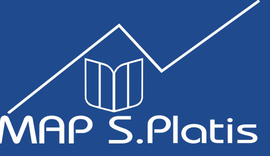

Issue 013 / December 2016

REGULATORY RADAR

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

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60 Second Summary

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

- **MiFID II**
  - MIFID II will apply from 3 January 2018. National transposition should be effected by 3 July 2017. Implementing texts, Questions and answers and guidance are still being developed and drafted
  - The new Market Abuse regime came into force across the EU on 3 July 2016

- **EMIR**
  - The first Interest Rate Swaps RTS was published in the Official Journal and the clearing obligation takes effect from June 2016 on a staggered basis depending on counterparty classification
  - The Credit default swap RTS was published in the Official Journal and the clearing obligation takes effect from February 2017 on a staggered basis depending on counterparty classification
  - The second Interest Rate Swaps RTS was published in the Official Journal and the clearing obligation takes effect from February 2017 on a staggered basis depending on counterparty classification
  - NDF mandatory clearing abandoned for now; clearing for certain other Interest Rate Swaps in EEA currencies is in ESMA review process
  - ESMA proposes postponing application of clearing obligation for certain financial counterparties with a limited volume of activity
  - Mandatory margin requirements for non-cleared OTC derivatives introduced on a staggered basis: variation margin in early 2017 for large institutions and 1 March 2017 for all other counterparties; initial margin from early 2017 to 1 September 2020; variation margin requirements for physically settled FX forwards (as newly defined in MIFID II) will apply from 3 January 2018

- **Other**
  - Securities Financing Transactions Regulation in force from 12 January 2016: the Regulation introduces a reporting regime for securities financing transactions; disclosure obligations in EU fund documentation and disclosures/risk warning and consents for all financial collateral arrangements came into force on 12 July 2016
  - The PRIIPS Regulation comes into force on 31 December 2016. On 14 September 2016, the European Parliament voted to reject the Commission's proposed PRIIPS delegated regulation. On 9 November 2016, the Commission announced that PRIIPS would be delayed till 1 January 2018. A new draft level two text is expected by 21 December 2016.

2. Anti-Money Laundering Legislation

- Fourth Money Laundering Directive: reminder that the transposition date into national law is 1 January 2017
- Financial Action Task Force focusses on beneficial ownership

3. Regulatory Developments in the European FX Industry

- The delineation of MiFID FX financial instruments vs spot FX contracts is resolved in MiFID II text
- ESMA issues further guidance, by way of updated Q&A, on to the marketing and sale of financial contracts for difference (CFDs) and other speculative products (such as binary options and rolling spot forex) to retail clients and states that it continues work on this topic

4. EU Financial Transaction Tax

- Slovakian Presidency states that there is a “certain degree of progress”

5. Taxation

- No progress

6. Fund Regulation

- Money Markets Funds – momentum to reach an agreement before the end of the year
- UCITS 5 in force from 18 March 2016; Level 2 on depositaries will come in force 13 October 2016; the UCITS remuneration guidelines will apply from 1 January 2017

7. UK – Developments of Interest to Investment Firms

- FCA proposes stricter rules for contract for difference products
- FCA publishes interim findings of its asset management market study
- FCA consults on its future mission
- FCA fines a firm for outsourcing failures
- FCA issues its third MIFID II consultation

8. CySEC Developments

- New Circular on MiFID II Guidelines on Cross Selling Practices
- New Directive for the Depositary of AIFs and AIFLNP
- Change in the treatment of the Investors Compensation Fund Contribution
- Consultation on merchant accounts with payment service providers for the clearing/settlement of payment transactions
- Consultation on promoting CIF’s services/products and soliciting business
- Updates in AML Directive formally permit the performance of electronic verification of a client’s identity subject to conducting one or more of the prescribed additional checks
- Publication of the new Market Abuse Law
- New Directive on the language of a Prospectus
- Consultation on obligations of CIFs concerning the safeguarding of clients’ funds
- New procedures for the notification of changes of ASPs
- New policy on the authorisation process for applicant Firms
- CySEC proposes amendments in the AIF Law and the creation of ‘Mini Managers’ regime
- CySEC clarifies its positions in relation to trading benefits, leverage and withdrawal of funds in light of ESMA’s Q&A on CFDs and other speculative products

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.

