

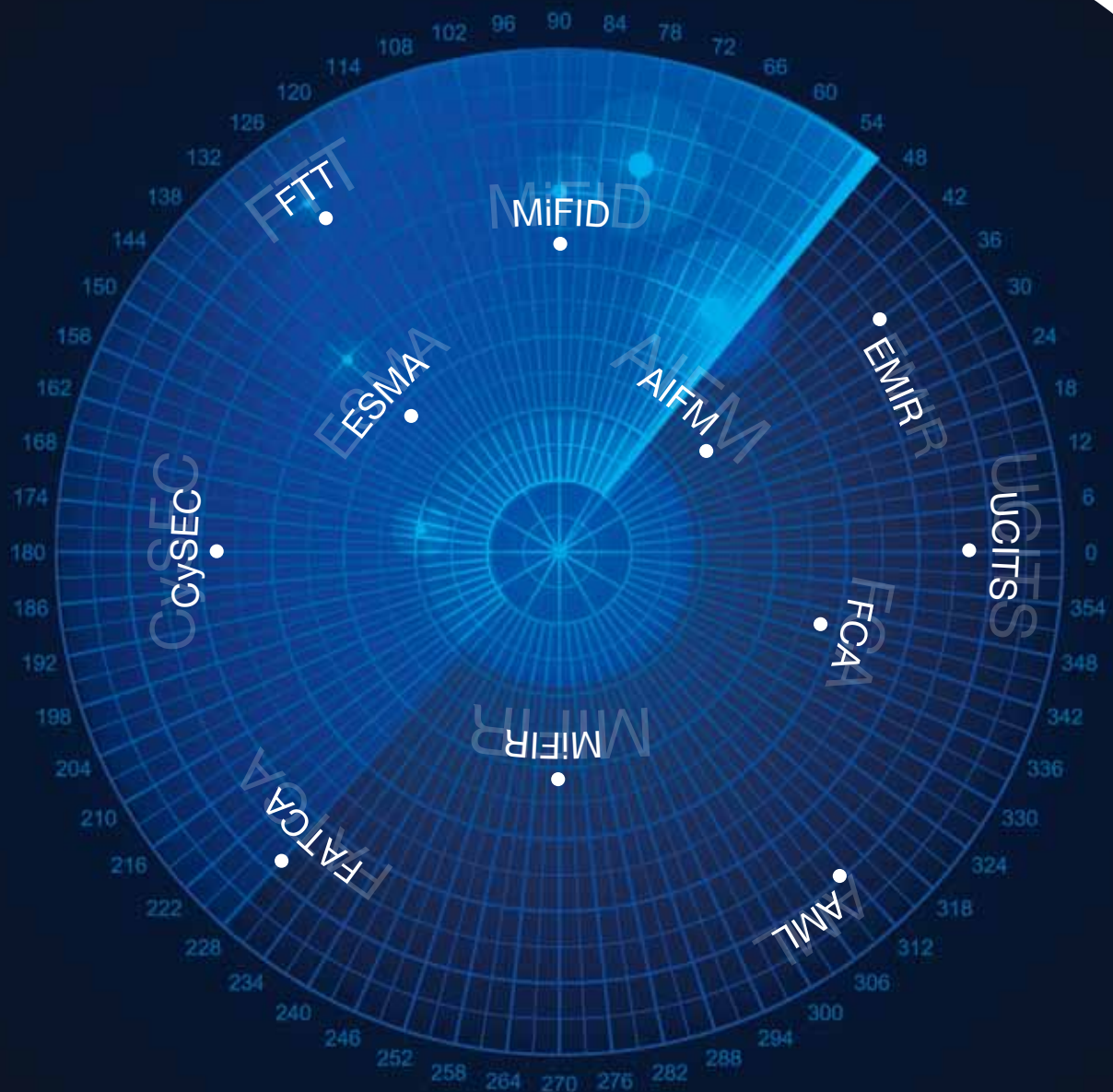


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Issue 006 / June 2015

# REGULATORY RADAR

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





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## Second Summary

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

- **MiFID II**  
The new MiFID II rules come into force on 3 January 2017; Level 2 legislation progressing; delays on some Level 2 texts: the EU consultation process is continuing
- **EMIR**  
Staggered implementation continues: the clearing obligation is next; the first Interest Rate Swaps RTS expected to be published in September 2015; CDS RTS on hold; NDF mandatory clearing abandoned for now; a new consultation on certain IRS in EEA currencies launched. Mandatory uncleared margin requirements delayed by 9 months now to begin on 1 September 2016
- **Other**  
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- AMLD 4 and FATF 2 are published in the Official Journal; the new framework will apply from June 2017

