

Amendment of the Directive DI144-2007-04 of CySEC for the charges and annual fees of CIFs

Following the amendment of the Investment Services and Activities and Regulated Markets Law of 2007 – 2012; on 13 March 2015, CySEC issued Directive DI144-2007-04(B) of 2015 on Payable Charges and Fees, which shall determine the charges payable for the examination of application or for the submission of notifications and/or communications, in respect of CIFs and regulated market, as well as the annual fees paid to CySEC.

Auditors' report on the adequacy of the arrangements established in relation to clients' funds and financial instruments

On 13 March 2015, through the issuance of Circular C059, CySEC reminded CIFs of the obligation of the External Auditor to prepare a report for the financial year of 2014 on the adequacy of arrangements established by the CIF, in relation to clients' funds and financial instruments ('the Report'), under article 116 of the Investment Services and Activities and Regulated Markets Law of 2007.

Furthermore, CySEC informed that the Report should be submitted by 30 April 2015 and be accompanied by:

- The auditor's verification that the CIF has applied the provisions of Circular E034 (on maintaining merchant account with payment service provides for the clearing/settlement of payment transactions).
- Reconciliation of clients' funds between CIFs' internal records and accounts and those of any third parties by whom those funds are held, as at March 18, 2015.
- Analysis of client funds balances per credit institution, payment service provider or other authorised third person, as at March 18, 2015. The analysis should have the following format:

Name of person	Account no	Country of establishment	License / Supervision (Yes/No)	Amount

Updates for Authorised and Non-Authorised Administrative Service Providers (ASP's)

On 30 March 2015, through an announcement, CySEC informed both the authorised and pending Administrative Service Providers (ASPs) that:

- Under article 11(1)(c) of the ASP Law and FAQ43 under ASP, pending applicants with CySEC must comply at all the time with the requirements of the ASP Law, the Prevention and Suppression of Money Laundering and Terrorist Financing Law and Directive DI144-2007-08 of 2012.
- Under paragraph 10(3) of the AML Directive, ALL ASPs are requested to submit their Annual Report by 31 March 2015.
- Under paragraph 11 of AML Directive, the Monthly Prevention statement for the prevention of money laundering and terrorist financing, must be prepared from all ASPs but should only be submitted from authorised ASPs.
- Under article 22 of the ASP Law, ASPs must have available, upon request, financial accounts that must:
  - Be prepared within 4 months from the end of the financial year;
  - Comply with the accounting standards and rules;
  - Be audited by an auditor and accompanied by a signed copy of its report;
  - Be kept at the ASP's head offices
- Under paragraph 6 of the AML Directive, all ASPs must submit their Internal Audit report by 30 April 2015.

Definition of the term "marketing" of units of UCITS and AIFs in the Republic.

On 03 April 2015 CySEC issued Circular C062 (in Greek only) on the definition of the term "marketing" of units of UCITS and AIFs in the Republic, in relation to units of UCITS/AIFs of another member state and/or third countries. CySEC notes that distributing, trading or promoting UCITS/AIF units to the public, professional or well informed investors with the intention of attracting investors to the aforementioned UCITS/AIFs, constitutes marketing and the UCITS/AIFs being promoted, should notify CySEC of their intention to market their units in the Republic beforehand, as per the relevant provisions of the law.
The following scenarios do not fall into the definition of marketing:

- When the acquisition of units of UCITS/AIFs takes place within the framework of discretionary portfolio management, does not fall into the definition of marketing.
- When the acquisition of units of a particular UCITS/AIFs takes place following the client's own initiative.

CySEC with this Circular repealed Circular CI78-2012-02, issued on 16 August 2012.

Acronyms & Definitions used

CDS	Credit Default Swap
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
FATF	Financial Action Task Force
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
MoU	Memorandum of Understanding
NDF	Non-deliverable forwards
Official Journal	The Official Journal of the European Union
OTC	Over-the-Counter
PRA	UK Prudential Regulation Authority
Q&As	Questions and Answers
RTS	Regulatory Technical Standards
SFT	Securities Financing Transaction
TA	Technical Advice

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