Originally, national transposition was required by 3 July 2016 and the new rules were to take effect from 3 January 2017.

However, on 10 February 2016, the EU Commission published a proposal to extend the application date of MiFID 2 by one year to 3 January 2018. The proposals set out an extension of the entire MIFID II and MIFIR package for one year to **3 January 2018** due to technical implementation challenges faced by ESMA and the national competent authorities and for the national transposition date to be moved by one year to **3 July 2017**. The final legal texts in relation to the delay of MIFID II, a Directive amending MiFID 2 and a Regulation amending MiFIR, were published in the Official Journal on 30 June 2016 and came into force on 1 July 2016.

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. 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).

The Commission's **Delegated Acts** referred to above (which were due by the end of June 2015) have now been adopted by the Commission as follows:

- 7 April 2016 – Commission Delegated Directive on safeguarding of client assets and funds product governance and inducements
- 25 April 2016 – Commission Delegated Regulation on organisational requirements and operating conditions for investment firms
- 18 May 2016 - Commission Delegated Regulation on the ratio of an executed orders to transactions in order to prevent disorderly trading conditions with Annex.

The status of the various Regulatory Technical Standards (RTS) and Implementing Technical Standards (ITS) is set out in this updated table (this is the latest version dated as at 6 December 2016).

Level 3 measures

ESMA Questions and Answers on MIFID II and MIFIR market structure and transparency topics

On 18 November 2016, ESMA has published two Questions and Answers (Q&A) documents regarding implementation issues relating to market structures and transparency topics under MiFID II and MiFIR:

- a new Q&A document on market structures which provides clarifications on the two following topics:
  - > data disaggregation; and,
  - > the mandatory tick size regime.

- A new Q&A on transparency with two new questions which provide details regarding:
  - > article 4(7) of MiFIR, review of waivers granted in accordance with MiFID I (grandfathering waivers granted under MIFID I i.e. before 3 January 2018); and,
  - > the procedure for granting a waiver from pre-trade transparency obligations for illiquid non-equity financial instruments.

ESMA Questions and Answers on MIFID II and MIFIR investor protection topics

On 10 October 2016, ESMA published its Questions and Answers on MIFID II and MIFIR investor protection topics. This Q&A provides clarifications on the following topics:

- Best execution
- Recording telephone conversations and electronic communications
- Record keeping
- Investment advice on an independent basis
- Underwriting and placement of a financial instrument
- Inducements (research)

ESMA will continue to develop its Q&A on investor protection topics under MiFID II in the coming months, both adding questions and answers to the topics mentioned above and introducing new sections for other MiFID II investor protection areas not yet addressed in this Q&A.

Guidelines on transaction reporting, reference data, order keeping & clock synchronisation

On 10 October 2016, ESMA issued final Guidelines regarding the implementation of the transaction reporting regime under MiFID II and MiFIR, along with its Final Report which sets out the feedback ESMA received to its consultation on these topics.

The Guidelines provide further detail on how to implement the transaction reporting, order record keeping and clock synchronisation requirements. As the regulatory technical standard (RTS) on the reporting of transactions to competent authorities is still under the scrutiny of the European Parliament and Council, this publication is without prejudice to their possible objection to that RTS.

The purpose of the Guidelines is to provide guidance to investment firms, trading venues and approved reporting mechanisms (ARMs) in order for them to prepare for compliance with their reporting and order record keeping obligations well in advance of their entry-into-force in 2018. The publication of these Guidelines

provides firms with sufficient lead time to comply with their future record keeping and reporting obligations. The Guidelines are designed to ensure consistency in the application of these requirements across EU Member States. In particular, they provide examples of transaction reports and of the order data records. Each example is accompanied by samples of xml-messages to be used to represent the expected reportable values.

