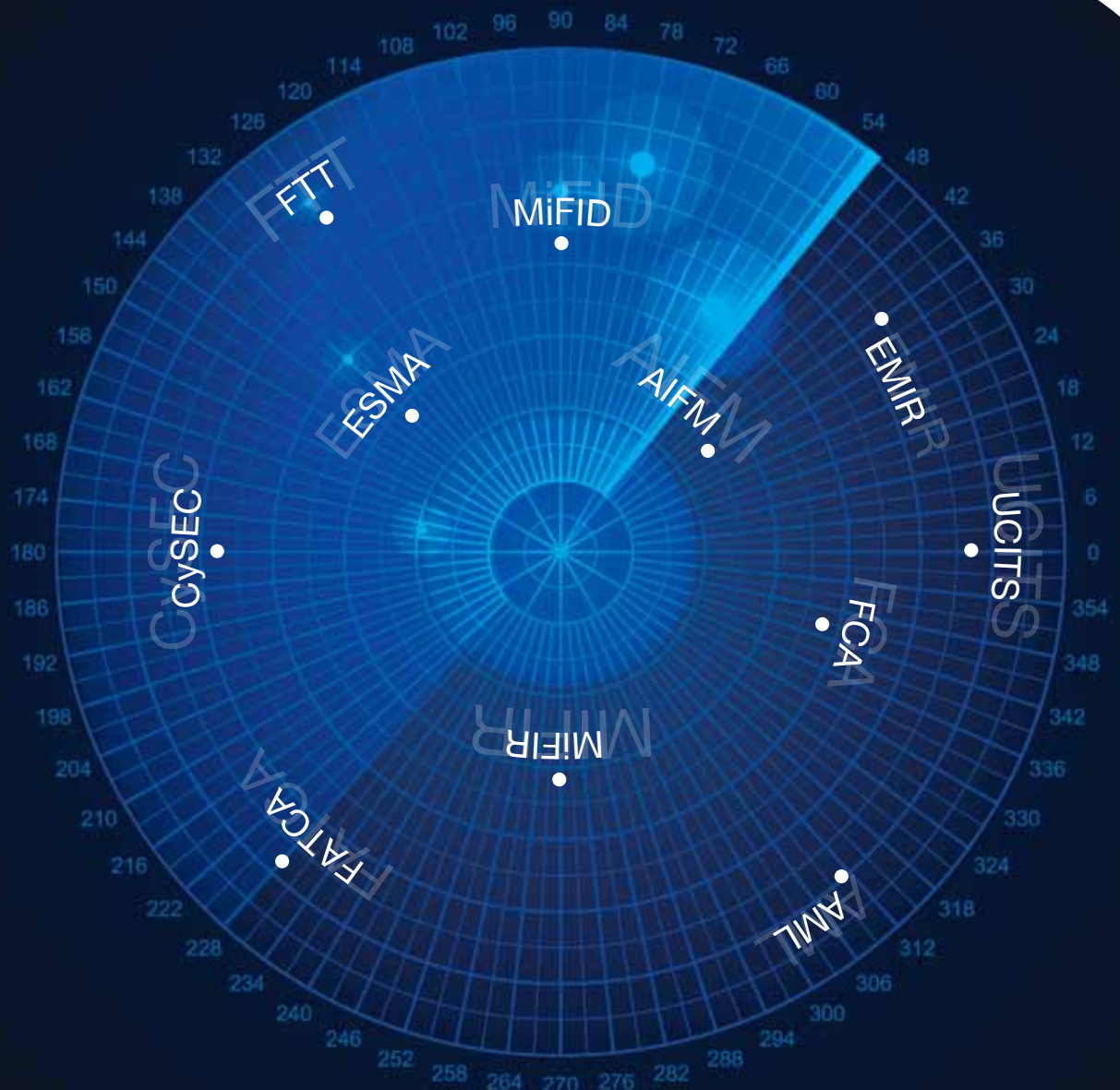
MAP S.Platis

Your Partner in Financial Services!

Issue 009 / December 2015

REGULATORY RADAR

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



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- **EMIR**
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- Imposition of an administrative fine/reprimand and judicial proceedings against Directors of a CIF; For the first time CySEC takes legal measures against Directors of a CIF
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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 would take effect from 3 January 2017. This is a 30 month implementation period.

The coming into force of MIFID II is likely to be delayed by one year on a wholesale basis so in its entirety. The European Parliament's Rapporteur for MIFID II, Markus Ferber MEP, explained: *"The European Parliament's negotiation team has informed the European Commission that we are ready to accept a one-year delay of the entry into force of MiFID II. However, this only applies if the Commission finalises the implementing legislation swiftly and thereby takes into account the European Parliament's priorities. Furthermore, Commission and ESMA need to come up with a clear roadmap on the implementation work and especially for setting up the IT-systems. Naturally, I expect that the European Parliament will be informed regularly and comprehensively about any progress in the implementation work."*

The European Parliament has set out its position in a letter to the Commission on the postponement and a second letter on the outstanding issues in the RTS.

There are four areas where the complexity of the systems, their interaction and the need for a harmonised start date are especially acute. These four areas are the main concerns in terms of possible delays in the go-live dates:

a. Reference data
b. Transaction reporting
c. Transparency parameters and publication
d. Position reporting

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, were to have been submitted by mid-2015. ESMA provided 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.

On 28 September 2015, ESMA publishes:

- Final Report on draft RTS and ITS together the draft texts and a cost benefit analysis.

The final report covers the areas of transparency, market microstructure, data publication and access, requirements applying on and to trading venues, commodity derivatives, market data reporting, post-trading and best execution. ESMA has published with these final proposals a total of 28 draft technical standards.