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

- The delineation of MiFID FX financial instruments vs spot FX contracts will be resolved in MiFID II text; ESMA has not issued any guidance
- UK may bring binary options in scope of MiFID

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- First FATCA return must be submitted on 31 July 2015

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- Consultation paper regarding Draft Law for the recovery of IFs and other entities supervised by CySEC
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- Issuance of amended Directive regarding certification of persons and the Public Register; COs and AMLCOs must now be certified
- Publication of a new Directive regarding the continued operation and functioning of the ICF

# 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**

Please refer to [Issue 5 of MAP S.Platis Regulatory Radar](#) for more information regarding ESMA's Consultation.

### **ESMA Consultation on guidelines for assessment of knowledge and competence**

On 23 April 2015, ESMA launched a [Consultation](#) on draft guidelines specifying criteria for the assessment of knowledge and competence of natural persons in investment firms that provide investment advice or information about financial instruments, investment services or ancillary services to clients.

The Consultation Paper proposes that such criteria should be met by attaining an “appropriate qualification” and “appropriate experience” and sets out the areas of knowledge and competence that need to be assessed against, in order to provide investment advice or information to clients.

The CP also proposes that national competent authorities or other appropriate bodies should determine the list of appropriate qualifications or criteria for the assessment of qualifications.

These guidelines are intended to enhance investor protection by setting out the standards required to be held by staff in investment firms that provide investment advice or information to clients, and requiring the review and assessment of how such staff meet these standards.

### **Next steps**

The Commission is expected to adopt the **Delegated Acts** referred to above by the end of June 2015 in accordance with the timeline.

In an exchange of letters ([ESMA letter dated 11 May 2015](#); [Commission letter undated](#)), ESMA and the Commission have agreed an extension of the deadline for the submission of the draft **regulatory technical standards** referred to above to the Commission to the end of September 2015 instead of July 2015.

The deadline for the submission of the draft **implementing technical standards** referred to above to the Commission remains January 2016.

MiFID II/ MiFIR and its implementing measures will be applicable from 3 January 2017.

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

The consultation on knowledge and competence will be open until 10 July 2015. Thereafter, ESMA will consider the responses and expects to publish final guidelines in Q4 2015.

## **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 on 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.
- **April 2016 (estimated)**, clearing obligation will commence for clearing members (Category 1 counterparties).
- **1 September 2016 (estimated)**, variation margin for non-cleared OTC derivatives and initial margin on a phased implementation timetable will begin.
- **October 2016 (estimated)**, clearing obligation for certain non-clearing members will commence (Category 2 counterparties).
- **April 2017 (estimated)**, clearing obligation for further category of non-clearing members will commence (Category 3 counterparties).
- **October 2017 (estimated)**, clearing obligation for further category of non-clearing members will commence (Category 4 counterparties).

#### IRS, CDS and NDF

On 11 May 2015, [ESMA published a fourth consultation](#) on proposed regulatory technical standards on the clearing obligation under EMIR.

This paper provides explanations on the draft regulatory technical standards establishing a clearing obligation on additional classes of OTC interest rate derivatives that were not included in the first RTS on the clearing



obligation for interest rate swaps. The addition consists of the following classes: fixed-to-float interest rate swaps denominated in certain non-G4 European currencies CZK, DKK, HUF, NOK, SEK and PLN as well as forward rate agreements denominated in NOK, SEK and PLN. (The G4 currencies are EUR, GBP, JPY and USD).

The deadline for comment is 15 July 2015. The overall approach on the determination of categories of counterparties remains the same with a few specificities. In the first RTS on the clearing obligation for IRS, the definition of Category 2 and Category 3 depends on a quantitative threshold; to avoid introducing unnecessary compliance costs, ESMA is proposing that the same three months are used for the assessment of the positions against the threshold in the draft RTS for IRS denominated in the new currencies. (See below on counterparty categorisation). Section 6 sets out the ESMA proposals related to the dates from which the clearing obligation should apply per category of counterparties.

In accordance with the clearing process, following the public consultation, ESMA will submit the draft technical standards the Commission for endorsement in the form of Commission Regulations.