ESMA consultation on product governance guidelines

On 5 October 2016, ESMA published its Consultation Paper on its draft guidelines on MIFID II product governance requirements. The proposed guidelines address issues specific to manufacturers and distributors as well as issues common to both.

Manufacturers

The proposed guidelines for manufacturers address the following main topics:

- Identification of the potential target market by the manufacturer: categories to be considered;
- Identification of the potential target market: differentiation on the basis of the nature of the product manufactured; and
- Articulation between the distribution strategy of the manufacturer and its definition of the target market.

Distributors

The proposed guidelines for distributors address the following main topics:

- Identification of the target market by the distributor: categories to be considered and differentiation on the basis of the nature of the product distributed;
- Identification and assessment of the target market by the distributor: interaction with the provision of different investment services;
- Regular review by the manufacturer and distributor to respectively assess whether products and services are reaching the target market;
- Distribution of products manufactured by entities not subject to the MiFID II product governance requirements; and
- Application of product governance requirements to the distribution of financial instruments manufactured or issued before the entry into application of MIFID II.

Transversal issues applicable to both manufacturer and distributor

These address the following issues:

- Identification of the negative target market by the manufacturer and distributor – clients for whom the investment products they manufacture and/or distribute are not compatible; and
- Application of the target market requirements to investment firms dealing in wholesale markets (i.e. with professional clients and eligible counterparties).

The consultation closes on 5 January 2017. ESMA will consider the feedback it receives to the consultation in Q1 2017 and expects to publish a final report in Q1/Q2 2017.

ESMA Q&A on implementation of the double volume cap

On 3 October 2016, ESMA issued a Question and Answers (Q&A) document regarding the implementation of the double volume cap under MiFID II/ MiFIR. MiFID II introduces a so-called "double" volume cap mechanism which limits the use of reference price waivers and negotiated price waivers under the new transparency regime of MIFID II.

The purpose of the Q&A is to promote common supervisory approaches and practices in the application of MiFID II/ MiFIR in relation to the double volume cap provisions. It provides responses to questions posed by the general public, market participants and competent authorities in relation to the practical application of MiFID II/MiFIR. This Q&A provides details regarding:

- clarifications of what data has to be taken into consideration in respect of volumes traded under MiFID I waivers in 2017;
- the application of the double volume cap regarding MTF only shares, depositary receipts, certificates, and newly issues instruments; and
- Mid-month reports.

ESMA consults on trading obligation for derivatives

On 20 September 2016, ESMA published a discussion paper on the implementation of the trading obligation for derivatives under Article 28 and 32 of MIFIR. The trading obligation under MiFIR is closely linked to the clearing obligation under the European Market Infrastructure Regulation (EMIR). Once a class of derivatives needs to be centrally cleared under EMIR, ESMA must determine whether these derivatives (or a subset of them) should be traded on-venue, meaning on a regulated market (RM), multilateral trading facility (MTF), organised trading facility (OTF) or an equivalent third-country trading venue. MiFIR foresees two tests to determine the trading obligation:

- The venue test: a class of derivatives must be admitted to trading or traded on at least one admissible trading venue; and
- The liquidity test: whether a derivative is 'sufficiently liquid' and there is sufficient third-party buying and selling interest.

The discussion paper includes options on how to determine the trading obligation by applying both tests, including an initial liquidity assessment on the basis of trading data for the six month to end-2015. The consultation is open for comments until 21 November 2016. ESMA will use the feedback received to continue working on implementing MiFIR's trading obligation and, if deemed appropriate, draft technical standards specifying which derivatives should be subject to the trading obligation.

Market Guidelines on Cross-Selling Practices

On 11 July 2016, ESMA published its Guidelines on Cross-Selling Practices under MiFID II to ensure investors are treated fairly when an investment firm offers two or more financial products or services as part of a package.

Competent authorities are directed to consider the following principles in their supervision of relevant firms:

- improving disclosures when different products are cross-sold with one another;
- requiring firms to provide investors with all relevant information in a timely and clear manner;
- addressing conflicts of interest arising from remuneration models; and
- improving client understanding on whether purchasing the individual products offered in a package is possible.