The Commission's ***Delegated Acts*** referred to above (which were due by the end of June 2015) are still delayed. The delegated acts cover a number of issues including the treatment of research as an inducement.

Complex debt instruments and structured deposits

On 26 November 2015, ESMA published its final report on guidelines on complex debt instruments and structured deposits. These guidelines relate to 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. to identify products for which execution-only services cannot be provided.

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 even if MIFID II is delayed.

On 3 February 2015, ESMA provided Technical Advice to the Commission on delegated acts.

On 28 September 2015, ESMA published its Final Report on draft Technical Standards on MAR.

ESMA's MAR TS will strengthen the existing market abuse framework by extending its scope to new markets, platforms and behaviours. They contain prohibitions for insider dealing and market manipulation, and provisions to prevent and detect these. The Technical standards focus on:

- the conditions under which transactions in buy-back programmes and stabilisation measures are not considered market abuse;
- requirements for market participants conducting market soundings and for competent authorities establishing accepted market practices;
- specific requirements to report suspicious orders and transactions;
- rules for public disclosure of insider information and the delays of such;
- specific formats for establishing insider lists and for the notification and disclosure of managers' transactions; and
- specific arrangements on how to present investment recommendations or other information recommending or suggesting an investment strategy.

This final report has been submitted to the European Commission to decide whether to endorse ESMA's draft regulatory and implementing technical standards.

On 5 November 2015, the UK FCA has issued a Consultation Paper on Policy proposals and Handbook changes related to the implementation of the Market Abuse Regulation. The consultation closes on 4 February 2016. A draft of the Statutory Instrument, which sets out proposed changes to UK legislation to implement the Market Abuse Regulation, is now available for comment from HM Treasury.

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 is unlikely to issue interim 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.
- **December 2017** variation margin for non-cleared OTC derivatives and initial margin on a phased implementation timetable will begin.
- **1 December 2015**, the RTS for the first batch of OTC derivatives published in the OJ
- **21 June 2016**, clearing obligation for first batch takes effect for Category 1 counterparties ie clearing members
- **21 December 2016**, clearing obligation takes effect for Category 2 counterparties
- **21 June 2017**, clearing obligation takes effect for Category 3 counterparties
- **21 December 2018**, clearing obligation takes effect for Category 4 counterparties

IRS, CDS and NDF

On 1 December 2015, the first RTS on the clearing obligation was published in the Official Journal. The RTS covers the following classes of OTC interest rate derivatives denominated in EUR, GBP, JPY or USD:

- fixed-to-float interest rate swaps;
- float-to-float swaps;
- forward rate agreements; and
- overnight index swaps

The RTS comes into force on 21 December 2015 and the clearing obligation for this first batch of OTC derivatives takes effect as set out above in accordance with counterparty categorisation. Frontloading impacts Category 1 and Category 2 counterparties only.

On 2 October 2015, ESMA finalised and submitted to the European Commission for endorsement a draft regulatory technical standard (RTS) for the central clearing of certain types of Credit Default Swap (CDS). More specifically, Table 1 of the RTS proposes for mandatory clearing to apply to the following two iTraxx Index CDS:

- Untranched iTraxx Index CDS (Europe Main, 5 year tenor, series 17 onwards, with EUR as the settlement currency)
- Untranched iTraxx Index CDS (Europe Crossover, 5 year tenor, series 17 onwards, with EUR as the settlement currency)

As expected, the approach taken in this draft RTS reflects that taken in the first RTS in a number of areas, such as the categorisation of counterparties, scope of frontloading and treatment of intragroup transactions.

ESMA has sent the draft RTS for endorsement to the European Commission, which has three months to do so, followed by a non-objection period by the European Parliament and Council.

On 11 May 2015, ESMA published a fourth consultation on proposed regulatory technical standards on the clearing obligation under EMIR in relation to 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). This consultation closed on 15 July 2015. We await feedback.

On 10 November 2015, ESMA published its final report on the draft technical standards on the clearing obligation under EMIR in relation to fixed-to-float IRS and forward rate agreements denominated in Norwegian Krone (NOK), Polish Zloty (PLN) and Swedish Krona (SEK).

ESMA has sent the draft RTS for endorsement to the European Commission, which has three months to do so, followed by a non-objection period by the European Parliament and the Council.

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.

Transaction reporting

On 13 November 2015, ESMA published an update of existing technical standards regarding data reporting requirements under EMIR. EMIR requires counterparties to report their derivative trades to trade repositories following a defined data format.

Since the implementation of EMIR reporting, ESMA has issued several Q&As, clarifying some interpretations of data fields of the technical standards and the most appropriate way of populating them. In order to ensure a consistent and harmonised population of data fields and reporting of complex derivatives, ESMA decided to transpose its existing Q&As together with some other improvements into the technical standards by reviewing the existing EMIR TS which entered into force in 2013. The updated Technical standards:

- Clarify data fields, including their description, format or both;
- Adapt existing fields to the reporting logic prescribed in existing Q&As or to reflect specific ways of populating them; and
- Introduce new fields and values to reflect market practice or other necessary regulatory requirements.

EMIR requires ESMA to develop draft regulatory (RTS) and implementing technical standards (ITS) in relation to the application of the reporting obligation for counterparties and CCPs.

ESMA's final draft technical standards have been sent for endorsement to the European Commission. The Commission now has three months to approve these. Once endorsed, both the European Parliament and the Council have an objection period.

ESMA Q&As

On 1 October 2015, ESMA published the 14th update to its Q&As on the implementation of EMIR. This is still the current Q&As.