This paper follows the publication of three consultation papers on the clearing obligation on:

- interest rate derivative classes;
- credit derivative classes and
- foreign-exchange non-deliverable forward classes.

Please refer to [Issue 4 of MAP S.Platis Regulatory Radar](#) for more information.

ESMA published on 11 March 2015 its final report on the draft RTS on the clearing obligation on interest rate swaps ([ESMA published a revised opinion](#) dated 6 March 2015). The latest news is that a final IRS RTS may be published in September 2015 - see section on EMIR II below. The timetable set out above reflects this assumption but may change again.

ESMA is delaying submitting the CDS RTS until the issues arising in the first IRS RTS are resolved.

ESMA had already stated that it is not proposing a clearing obligation on the NDF classes at this stage.

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 till August 2017

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. Please refer to [Issue 4 of MAP S.Platis Regulatory Radar](#) for more information.

On 5 June 2015, the European Commission published a [Delegated Regulation](#) implementing the extension by additional two years (i.e. up to 16 August 2017) of the transitional clearing exemption for pension scheme arrangements meeting certain criteria. The Delegated Regulation states that it should enter into force “as soon as possible.”

## ESMA Q&As

The latest [ESMA Q&As](#) are dated 27 April 2015.

## EMIR II – Commission review

On 21 May 2015, the Commission launched its public consultation to review EMIR by publishing a [questionnaire](#) about EMIR. The public consultation is open till 13 August 2015. Article 85(1) of EMIR obliges the Commission to review and prepare a general report on the regulation. The Commission is reviewing a number of specific aspects of EMIR. These include: the access of CCPs to central bank liquidity facilities; the functioning of supervisory colleges for CCPs; and the margin practices of CCPs. The review will also assess the systemic importance of non-financial firms.

As part of the review, a public hearing was held on 29 May 2015. Lord Hill, European Commissioner for financial stability, financial services and capital markets union gave a speech [First steps in the review of EMIR, the European derivatives regulation](#) in which he set out what had been achieved so far including the news that the first clearing rules for certain Interest Rate products might be in place as soon as April 2016.

## Mandatory rules for margin for non-cleared trades

For the latest position with all relevant dates, please refer to [Issue 5 of MAP S.Platis Regulatory Radar](#).

## 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

On 5 June 2015, the [fourth Anti-Money Laundering Directive](#) (AMLD 4) and the [Regulation on information accompanying transfers of funds](#) (FATF 2 Regulation) were published in the Official Journal.

Both the Directive and Regulation will enter into force on 25 June 2015. Member States have until 26 June 2017 to transpose and comply with AMLD 4. The FATF 2 Regulation will become directly applicable in Member States from 26 June 2017.

The new strengthened European Anti-Money Laundering framework will contribute to the fight against terrorist financing and money laundering by:

- facilitating the work of Financial Intelligence Units from different Member States to identify and follow suspicious transfers of money and facilitate the exchange of information;
- establishing a coherent policy towards non-EU countries that have deficient anti-money laundering and counter-terrorist financing regimes;
- ensuring full traceability of funds transfers within, to and from the European Union.

The Commission will supplement this legislation by working on a supranational assessment of risks. Both texts fully take into account the 2012 Recommendations of the Financial Action Task Force, the international standard-setter in the field, and go further on a number of issues to promote the highest standards for anti-money laundering and to counter terrorism financing.

There is a reinforcement of sanctioning powers and requirements to co-ordinate cross-border action with stronger and clearer requirements imposed in relation to the collection and reporting of data by national authorities and in relation to the exchange of information and co-operation between them.

The key changes in AMLD 4 cover the following areas:

- Expansion of scope:
  - > Lower exemptions for one-off transactions as the threshold over which traders in high value goods must undertake customer due diligence when dealing with cash transactions is reduced from EUR15,000 to EUR 10,000.
  - > Customer due diligence requirements are extended from “casinos” to other parts of the gambling sector.
  - > Tax crimes are predicate offences so now in scope.
- Adoption of a risk based approach moving away from the current system of exemptions from customer due diligence requirements based on third country equivalence:
  - > The Commission will conduct a risk assessment and the European Supervisory Authorities will provide a joint opinion on the money laundering and transfer of funds risks affecting the internal market that will be taken into account by the Commission for its risk-assessment.
  - > Each member state is required to carry out a risk assessment at national level and to make the findings available to regulated firms to help them conduct their risk assessments.