The guidelines apply from 3 January 2018 to investment firms, credit institutions providing investment credit services in accordance with MiFID II, Undertakings for Collective Investment in Transferable Securities management companies and Alternative Investment Fund Managers providing investment services providing investment services and engaged in cross-selling practices.

Knowledge and competence

On 22 March 2016, ESMA published the final guidelines specifying criteria for the assessment of knowledge and competence of investment firms' personnel. Article 25(1) of MiFID II states that Member States shall require investment firms to ensure and demonstrate to competent authorities on request that natural persons giving investment advice or providing information about financial instruments, investment services or ancillary services to clients on behalf of the investment firm possess the necessary knowledge and competence to fulfil their obligations under Article 24 and Article 25 of MIFID II.

The final guidelines cover: criteria for knowledge and competence for staff giving information about investment products, investment services or ancillary services; criteria for knowledge and competence for staff giving investment advice and organisational requirements for assessment, maintenance and updating of knowledge and competence. The guidelines will come into effect on 3 January 2018.

Competent authorities must notify ESMA whether they intend to comply or not within two months of the date of publication by ESMA of the guidelines. Firms to which these guidelines apply are not required to report to ESMA whether they comply with these guidelines.

Complex debt instruments and structured deposits

On 4 February 2016, ESMA published its final guidelines on complex debt instruments and structured deposits. These guidelines cover the following products:

(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.

The guidelines relate to the assessment of these products for which execution-only services cannot be provided.

II. 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 came into force across the EU on 3 July 2016.

ESMA's Questions and Answers document on the Market Abuse Regulation dated 26 October 2016 is the current Question and Answers document.

III. 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 has now been settled by MiFID II Level 2 measures. See Art 7 of the 25 April 2016 delegated act.

EMIR implementation timetable

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.

- The first IRS RTS was published on 1 December 2015 in the Official Journal; for these specific OTC derivatives:

  > **21 June 2016**, clearing obligation takes effect for Category 1 counterparties
  > **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

- The CDS RTS was published on 19 April 2016 in the Official Journal; for these specific OTC derivatives:
  - > **9 February 2017**, clearing obligation takes effect for Category 1 counterparties
  - > **9 August 2017**, clearing obligation takes effect for Category 2 counterparties
  - > **9 February 2018**, clearing obligation takes effect for Category 3 counterparties
  - > **9 May 2019**, clearing obligation takes effect for Category 4 counterparties

- The second IRS RTS was published on 20 July 2016 in the Official Journal (with a corrigendum published on 21 July 2016); for these specific OTC derivatives:
  - > **9 February 2017**, clearing obligation takes effect for Category 1 counterparties
  - > **9 August 2017**, clearing obligation takes effect for Category 2 counterparties
  - > **9 February 2018**, clearing obligation takes effect for Category 3 counterparties
  - > **9 August 2019**, clearing obligation takes effect for Category 4 counterparties

- **January/February 2017 (estimate)**, initial and variation margin for non-cleared OTC derivatives and initial margin on a phased implementation timetable will begin.

IRS, CDS and NDF

On 1 December 2015, the first IRS 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 came 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 19 April 2016, the Regulatory technical standard (RTS) for the central clearing of certain types of Credit Default Swap (CDS) was published in the official Journal pursuant to which mandatory clearing shall 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)

The RTS follows the first RTS in a number of areas, such as the categorisation of counterparties, scope of frontloading and treatment of intragroup transactions and takes effect as set out above.

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 20 July 2016, the second IRS RTS on the clearing obligation was published in the Official Journal. The RTS covers fixed-to-float IRS and forward rate agreements denominated in Norwegian Krone (NOK), Polish Zloty (PLN) and Swedish Krona (SEK).

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.