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 Regulation (SFTR)

On 29 October 2015, the European Parliament formally adopted the SFTR. On 17 November 2015, the Council adopted the SFTR. The publication of the SFTR in the Official Journal is expected imminently. The Regulation will come into force 20 days thereafter.

Securities financing transaction is defined as stock lending and borrowing, repo and reverse repo, buy/sell backs and sell/buy back and margin lending transactions.

The SFTR introduces:

1. a trade reporting obligation in respect of securities financing transactions
2. an obligation to make prescribed pre-contractual disclosures to UCITS and AIF investors in respect of securities financing transactions and total return swaps in the UCITS /AIF prospectus and annual return
3. provisions minimum transparency requirements relating to the "re-use" of collateral (financial instruments only) under financial collateral agreements

The fund prospectus disclosure obligation comes into force from the date of entry into force, for funds constituted after the date of entry into force for funds - estimated to be December 2015; 18 months after the date of entry into force for funds constituted before the date of entry into force - estimated to be June 2017. The annual report disclosure requirement comes into force 12 months after the entry into force of the Regulation - estimated to be December 2016.

The collateral arrangement obligation comes into force six months after the entry into force of the Regulation – estimated to be June 2016. Industry template containing the written risk warning is being produced by Clifford Chance and Association for Financial Markets in Europe (AFME), a sell-side trade association.

The reporting obligation is dependent on Level 2 measures and would enter into force 12/15/18/21 months after entry into force of the delegated act depending on the type of counterparty.

The Commission issued an FAQ on 29 October 2015. The European Parliament released their legislative text (dated 5 November 2015).

2. Anti-Money Laundering

Transparency International UK: Don't Look, Won't Find: Weaknesses in the Supervision of the UK's Anti-Money Laundering Rules

Transparency International UK publishes a report on 30 November 2015 concluding that a radical overhaul of the UK's anti-money laundering system is needed, if the UK is to close the door to the billions of pounds in corrupt money coming into the country every year.

A system not fit for purpose:

- **Poor oversight** – The majority of sectors covered in this research are performing very badly in terms of identifying and reporting money laundering. Major problems have been identified in the quality, as well as the quantity, of reports coming out of the legal, accountancy and estate agency sectors. One supervisor even admitted it carried out no targeted AML monitoring at all during 2013.
- **Lack of transparency** – 20/22 supervisors fail to meet the standard of enforcement transparency demanded by the Macrory standards of effective regulation.
- **Ineffective sanctions** – Low fines, in relation to the amounts being laundered, failing to be effective deterrents. Of the 7 Her Majesty's Revenue and Customs regulated sectors, that includes estate agents, the total fines in 2014/15 amounted to just £768,000.
- **Independence questioned** – Just 7/22 supervisors control for institutional conflicts of interest, whilst 15 are also lobby groups for the sectors they supervise.

The research highlights that:

- A third of banks dismissed serious money laundering allegations without adequate review
- In the accountancy sector, at least 14 different supervisors have some responsibility – leading to widespread inconsistency and variations.
- In property, only 179 cases deemed suspicious by estate agents in 2013/14.
- Just 15 suspicious cases reported through art and auction houses.

The report contains three key recommendations that the UK Government (i) overhauls the way anti-money laundering standards are overseen to achieve consistency, integrity and accountability in the supervisory system; (ii) ensures adequate levels of enforcement against money laundering; and (iii) provides better information about money laundering risks to the private sector.

As regards the financial services sector, the report considers the transparency and supervision by the FCA to be the strongest of all UK anti-money laundering supervisors. The report refers to the strength of suspicious

activity reporting and the "significant" sanctions which have been levied in response to money laundering failings. However, the report does raise concerns that not all illicit proceeds are identified through the sector, including from politically-exposed persons and high net worth individuals.

UK HM Treasury advisory notice on anti-money laundering and counter-terrorist financing

Based on Financial Action Task Force Statements of 23 October 2015, HM Treasury has published an updated advisory notice advising firms to:

- consider Iran, Myanmar and the Democratic People's Republic of Korea high risk for the purposes of the Money Laundering Regulations 2007, and apply enhanced due diligence measures accordingly; and
- take appropriate actions with regard to 12 other jurisdictions in order to reduce associated anti-money laundering / counter terrorism financing risks.

FATF Plenary meeting

The Financial Action Task Force (FATF) held its plenary meeting on 21-23 October 2015.

The main issues dealt with by this Plenary were:

- Work on terrorist financing, which remains the top priority for the FATF, including:
    - Revising the Interpretive Note to Recommendation 5 to address the foreign terrorist fighters threat
    - Adopting a report identifying emerging terrorist financing risks
    - Approving a report to G20 leaders on action taken by FATF
- The mutual evaluation report of Italy on compliance with the FATF Recommendations.
- A statement on FATF action regarding de-risking
- Endorsement of general principles for establishing the Training and Research Institute (TREIN).
- Expansion of the FATF global network - Recognising the Task Force on Money-Laundering in Central Africa (GABAC) as an FATF–Style Regional Body
- 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
- An update on AML/CFT improvements in Ecuador and Sudan
- Adoption of the following documents:
    - Money Laundering through the Physical Transportation of Cash
    - Guidance on Data and Statistics
    - Guidance on the Risk-Based approach for Effective Supervision and Enforcement by AML/CFT Supervisors of the Financial Sector and Law Enforcement

The three European Supervisory Authorities consult on anti-money laundering and countering the financing of terrorism

On 21 October 2015, the Joint Committee of the three European Supervisory Authorities launched a public consultation on two anti-money laundering and countering the financing of terrorism (AML/CFT) Guidelines. These Guidelines promote a common understanding of the risk-based approach to AML/CFT and set out how it should be applied by credit and financial institutions and competent authorities across the EU. The documents are part of the Joint Committee's work to establish consistent and effective, risk-based supervisory practices across the EU. The consultation closes on 22 January 2016.