- Updating the current list of circumstances when simplified customer due diligence will be appropriate by reducing the categories of clients to be regarded as posing a lower risk.
- Clarification that enhanced due diligence will always be appropriate where transactions involve politically exposed persons (“PEPs”) and the definition of PEPs is widened to include domestic individuals occupying prominent public positions, in addition to those from abroad.
- New requirements on beneficial ownership require that information should be held in a central register in each member state:
  - > Any type of legal entity and trusts established within a member state’s territory is required to hold this information.
  - > The central register will be accessible to the authorities and their financial intelligence units without any restrictions.
  - > The central register (for some information) will be accessible by persons/organisations that can demonstrate a legitimate interest (e.g. journalists) subject to certain conditions and restrictions and in accordance with data protection rules.

The key changes in FATF 2 Regulation cover the following areas:

- Increasing the traceability of payments by requiring the inclusion of information on payees;
- Payment service providers to verify the identities of beneficiaries for payments originating outside the EU for amounts over EUR 1,000, and to put in place risk based procedures to determine when to execute, reject or suspend transfers and to keep records;
- Credit or debit cards and mobile phones and other electronic devices will be covered by the requirements if they are used to transfer funds.



### 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) of [Issue 5 of MAP S.Platis Regulatory Radar](#), 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 [Issue 4 of MAP S.Platis Regulatory Radar](#), 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.

### 4. EU Financial Transaction Tax (FTT)

There is no further public information since February 2015. Please refer to [Issue 5 of MAP S.Platis Regulatory Radar](#) for the latest position.

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

Further to the Cyprus-US Inter-governmental Agreement that was signed on 2 December 2014, Cyprus Reporting Financial Institutions should file their first FATCA return with respect to 2014 and report high-value pre-existing individual accounts, new U.S. Reportable accounts and accounts held by non-Participating Financial Institutions.

The aforementioned FATCA return should be submitted to the Cyprus Inland Revenue (IRD) electronically, through an XML file that all Financial Institutions have to create and validate against the schemas published on the IRD's website. The first FATCA return will be submitted on 31 July 2015 and not 30 June 2015, as initially announced.

Please refer to [Issue 1 of MAP S.Platis Regulatory Radar](#), [Issue 3 of MAP S.Platis Regulatory Radar](#) and [Issue 5 of MAP S.Platis Regulatory Radar](#) for more information regarding FATCA.

## 6. Fund Regulation

### Money Market Funds (MMFs)

On 28 April 2015, the European Parliament in plenary session voted to adopt the draft Regulation on Money Market Funds (MMFs). When the position of Member States in the Council of the EU is agreed, trilogue negotiations can begin between the European Parliament, the Council and the Commission.

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

### One minute guide – Market Abuse Regulation

The FCA has produced a [short guide](#) on the new Market Abuse Regulation.

### FCA fines bank £126 million for failure to comply with the custody rules

On 14 April 2015, the FCA [fined](#) The Bank of New York Mellon London Branch and The Bank of New York Mellon International Limited £126 million.

Georgina Philippou, acting director of enforcement and market oversight at the FCA said:

“Our Custody Rules are in place to ensure that clients are protected in the event of insolvency. The Firms’ failure to comply with our rules including their failure to adequately record, reconcile and protect safe custody assets was particularly serious given the systemically important nature of the Firms and the fact that safeguarding assets is core to their business. Had the Firms become insolvent, the total value of safe custody assets at risk would have been significant. This is compounded by the fact that the breaches took place at a time when there was considerable stress in the market.

“The size of the fine today reflects the value of safe custody assets held by the Firms as well as the seriousness of the failings and the fact that these failings were not identified by the Firms’ own compliance monitoring. Other firms with responsibility for client assets should take this as a further warning that there is no excuse for failing to safeguard client assets and to ensure their own processes comply with our rules.

“Client assets protection continues to be a priority for the FCA and firms who hold client assets should review their processes in line with these findings to ensure full compliance with the Custody Rules.”

## 8. CySEC Developments

### Issuers reminder regarding the abolishment of the requirement to publish an Annual Bulletin (available in Greek language)

On 7 April 2015, through the issuance of [Circular C063](#) (in Greek) and following the issuance of Circular [CI114-2014-01](#) (in Greek), CySEC reminded the issuers of admitted transferable securities for trading purposes in a regulated market, that the requirement to publish an Annual Bulletin has been abolished.