ESMA consultation paper on the clearing obligation for financial counterparties with a limited volume of activity

On 13 July 2016, ESMA published a consultation paper proposing to change the phase-in period for central clearing of OTC derivatives applicable to financial counterparties with a limited volume of derivatives activity under EMIR. ESMA proposed to amend EMIR's Delegated Regulations on the clearing obligation to prolong, by two years, the phase-in for financial counterparties with a limited volume of derivatives activity - those ones classified in Category 3 under EMIR Delegated Regulations.

On 14 November 2016, ESMA published its final report regarding the amended application of the clearing obligation that financial counterparties with a limited volume of activity in OTC derivatives need to comply with under EMIR. ESMA's report confirms that it proposes to amend EMIR's Delegated Regulations on the clearing obligation in order to prolong, by two years, the phase-in for financial counterparties with a limited volume of derivatives activity - those ones classified in Category 3 under EMIR Delegated Regulations. ESMA is also proposing to align the three compliance dates for Category 3 firms in the Delegated Regulations regarding Interest Rate Swaps and Credit Default Swaps. The newly proposed compliance date would be 21 June 2019.

ESMA's final report was submitted to the European Commission for endorsement of the draft RTS presented in the Annex. From the date of submission, the European Commission should decide within three months whether or not to endorse the RTS.

ESMA EMIR Q&As

On 26 July 2016, ESMA published a further 19th update to its Q&A. The updated Q&A includes a new answer on derivative contracts cleared by an entity which is not a CCP within the meaning of EMIR (e.g. a clearing house).

EMIR – Risk mitigation techniques for OTC derivatives not cleared by a Central Counterparty

On 8 March 2016, the European Supervisory Authorities published the final draft Regulatory Technical Standards on the risk mitigation techniques related to the exchange of collateral to cover exposures arising from non-centrally cleared over-the-counter derivatives under Article 11(15) of EMIR.

The draft RTS contain the following provisions:

1. For OTC derivatives not cleared by a Central Counterparty, the draft RTS prescribe that counterparties have to exchange both initial and variation margins.
2. The draft RTS outline the list of eligible collateral for the exchange of margins, the criteria to ensure the collateral is sufficiently diversified and not subject to wrong-way risk, as well as the methods to determine appropriate collateral haircuts.
3. The draft RTS lay down the operational procedures related to documentation, legal assessments of the enforceability of the agreements and the timing of the collateral exchange.

On 28 July 2016, the European Commission endorsed the draft regulatory technical standards together with its Annex and an Addendum, with amendments which are explained in an accompanying explanatory letter. The European Supervisory Authorities have 6 weeks to respond to the Commission's amendments. On 9 September 2016, the 3 European Supervisory Authorities rejected some of the proposed changes. In particular, the ESAs disagree with the European Commission's proposal to remove concentration limits on initial margins for pension schemes and emphasise that these are crucial for mitigating potential risks pension funds and their counterparties might be exposed to.

On 4 October 2016, the Commission adopted the delegated regulation plus annexes. The delegated regulation is now subject to an objection period by the European Parliament and the Council after which it will be published in the Official Journal. The implementation of the rules will begin one month after the entry into force of the Delegated Regulation.

This is the summary of relevant dates (still subject to the final legislative texts):

- **January or February 2017:** Variation margining requirements for non-centrally cleared trades will apply for the largest institutions
- **1 March 2017:** Variation margining requirements for non-centrally cleared trades will apply for all other institutions that are within scope
- **January or February 2017 – 1 September 2020:** Initial margining requirements for non-centrally cleared trades will apply from January or February 2017 for the largest institutions. This will be followed by an annual phase in such that all other institutions that are within scope above a minimum threshold will be subject to initial margin from 1 September 2020.
- **Timing for physically settled FX Forward transactions**
  In the EU, there is currently no unique definition of physically settled FX forwards. This inconsistency

at EU level is expected to be solved via the Commission delegated act defining theses type of derivatives under MiFID II. ESMA takes the view that introducing a requirement to exchange variation margins for physically settled FX forwards before such a common definition is introduced at Union level would have significant distortive effects.

For this reason, the draft RTS has introduced a delayed application of the requirement to exchange variation margins for physically settled FX forwards to the earlier of either (1) the date of entry into force of this delegated act and (2) 31 December 2018.