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.

The Central Bank of Ireland conducts a themed inspection of the Contract for Difference (CFD) market

On 23 November 2015, The Central Bank of Ireland reported on a themed inspection it had conducted covering retail clients who invested in CFDs during 2013 and 2014. The themed inspection consisted of a desk based review of all active investment and stockbroking firms providing CFD products (including spread betting) which are regulated by the Central Bank or operating in Ireland on a branch basis (nine firms). Over 39,000 retail clients, almost 5,000 were Irish Resident, invested in CFDs with Irish-based investment and stockbroking firms during this period. The main findings were:

- 75% of clients made a loss, of which the average loss was €6,900.
- Criteria used for assessing appropriateness varied among firms. Although some firms went over the requirements, the Central Bank determined that in others, the client's knowledge and experience may have been overestimated;
- Most firms were in compliance with regulatory requirements on complaints handling, however some failed to maintain up-to-date records; and
- Marketing material was not always constructed and presented in a sufficiently-balanced way to outline both the risks and benefits of CFDs.

Where the Central Bank identified risks to consumers, due to the issues outlined above, formal supervisory requirements were imposed on the relevant firms. The Central Bank has also sent a letter to all MiFID

firms, detailing the findings of this inspection together with recommendations to enhance their compliance arrangements, where relevant.

Bernard Sheridan, Director of Consumer Protection, said: *"One of our key priorities for 2015 was to examine the sale of investment products which may pose a risk to consumers.*

One such product is a CFD and, following a themed inspection of the CFD market, we identified several issues in relation to execution-only sales. It is our view that CFDs are unsuitable for investors with a low-risk appetite.

This is due to the volatile nature of the CFD market, coupled with the potential for a consumer to lose more than the initial investment. Consumers need to be made fully aware of the high-risk and complex nature of CFDs before making investment decisions".

4. EU Financial Transaction Tax (FTT)

An FTT Council Working Group continues to meet but there is no deal emerging. There may be an update without discussion at the next Council meeting (ECOFIN) on 8 December but it is still unclear whether there will be a public announcement by the FTT eleven Member States showing ongoing progress.

5. Taxation

OECD Common Reporting Standard

The Republic of Cyprus through a joint statement (dating back in October 2014) committed to participate in the automatic exchange of information for tax matters and to be an early adopter of the Common Reporting Standard. Further to this, and a year after, the Ministry of Finance of the Republic of Cyprus, is in the process of transposing the standard into a national law and the expectation is that this will be transposed before the end of the year 2015.

During the last two months (i.e. November to December) the OECD published further updates on the following matters:

November:

- The CRS by Jurisdiction table.

  The Jurisdiction table inter alia refers to:

  - the status of every Country that has committed to exchange information,
  - whether the standard has been transposed into a local legislation,
  - the year committed to first exchange.

- The CRS Related FAQs in order to cover the following subjects:
  - Residence Address Test – Penalty of perjury,

- Requirement to obtain a TIN in the framework of the curing procedure,
- New Entity Accounts – Reliance on publicly available information,
- Determination of the threshold for due diligence with respect to Controlling Persons,
- Timing of self-certifications,
- OTC Derivatives,
- Excluded Accounts – substitute requirements:
  - penalty regime, and
  - reporting to tax authorities.
- Related Entity definition in case of indirect ownership.

- Global Forum on tax transparency pushes forward international co-operation against tax evasion.

December:

- OECD agrees on course of action in response to EU request to include additional fields in the CRS XML Schema.

For previous updates on the matter, please refer to Issue 8 of MAP S.Platis Regulatory Radar.

Foreign Account Tax Compliance Act (FATCA)

The Cyprus Inland Revenue Department published a version of the FATCA Decree in the English Language. There was no any other notable update on FATCA in Cyprus during the last 2 months.

For previous updates on the matter, please refer to Issue 8 of MAP S.Platis Regulatory Radar.

6. Fund Regulation

Money Market Funds (MMFs)

Once 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. There has been no progress in Council position under the Luxembourg presidency since July.

7. UK – Developments of Interest to Investment Firms

FCA fines Barclays £72 million for poor handling of financial crime risk

On 26 November 2015, the FCA fined Barclays Bank (Barclays) £72,069,400 for failing to minimise the risk that it may be used to facilitate financial crime.

The failings relate to a £1.88 billion pound transaction (Transaction) that Barclays arranged and executed in 2011 and 2012 for a number of ultra-high net worth clients. The clients involved were politically exposed persons (PEPs) and should therefore have been subject to enhanced levels of due diligence and monitoring by Barclays.

While the FCA makes no finding that the Transaction, in fact, involved financial crime, the circumstances of the Transaction gave rise to a number of features which, together with the PEP status of the individuals, indicated a higher level of risk. This required Barclays to adhere to a higher level of due skill, care and diligence but Barclays failed to do this. In fact, Barclays applied a lower level of due diligence than its policies required for other business relationships of a lower risk profile. Barclays did not follow its standard procedures, preferring instead to take on the clients as quickly as possible and thereby generated £52.3 million in revenue.

Barclays went to unacceptable lengths to accommodate the clients. Specifically, Barclays did not obtain information that it was required to obtain from the clients to comply with financial crime requirements. Barclays did not do so because it did not wish to inconvenience the clients. Barclays agreed to keep details of the Transaction strictly confidential, even within the firm, and agreed to indemnify the clients up to £37.7 million in the event that it failed to comply with these confidentiality restrictions.