### Disclosure in accordance with Part Eight of European Regulation (EU) 575/2013 ('Pillar III disclosures') - Submission of CRD IV CoRep forms based on the audited financial statements

On 8 April 2015, through the issuance of [Circular C064](#), and following the issuance of [Circular C038](#) and the [Guide for the implementation of CRD IV package](#), CySEC informed Cyprus Investment Firms ('CIFs') regarding their 'Pillar III disclosures' and the submission of CRD IV CoRep forms based on their audited financial statements.

As per Part Eight of European [Regulation \(EU\) 575/2013](#) ('the Regulation'), CIFs are obligated to publish their Pillar III disclosures by the end of April each year and submit to CySEC their external auditors' verification report by the end of May each year. For the publication of Pillar III disclosures for the year 2014, CySEC has granted an extension until 31 May 2015.

CIFs must submit to the TRS system the CRD IV CoRep forms based on their audited financial statement within 5 months from the end of each financial year. Accordingly, CIFs should have submitted the 2014 CRDIV CoRep forms, by 31 May 2015.

In case a CIF is subject to a consolidated supervision then a) the completed CRD IV CoRep forms based on the solo audited financial statements should be submitted to the TRS system and b) the completed CRD IV CoRep forms based on the consolidated audited financial statements should be submitted to the email address [crdsubmission@cysec.gov.cy](mailto:crdsubmission@cysec.gov.cy).

### Granting trading benefits to clients

On 8 April 2015, through the issuance of [Circular C065](#), and following the issuance of Circular [CI144-2014-02](#), CySEC informed CIFs regarding the granting of trading benefits to clients under conditions and practices, which are not consistent with a) the Article 36 of the 'Law', b) Part VI of the Directive [DI144-2007-01](#) of 2012 and c) Part III & IV of the Directive [DI144-2007-02](#) of 2012.

Specifically, CySEC provides the following examples of conditions / practices that do not seem to be consistent with the aforementioned parts of the legislation:

- No explanation or insufficient explanation of the conditions of a trading benefit granted to a client in a clear and understandable way.
- Granting trading benefit to all clients without exemption and without their consent/acceptance.
- Setting short timeframe for fulfilling the trading benefit conditions.
- Modification of the trading benefit conditions without appropriate and in advance notice to the client.
- Uneven allocation of profits vs losses to the client.
- Insufficient client information on available for withdrawal funds.
- High charges in case of funds withdrawal.

CIFs must maintain in clients' records all the evidence supporting the implementation of [Circular C065](#) and are requested to review immediately their procedures/arrangements in relation to the granting of trading benefits and take corrective measures in order to comply with the said Circular.

## **Consultation Paper CP (2015-05) regarding the publication of a Directive for the delisting of securities in CSE at the issuer's request**

On 8 April 2015 CySEC published [Consultation Paper CP \(2015-05\)](#) for the submission of comments regarding the upcoming publication of a new Directive concerning the delisting of securities from the Cyprus Stock Exchange (CSE) at the issuer's request. The consultation closed on 27 April 2015.

The said Directive determines and particularises the provisions of Article 181(1) of the Securities and Cyprus Stock Exchange Law. Issuers can request the delisting of securities from the CSE, in the following cases:

- a) When exercising the right of takeover via 'squeeze out' as per article 36 of the [Public Takeover Bid Law](#).
- b) After the acceptance of a takeover bid, the offeror has acquired more than 90% of all the voting rights and has informed his/her intention of delisting of securities, as referred to article 19 of the Public Takeover Bid Law.
- c) After securing a resolution at a General Meeting that will be approved by more than 90% of the securities' holders.

## **Consultation Paper CP (2015-06) regarding a proposed Circular about domains and clients' agreement**

On 11 May 2015 CySEC published the [Consultation Paper CP \(2015-06\)](#) for the submission of comments and/or suggestions regarding a proposed circular about domains and clients' agreement. The consultation closed on 29 May 2015.

The upcoming Circular, stipulates that CIFs must in due time conform to the following requirements:

- a) Notify CySEC about all their domains used for conducting business, ensuring that the domains clearly disclose their name and ensuring the uniqueness of their domain's name;
- b) Disclose to their clients the terms and conditions agreement and be able when asked to provide CySEC the clients' consent, when requested.