IV. Securities Financing Transactions Regulation (SFTR)

The SFTR was published in the Official Journal on 23 December 2015 and the Regulation came into force 20 days thereafter on 12 January 2016.

Securities financing transaction is defined as stocklending 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 12 January 2016, for funds constituted after the date of entry into force for funds
- from 12 July 2017, for funds constituted before the date of entry into force

The annual report disclosure requirement comes into force 12 months after the entry into force of the Regulation so 13 January 2017.

The collateral arrangement obligation came into force on 12 July 2016.

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.

On 11 March 2016, ESMA issued a discussion paper on rules under the Securities Financing Transaction Regulation. The new rules on transparency require both financial and non-financial market participants to report details of their securities financing transactions. Details to be reported include the composition of the collateral, whether the collateral is available for reuse or has been reused, the substitution of collateral at the end of the day and the haircuts applied.

The discussion paper sets out proposals for implementing the reporting framework under the SFTR, including tables of the fields with the proposed data to be reported, and the registration requirements for those Trade Repositories which want to accept reports on security financing transactions. The consultation closed on 22 April 2016.

On 30 September 2016, ESMA published a follow-up consultation. ESMA is seeking stakeholder's views on its draft SFTR implementing measures. The key areas of the draft rules include:

- the procedure and criteria for the registration as a trade repository under the SFTR;
- the use of internationally agreed reporting standards, the reporting logic and the main aspects of the structure and content of SFT reports;
- the requirements regarding transparency of data, data collection, aggregation and comparison; and
- the access levels for different competent authorities.

ESMA has developed its proposals on reporting of SFTs building on its experience with the European Market Infrastructure Regulation (EMIR), and other EU-wide reporting regimes in order to align reporting standards to the maximum extent possible.

The consultation closed on 30 November 2016.

V. Packaged Retail and Insurance-based Investment Products (PRIIPs)

On 7 April 2016, the Joint Committee of the European Supervisory Authorities published the final draft of the regulatory technical standards on Key Information Documents (KIDs) for Packaged Retail and Insurance-based Investment Products (PRIIPs). The proposed KIDs provide retail investors with simple and comparable information on investment products in the banking, insurance and securities sectors.

The new rules address the content and presentation of the KIDs and include:

- a common mandatory 3-page template for the KID, covering the texts and layouts to be used (see Annexes I, III, V and VII of the Report);
- a summary risk indicator of seven classes for the risk and reward section of the KID;
- a methodology to assign each PRIIP to one of the seven classes contained in the summary risk indicator, and for the inclusion of additional warnings and narrative explanations for certain PRIIPs;
- details on performance scenarios and a format for their presentation, including possible performance for different time periods and at least three scenarios;
- costs presentation, including the figures that must be calculated and the format to be used for these i.e. in both cash and percentage terms;
- specific layouts and contents for the KID for products offering multiple options that cannot effectively be covered in three pages;
- rules on revision and republication of the KID, to be done at least each year; and

- rules on providing the KID sufficiently early for a retail investor to be able to take its contents into account when making an investment decision.

The new rules were submitted to the European Commission for endorsement.

On 30 June 2016, the Commission adopted the Delegated Regulation and related annexes supplementing the PRIIPS KID Regulation. On 1 September 2016, the European Parliament's Committee on Economic and Monetary Affairs unanimously voted to reject the Commission's proposed delegated regulation. On 14 September 2016, the European Parliament voted to reject the PRIIPS delegated regulation.

On 9 November 2016, the Commission announced that it had proposed to extend the date of application of PRIIPS from 1 January 2017 to 1 January 2018. The European Commission is now working closely with the three European Supervisory Authorities to resubmit the revised Regulatory Technical Standards to the Commission by 21 December 2016.

On 29 October 2016, the Commission Delegated Regulation with regard to product intervention was published in the Official Journal.

MAP S.Platis will continue to monitor all developments.