The fine comprises disgorgement of £52.3 million, which is the amount of revenue that Barclays generated from the Transaction, and a penalty of £19,769,400. This is the largest fine that has been imposed by the FCA and its predecessor the FSA for financial crime failings.

Mark Steward, director of enforcement and market oversight at the FCA said:
"Barclays ignored its own process designed to safeguard against the risk of financial crime and overlooked obvious red flags to win new business and generate significant revenue. This is wholly unacceptable. Firms will be held to account if they fail to minimise financial crime risks appropriately and for this reason the FCA has required Barclays to disgorge its revenue from the Transaction."

To note that the FCA made no finding that financial crime was involved or facilitated by Barclays, or regarding the provenance of the funds invested as part of the Transaction. Nor did the Authority make any finding that the revenue that Barclays generated from the Transaction was derived from any financial crime. The FCA made no criticisms of the clients.

FCA imposes a fine and prohibition for lack of fitness/ propriety, unfair treatment of customers and conflicts of interest in the asset management sector

On 17 November 2015, the FCA fined Mothahir Miah, a former Investment Analyst at Aviva Investors Global Services Limited (Aviva Investors), £139,000 and banned him from performing any function in relation to any regulated activity in the financial services industry for failing to act with honesty and integrity (see Final Notice).

At Aviva Investors Mr Miah had authority to trade on behalf of hedge and long-only funds. Between January 2010 and October 2012, Mr Miah exploited weaknesses in the trading systems and controls at Aviva Investors in order to delay the booking and allocation of trades.

This meant Mr Miah was able to assess the performance of a trade during the day and allocate trades which had benefitted from favourable price movements to hedge funds that paid performance fees and trades that had not benefited to certain long-only funds that paid lower or no performance fees. This abusive practice is known as “cherry picking”.

Mr Miah’s actions contributed to Aviva Investors having to pay significant compensation to a number of long-only funds. The FCA fined Aviva Investors £17.6 million in relation to its failings on 24 February 2015.

The financial penalty would have been higher had it not been for Mr Miah’s very early admissions and level of co-operation. Mr Miah’s early admissions and expression of remorse also mean that the FCA are minded to revoke Mr Miah’s ban from performing any regulated activity after five years upon his application.

FCA MIFID II conference materials

On 30 October 2015, the FCA made available summary materials of its MiFID II wholesale firms conference held on 19 October 2015. The FCA’s stated aims of the conference were to:

- help wholesale investment firms understand the remaining steps in the legislative process in the EU and how domestic implementation will work
- explain and outline the key Level 2 provisions following the publication of ESMA’s draft Technical Standards
- describe how the FCA proposes to work with market participants during the implementation process.

8. CySEC Developments

Consultation Paper on the Regulatory Technical Standards on the European Single Electronic Format (ESEF)

On 20 October 2015, through the issuance of an announcement (in Greek), CySEC draws the attention of Issuers, whose securities are admitted to trading on the Cyprus Stock Exchange (CSE) or another regulated market as well as all parties involved, to ESMA's Consultation Paper on the RTS on the ESEF with reference number ESMA/2015/1463.

The said paper contains ESMA's recommendations in relation to the requirements set out in the amended Transparency Directive 2013/50/EC whereby ESMA is required to develop and submit the draft RTS for the development of the ESEF to the European Commission (EC) by the end of 2016.

The amended Transparency Directive requires Issuers whose securities are admitted to trading on a regulated market, as from 1 January 2020, to prepare their Annual Financial Report (AFR) on the ESEF. The said directive aims to ease the submission of AFR from the said Issuers as well as to benefit investors and regulators through a better accessibility, analysis and comparability of the said information.

The abovementioned consultation paper includes an assessment of current electronic reporting; an analysis of the policy objectives included in the Transparency Directive and explores ways forward with regards to the establishment of an ESEF by taking into account technical developments in financial markets and telecommunication technologies.

ESMA will consider all comments received by 24 December 2015. All contributions should be submitted online at www.esma.europa.eu under the heading 'Your input - Consultations'.

Complaints handling and Financial Ombudsman

On 22 October 2015, through the issuance of an announcement, CySEC reminds the public and all stakeholders on the way complaints against CIFs are handled. More precisely, CySEC encourages investors, who are appealing for compensation due to their considerations of unfair treatment from CIFs, to consider submitting their complaints to the Financial Ombudsman of the Republic of Cyprus whose contact details are published in the said announcement.

Finally, CySEC points out that it has no restitution powers and thus complaints submitted for its attention will only be considered under its supervisory mandate.

Fast track examination scheme for all interest parties who have submitted application for CySEC authorisation

On 2 November 2015, through the issuance of an announcement, CySEC informs all interested parties who have submitted application for authorisation and the examination is still pending, of the new 'fast track' examination scheme (the "Scheme") aiming to comfort the relevant entities' willingness to get authorised.

The Scheme applies:

A. To all entities that have applied for authorisation pursuant to:

1. Section 21 of the Investment Services and Activities and Regulated Markets Law of 2007;
2. Section 10 of the Administrative Service Providers Law of 2012 (the 'ASP' Law);
3. Sections 8 and 111 of the Undertakings for Collective Investments Law of 2012;
4. Section 7 of the Alternative Investment Fund Managers Law of 2013;
5. Sections 12 and 115 of the Alternative Investment Funds Law of 2014 (AIF Law).

B. To current International Collective Investment Schemes (ICIS) that have applied to convert into AIFs with Limited Number of Persons pursuant to Section 120 of the AIF Law.