The proposed Circular specifies among others that:

- CIFs shall ensure that during their operation, they only operate through the website addresses notified to CySEC and posted on their website. Otherwise, operation through a non-registered website could be considered as violation.
- In cases where the domain name of a CIF differs from the name under which it obtained authorisation by CySEC, investors should be informed in detail about the name of the person that they deal with.
- A CIF can refer visitors from its domain to another domain, only when that domain belongs to the same group and it is licensed / supervised by a competent authority for the provision of investment services.
- A CIF allowing customers to accept electronically the terms and conditions through its website may be deemed to comply with paragraph 8 of the Directive OD144-2007-02 of 2012, only when it adopts and implements such measures, which are able to demonstrate the disclosure of the terms and conditions to the clients (e.g. dispatch of an email to clients to accept the terms and conditions).
- CIFs must operate a domain name that is unique and not used by another company. Furthermore, the domain name must direct visitors to a single website, belonging exclusively to the CIF.

## Consultation Paper CP (2015-07) – Draft Law regarding the recovery of investment firms and other entities supervised by the CySEC

On 11 May 2015 CySEC published [Consultation Paper CP \(2015-07\)](#) for the submission of comments regarding a proposed Draft Law regarding the recovery of investment firms and other entities supervised by the CySEC. The consultation closed on 26 May 2015.

CySEC in cooperation with the Ministry of Finance and the Central Bank of Cyprus (CBC) wishes with the proposed Draft Law to ensure the recovery of CIFs and other entities supervised by CySEC through the design and implementation of recovery measures. The introduction of a full legal framework will provide adequate tools to tackle unhealthy institutions in Cyprus and across borders and to minimize the negative effects in case of insolvency.

The main purpose and provisions of the new legislation will be the following:

- a) The prevention of insolvency of major CIFs and legal persons within the group of a CIF (the 'Affected Persons') that are supervised by CySEC. More precisely:
  - Affected Persons should design a recovery framework which will be supervised and evaluated by CySEC;
  - Application of early intervention measures to prevent insolvency, including the removal of Senior Management members from the Board of Directors of an Affected Person and his/her replacement with a provisional administrator;
  - Intragroup financial support agreements subject to the approval of CySEC, in order to ensure the financial stability of the group, without endangering liquidity or solvency of an Affected Person.
- b) CySEC's cooperation with the relevant competent authorities of other Member States in the event of recovery measures or early intervention across borders, which will provide the legal framework to carry out the resolution of an Affected Person.

- c) CySEC's cooperation with the CBC in order CBC to be able to receive and access correctly, updated information on the Affected Persons and be able to apply the relevant resolution tools.
- d) CySEC shall determine whether an Affected Person is bankrupt or is at risk to become bankrupt.

## Consultation paper, Ministry of Finance – Draft Law regarding the transposition of MIFID II

On 15 May 2015, Ministry of Finance published a [Consultation Paper](#) for the submission of comments and/or suggestions regarding the transposition of MIFID II to Cyprus law. The consultation closed on 15 June 2015.

The Ministry of Finance has proceeded with the preparation of the Draft Law “Provision of Investment Services, the Exercise of Investment Activities, the Operation of Regulated Markets and other related matters” for purposes of harmonization with the [Directive 2014/65/EU](#) of the European Council on markets in financial instruments, amending [Directive 2002/92/EC](#) and [Directive 2011/61/EU](#).

Please refer to Section 1 of this report (and previous issues of MAP S.Platis Regulatory Radar found [here](#)) for more information on MiFID II.

## Directive regarding the certification of persons and the certification registers

On 25 May 2015 CySEC issued amending [Directive R.A.D. 174/2015](#) regarding the “Certification of persons and the certification registers” in replacement to the Directive [R.A.D. 499/2012](#) and amending Directives [R.A.D 118/2013](#), [R.A.D. 403/2013](#) and R.A.D. 466/2014 which have been repealed. The Directive contains, inter alia, information regarding persons who wish to enter the Public Register and persons who wish to maintain their registry.

The aforementioned Directive, inter alia:

- a) defines, specifies or clarifies the frequency, conduct method, and content of the exam and syllabus;
- b) determines issues regarding the establishment of Public Register, the update process, registering and renewing registration and deletion of persons registered in it;
- c) determines exam fees, annual fees and renewal fees for registration to Public Register and the Register of Compliance Officers.