In order to initiate the Scheme Procedure, CySEC, inter alia, notes the following:

- Additional fees shall apply depending on the applicant's type of authorisation since these applications will be examined during non-working hours. The 'fast-track' examination fees are listed in Annex I of the said announcement
- Interested entities may submit their interest directly to Mrs Christoula Ignatiou at cignatiou@cysec.com.gov.cy stating their application name and type of authorisation as well as their willingness to participate in the Scheme.
- Indicative timeframes of the Actions to be taken by both the Commission and the interested entity together with the deadlines of the said actions is provided in Annex II of the said announcement.
- In the event where an application does not include all the necessary information as per the provisions of the relevant Law and CySEC directives, the examination of the application shall not commence and the applicable fees as well as the relevant 'fast track fee' shall be returned to the interested entity.

Consultation Paper CP (2015-09) regarding proposed amendments to the Transparency Requirements (Securities Admitted to Trading on Regulated Market) Laws and to the Public Offer and Prospectus Laws

On 3 November 2015, CySEC published the Consultation Paper CP (2015-09) (in Greek) in order to invite all market participants to submit comments and/or suggestions regarding the proposed modifications to the Transparency Requirements (Securities Admitted to Trading on Regulated Market) Laws of 2007 to 2014 (L.190(I)/2007) (in Greek) and to the Public and Prospectus Laws of 2005 to 2015 (L.114(I)/2005) (in Greek). The commission has proceeded with the said amendments for the purpose of harmonisation with the Directive 2013/50/EU that amends Directive 2004/109/EC for transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, Directive 2003/71/EC regarding prospectus to be published when securities are offered or admitted to trading and Directive 2007/14/EC which lays down detailed rules for implementing certain provisions of Directive 2004/109/EC.

Furthermore, CySEC has prepared an 'Assessment Paper' that is included in the said Consultation Paper

and which shall be used for the submission of comments regarding the continuance or the suspension of the Issuer's obligation on the publication of Indicative Result.

The Commission drew the attention of stakeholders on a set of major amendments introduced in the abovementioned legislation due to the harmonisation with Directive 2013/50/EU and which, inter alia, include the following:

- The definition of 'issuer' includes the issuer of unlisted securities represented by depository receipts admitted to trading on a regulated market.
- Issuers' obligation to publish Interim Management Statement during each half of a financial year is repealed. The provision covering the case of an Issuer's discharge from the requirement to publish an Interim Management Statement when the Issuer in question is publishing Quarterly Financial Reports is also repealed.
- The requirement for the issuer to publish the issuance of a new debt (loan) is repealed.
- The requirement for publication of a half-yearly Financial Report is now extended to three (3) months (instead of two (2) months) after the end of the first half of the financial year.
- The Annual Financial Report and the half-yearly Financial Report must be available to the public for ten (10) years (instead of five (5) years)

The consultation closed on 12 November 2015.

Circular C092 - National Risk Assessment of Anti Money Laundering and Counter Terrorist Financing Measures

On 4 November 2015, through the issuance of Circular C092, CySEC informed all regulated entities about its decision to conduct a National Risk Assessment ('NRA') aiming to the identification, the assessment and the understanding of the money laundering, and terrorist financing risks at a national level which is crucial for the implementation and the development of a stronger anti money laundering regime. The said decision was taken in accordance with the international standards set by the Financial Action Task Force ('FATF') and the relevant European directives on the said matters. The methodology followed was based on the respective methodology of the World Bank.

Cypriot regulated entities were requested to complete a specific form (questionnaire), depending on their type of authorisation, and to submit it to the electronic address aml@cysec.gov.cy, no later than the 18 November 2015. General comments on how the regulated entities were requested to complete the said forms may be found in the abovementioned Circular.

The aftermath of the said assessment shall form part of a report including CySEC's recommendations, which shall be submitted to the Cyprus Government, the Cypriot regulatory authorities and the private sector for implementation.

Directive regarding the Authorisation and Operating Conditions of CIFs

On 13 November 2015, CySEC announced the amendment of the Directive DI144-2007-01(A) of 2014 (in Greek) regarding the Authorisation and Operating Conditions of CIFs with the amending Directive R.A.D 375/2015. The said amendment concerns the replacement of subparagraph (6) of Paragraph 13 of the Directive DI144-2007-01(A) with the following new subparagraph: "(6) A CIF is required to provide to the Commission, in electronic form, information regarding the complaints it receives and how these are handled." CySEC also proceeded with the issuance of DI144-2007-01(B) for the Authorisation and Operating Conditions of CIFs which includes the said amendment and replaces Directive DI144-2007-01(A).

Announcement by the Ministry of Finance in relation to the European Commission consultation papers in relation to financial transactions, covered bonds, EuVECA and EuSEF

On 19 November 2015, through the issuance of an announcement, CySEC informed investors and all interested parties regarding an announcement (in Greek) issued by the Ministry of Finance in relation to the European Commission Consultation Papers which are related to the revision of the regulatory framework on financial transactions, covered bonds, and the revision of Regulations on European Venture Capital Funds (EuVECA) and European Social Entrepreneurship Funds (EuSEF).

Circular C095 regarding Consultation Paper on the AML/CFT Risk Factors Guidelines – Joint Committee of the three European Supervisory Authorities (EBA, EIOPA and ESMA – 'ESAs')

On 20 November 2015, through the issuance of Circular C095, CySEC informed all Regulated Entities that the EU Directive 2015/849 ('4th EU AML Directive') recognises that the risks of money laundering and terrorist financing may differ based on several factors, and thus their identification should be made on a risk-based approach. In this respect, the Joint Committee of the ESAs, through the issuance of the Consultation Paper on the Risk-Factors Guidelines, promotes a common understanding of the risk-based approach to AML/CFT and set out how it should be applied by credit and financial institutions and competent authorities across the EU.