Furthermore, it is noted that every person who performs the duties of a Compliance Officer ('CO') shall need to be registered in CySEC's Public Register by succeeding CySEC's advanced examinations related to the provision of investment services, while Anti-Money Laundering Compliance Officers ('AMLCOs') and any person who performs, to any degree, the duties of an AMLCO shall need to be registered in CySEC's Register for Compliance Officers by succeeding CySEC's Compliance Officer's examination on AML.

Finally, COs and AMLCOs shall renew their registration during the first two months of each calendar year by:

- a) paying CySEC an annual fee;
- b) submitting to CySEC a statement of continued professional training on topics that fall within the relevant legislation which applied to them and which related directly to the duties which they will undertake as

part of their certification, of a duration of:

- five hours for persons registered in the public register for the basic examination
- ten hours for persons registered in the public register for the advanced examination
- ten hours for persons registered in the register for AML compliance officers

If a person exercises simultaneously the duties of the CO and AMLCO then such person shall need to submit to CySEC a statement of continued professional training for twenty hours (ten hours for the register of the advanced examination plus additional 10 hours for the register of AML compliance officers).

## **DI144-2007-15 of 2015 for the Operation and Continuance of Operation CIF Investor Compensation Fund**

On 25 May 2015 CySEC issued [Directive DI144-2007-15](#) (in Greek) on the “Continuance of operation and the operation of the CIF Investor Compensation Fund” in replacement of the “Establishment and Operation of an Investor Compensation Fund for customers of CIFs Regulations of 2004”. The new Directive describes, inter alia, the general operation and functioning of the Fund, the authorisation process for registering a CIF and/or any IF (not a bank) established at the Republic as a member of the Fund, the resignation process from a member of the Fund and the conditions for reimbursement of covered clients.

The Fund’s objective is to secure the claims of its covered clients against its members through the payment of compensation, when at least one of the following preconditions is fulfilled:

- I. CySEC has determined by resolution that an IF, which has subscribed to the Fund, is unable to meet any of its obligations that arise as a result of the provision of investment and/or ancillary services, and where the IF’s financial position is unlikely to change in the foreseeable future.
- II. A court has, on reasonable grounds directly related to the financial circumstances of an IF which has subscribed to the Fund, issued a ruling which has the effect of suspending the investors ability to lodge claims against the said IF.

The amount of compensation towards investor-clients of Fund members shall be up to a maximum amount of twenty thousand EURO (€20.000) and the said coverage applies to the total amount of claims toward a Fund member, irrespective of the number of accounts, currency and place of provision of the service.

It should be noted that any claims arising out from illicit transactions (i.e. transactions involving individuals convicted of criminal offense with respect to the said transaction and pursuant to the Prevention and Suppression of Money Laundering Activities Law of 2007) shall not be compensated by the Fund.

The Fund’s capital is comprised by the initial contributions of its new members along with the ordinary annual and extraordinary supplementary contributions of its current members. Each member of the Fund owns an individual share, which represent a percentage of subscription to the net assets of the Fund. If for any reason the membership status of a member is lost, then that a member shall receive, in cash, the value of its share based on the valuation in force at the time of loss of such membership status.

# Acronyms & Definitions used

|                  |                                                                                                                                                                                                                                     |
|------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| AMLD 4           | The fourth Anti-money Laundering Directive                                                                                                                                                                                          |
| CDS              | Credit Default Swap                                                                                                                                                                                                                 |
| Commission       | European Commission                                                                                                                                                                                                                 |
| CBC              | Central Bank of Cyprus                                                                                                                                                                                                              |
| CP               | Consultation Paper                                                                                                                                                                                                                  |
| CSE              | Cyprus Stock Exchange                                                                                                                                                                                                               |
| 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                                                                                                                                                                                                                    |
| IRD              | Inland Revenue Department                                                                                                                                                                                                           |
| 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                                                                                                                                                                                                                    |
| OTF              | Organised Trading Facilities                                                                                                                                                                                                        |
| 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 |

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## ► Contact Us

### **Mailing Address:**

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

### **Main Offices in Cyprus**

#### **Limassol:**

74 Archiepiskopou Makariou C'

Amaranton Court, 3rd Floor, Mesa Geitonia

4003 Limassol, Cyprus

Tel: +357 2535 1335

Fax: +357 2535 1330

#### **Nicosia:**

25 Demostheni Severi Avenue

Metropolis Tower, 4th Floor

1080 Nicosia, Cyprus

Tel: +357 2287 7744

Fax: +357 2287 7780

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