CySEC invites all Regulated Entities to respond to the abovementioned public consultation which, inter alia, aims to provide credit and financial institutions with the tools they need to make informed, risk-based and proportionate decisions on the effective management of individual business relationships and occasional transactions. The said consultation will be open for comments until 22 January 2016, the latest.

Directive CSE 01 of 2015 regarding the delisting of securities from the Cyprus Stock Exchange following an application by the issuer

On 20 November 2015, CySEC issued Directive CSE 01 (in Greek) on "The delisting of securities from the Cyprus Stock Exchange following an application by the issuer". The said Directive lays down the conditions and provides the applicable procedure for the delisting of securities from the CSE, following the submission of the

relevant application from the Issuer. This Directive applies to an Issuer whose securities are admitted to trading on a CSE's regulated market for shares for three (3) consecutive years.

Circular C096 regarding the freedom to provide investment and ancillary services and/or perform investment activities in a third country.

On 23 November 2015, through the issuance of Circular C096, and following the issuance of Circular CI144-2013-22A, CySEC reminds all CIFs to comply with the provisions of Section 79 of the Law 144(I)/2007-2014, when they intend to provide investment and ancillary services and/or perform investment activities in the territories of third countries.

Moreover, CySEC stresses that CIFs may provide/perform investment services/activities in the territories of third countries only when they have obtained the relevant authorisation from both the Commission and the respective competent authorities of the third countries, where applicable.

Finally, CySEC requests CIFs which are included in the IOSCO's investors alert portal to communicate immediately with the competent authorities that have issued alerts/warnings against them and to take the necessary steps to be removed from it, as well as to inform CySEC of their actions/results at electronic address supervison@cysec.gov.cy, no later than the 23 December 2015. CySEC points out that it reserves the right to make an investigation and where appropriate, take supervisory measures against such CIFs.

Circular C097 regarding the contribution of CIFs to the Single Resolution Fund and National Resolution Fund

On 23 November 2015, through the issuance of Circular C097, CySEC informs CIFs that Cyprus is in the final stages of transposing BBRD into national Law whereby CySEC will be the Competent Authority and the Central Bank of Cyprus will be the Resolution Authority for CIFs.

The BBRD is the EU framework (European Directive 2014/59/EU) for the recovery and resolution of credit institutions and investment firms. The said framework provides authorities with the fundamentals in order to minimise the impact of an institution's failure on the economy and financial system. In general, investment firms, which are required to hold initial capital of at least €730.000, fall within the scope of BRRD and are required to either contribute to the National Resolution Fund (the 'NRF') or the Single Resolution Fund (the 'SRF'). Further information on the amount of contributions is provided in the Commission Delegated Regulation (EU) 2015/63. CySEC also provides further information on the BBRD, through the issuance of the Practical Guide to the EU Bank Recovery and Resolution Directive.

Finally, CySEC states that further details regarding the timing of the payment of the contributions to the SRF and the NRF will be announced at a later stage.

Imposition of an administrative fine/reprimand and judicial proceedings against Directors of a CIF

On 24 November 2015, through the issuance of an announcement, CySEC informs the public about its decision

to impose fines to the Executive Directors of Pulp International Business Ltd for their failure to periodically review the effectiveness of the policies, arrangements and procedures established by the Company for its compliance with the obligations under the Law 144(I)/2007 and the Directive DI144-2007-01.

More precisely, CySEC decided to impose to each of the Executive Directors an administrative fine of €150.000 and prohibit both of them from exercising a professional activity in the financial sector for a period of five (5) years. In addition, CySEC decided to reprimand the two Non-Executive Directors of Pulp International Business Ltd.

Finally, CySEC has decided to refer the case to the Attorney General to examine whether any criminal liabilities arise from the above. This is the first time CySEC takes such action against shareholders and directors of a CIF.

Tied Agents Public Register List

On 25 November 2015, CySEC published an updated version of the Tied Agents Public Register as per the relevant requirement under Section 40(6) of the Law 144(I)/2007. The said list includes the Agent's Name/ Company' Name and it's registration date, the IF/Credit Institution for which the Tied Agent is appointed for as well as the services that the Tied Agent is allowed to offer on specific financial instruments.

CySEC imposes administrative fines and reaches to settlement with certain CIFs

On 27 November 2015, CySEC published its decisions to impose administrative fines, which total the amount of €996,000, to four (4) CIFs for their non-compliance with the following:

- the Investment Services and Activities and Regulated Markets Law of 2007, as amended from time to time (L.144(I)/2007)
- the Prevention and Suppression of Money Laundering and Terrorist Financing Law of 2007, as amended from time to time (L.188(I)/2007)
- the Directive DI144-2007-01 of 2012 of the Securities and Exchange Commission for the Authorisation and Operating Conditions of CIFs
- the Directive DI144-2007-02 of 2012 of the Securities and Exchange Commission for the professional competence of Investment Firms and the natural persons employed by them
- the Directive DI144-2007-08 of 2012 of the Securities and Exchange Commission for the Prevention of Money Laundering and Terrorist Financing.

In addition, CySEC published its decision of a settlement with a CIF, for the amount of €335,000, as there was reasonable suspicion of committing violations of the relevant legislation.

Warning regarding individuals impersonating CySEC officers

On 27 November 2015, through the issuance of an announcement, CySEC warns the public about several types of financial scam messages and/or letters purporting to be sent by the CySEC itself.

More precisely, unknown individuals impersonating CySEC officers working for the International Affairs

Department (international.affairs@cysec.info) are trying to lure unsuspicious investors for the transferring of funds to bank accounts they have designated.

CySEC clarifies that it is not connected in any way with the abovementioned incident and urges the public to remain vigilant over such cases and in case they receive any similar communication in the future, to confirm the authenticity of the communication by contacting info@cysec.gov.cy before taking any action.

Amending Directive DI144-2007-16(A) in relation to Financial Conglomerates

On 30 November 2015, CySEC announced the amendment of Directive DI144-2007-16 (in Greek) in relation to the "Supplementary supervision of Investment Firms, UCITS Management Companies or Alternative Investment Fund Managers in a Financial Conglomerate", or otherwise call the "Financial Conglomerate Directive", with the amending Directive DI144-2007-16(A) (in Greek) on Financial Conglomerates. Further to this, CySEC also published the unofficial consolidation of the said directives, which shall now be cited as Directive DI144-2007-16 & 16(A).

The most major and relevant changes in the new Directive are the following:

- Paragraph 2 of Chapter I - Definitions of "control", "subsidiary undertaking" and "parent undertaking" are amended as follows:
    - «control» means the relationship between a parent undertaking and a subsidiary, in all the cases referred to in section 148 of the Companies Law, or a similar relationship between any natural or legal person and an undertaking;
    - «subsidiary undertaking» means a subsidiary undertaking within the meaning of section 148 of the Companies Law or any other undertaking over which, in the opinion of the Commission, a parent undertaking effectively exercises a dominant influence or all subsidiary undertakings of such subsidiary undertakings;
    - "«parent undertaking» means a parent undertaking within the meaning of section 148 of the Companies Law or any undertaking which, in the opinion of the Commission, effectively exercises a dominant influence over another undertaking;"
- Paragraph 21(1) of Chapter II 21(1) is amended as follows "(b) Where a competent authority disagrees with the decision taken by another relevant competent authority under point (a) of this sub-paragraph, Article 19 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010 respectively shall apply."

Circular C098 regarding ESMA Guidelines on Alternative Performance Measures

On 1 December 2015, through the issuance of Circular C098, CySEC informs Issuers who are required to publish

regulated information as per the Transparency Requirements Law (L.190(I)/2007) and Persons responsible for the prospectus under the Public Offer and Prospectus Law (L.114(I)/2005) (in Greek) about the Commission's decision to adopt ESMA's Guidelines on Alternative Performance Measures (ESMA/2015/1415) which shall enter into force on 3 July 2016.

Circular C100 regarding CIF Handling of Clients' Complaints

On 7 December 2015, through the issuance of Circular C100, CySEC informed all CIFs about certain obligations and requirements pertaining to the Clients' complaints handling procedures.

The aforementioned Circular, inter alia, specifies the following:

- CIFs shall fully comply with:

  (a) the implementation of effective and transparent procedures for the complaints/grievances received from Clients;
  (b) the keeping of records of each complaint/grievance and the measures taken for the complaint's resolution.

- CIFs shall confirm, within five days of the submission of a complaint, the receiving of the complaint to the complainant.

- Following from the point above, CIFs are required to investigate the complaint and reply, within two months, to the complainant about the final outcome/decision. It is provided that, during the investigation of the complaint, the CIF informs the complainant of the handling process of his/hers complaint.

- In the event that the CIF is unable to respond within two months, it informs the complainant of the reasons for the delay and indicates the period of time within it is possible to complete the investigation. This period of time cannot exceed three months from the submission of the complaint.

- CIFs are, when receiving a Client complaint/grievance, required to file the said complaint/grievance into an internal registry with a unique reference number and fill in a specified, by CySEC, record accordingly. The record includes information regarding the complaints they receive and how these are being handled.

- The unique reference number shall be communicated to the complainant and the CIF informs the complainant that he should use the said reference number in all future contact with the CIF, the Financial Ombudsman and/or CySEC regarding the specific complaint.

- The above-mentioned record shall be submitted in electronic form, on a monthly basis, to CySEC, within five days after the reporting month. In the event where the CIF did not receive any complaint within the reporting month and/or an update of a previous complaint already submitted to CySEC, it is not required to submit the relevant record for the respective month.

Finally, the reporting reference date for submitting information to CySEC is the 31st of January 2016. In this respect, CIFs must submit their record for January 2016, no later than 5 of February, 2016.

Acronyms & Definitions used

AFR	Annual Financial Report
AIF	Alternative Investment Fund under Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers
ASP	Administrative Service Providers Law of 2012
CDS	Credit Default Swap
Commission	European Commission
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
ESEF	European Single Electronic Format
ESMA	European Securities and Markets Authority
ETD	Exchange-Traded Derivative
EU	European Union
EuVECA	European Venture Capital Funds
EuSEF	European Social Entrepreneurship Funds
FATF	Financial Action Task Force
FCA	UK Financial Conduct Authority
FTT	Financial Transaction Tax
FX	Foreign Exchange
ICIS	International Collective Investment Schemes
IRS	Interest Rate Swap
ITS	Implementing Technical Standards
MAD	Directive no.2014/57/EU of the European Parliament and of the Council on criminal sanctions for market abuse
MAR	Regulation no. 596/2014 of the European Parliament and of the Council on insider dealing and market manipulation (market abuse)
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
NRA	National Risk Assessment
NRF	National Resolution Fund

OECD	Organisation for Economic Co-operation and Development
Official Journal	The Official Journal of the European Union
OTC	Over-the-Counter
Q&As	Questions and Answers
RTS	Regulatory Technical Standards
SFT	Securities Financing Transaction
SRF	Single Resolution Fund
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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