2. Anti-Money Laundering

Money Laundering Directive 4 – transposition into national law by 1 January 2017

The formal transposition date for the fourth AMLD is 26 June 2017. In its Action Plan to strengthen the fight against terrorism financing of 2 February 2016, the Commission called on Member States to bring forward the date for effective transposition of the Directive to Q4 2016. Please refer to Issue 10 and Issue 12 of MAP S.Platis Regulatory Radar, for more details.

Money Laundering Directive 4 - European Supervisory Authorities guidelines on anti-money laundering and combating the financing of terrorism

On 16 November 2016, the Joint Committee of the three European Supervisory Authorities (ie European Banking Authority (EBA), European Securities and Markets Authority (ESMA) and European Insurance and Occupational Pensions Authority (EIOPA), collectively known as the three European Supervisory Authorities) published its final Guidelines on the characteristics of a risk based approach to anti-money laundering and terrorist financing supervision and the steps to be taken when conducting supervision on a risk-sensitive basis. These guidelines form part of the Joint Committee's work to establish consistent, effective and risk-based supervisory practices across the European Union and contribute to a more robust European anti-money

laundering and countering the financing of terrorism (AML/CFT) regime. They are consistent with international AML/CFT standards.

Specifically, these Guidelines require Competent Authorities to identify and assess the money laundering and terrorist financing (ML/TF) risk to which their sector is exposed, and adjust the focus, intensity and frequency of supervisory actions in line with the risk-based approach. As part of an effective risk-based approach to AML/CFT supervision, Competent Authorities should have suitably qualified staff to carry out risk-based AML/CFT supervision in an informed and consistent manner.

Finally, the Guidelines make it clear that the size or systemic importance of a credit or financial institution may not, by itself, be indicative of the extent to which it is exposed to ML/TF risk and that small firms that are not systemically important can nevertheless pose a high ML/TF risk.

Financial Action Task Force (FATF) meeting Plenary meeting

A Plenary meeting of the Financial Action Task Force (FATF) was held in Paris on 21 October 2016. FAFT has issued a press release following its latest plenary meeting. The main issues dealt with at the meeting were:

- the FATF's work on terrorist financing, including:
    - approval of the guidance on criminalising terrorist financing;
    - approval of a joint report on terrorist financing in West and Central Africa, prepared by FATF, the Task Force on Money Laundering in Central Africa (GABAC) and the Inter-Governmental Action Group against Money Laundering in West Africa (GIABA);
    - further information on Islamic State of Iraq and the Levant funding;
    - revision of the FATF Interpretive Note to Recommendation 5 on criminalising terrorist financing to affirm the inclusion of oil and other key sources of funds;
    - updates to the methodology for assessing compliance with Recommendation 8 which focuses on safeguarding non-profit organisations from terrorist financing abuse; and
    - changes to the methodology for assessing how effectively countries are implementing measures to protect non-profit organisations from terrorist financing abuse;
- the FATF's work to improve transparency and access to beneficial ownership information;
- the decline of correspondent banking relationships, including the approval of guidance on correspondent banking services aimed to address the decline;
- liaison with the FinTech and RegTech communities;
- a discussion to take place amongst the heads of the FATF Financial Intelligence Units to discuss operational issues;
- discussion of the mutual evaluation reports of Switzerland and the United States;

- two public documents identifying jurisdictions that may pose a risk to the international financial system:
  > jurisdictions with strategic deficiencies in anti-money laundering and combating the financing of terrorism for which a call for action applies; and
  > jurisdictions with strategic deficiencies in anti-money laundering and combating the financing of terrorism for which they have developed an action plan with the FATF;
- an update on Brazil's progress in rectifying the deficiencies identified in its mutual evaluation reports;
- recognition of the improvements in anti-money laundering and combating the financing of terrorism in Guyana; and
- an update on the development of the FATF Training and Research Institution which opened on 20 September 2016.

Financial Action Task Force (FATF) meeting

The Financial Action Task Force (FATF) and the G20 Anti-Corruption Working Group (ACWG) held a joint Experts Meeting on Corruption in Paris on 16 October 2016 and focused on transparency and beneficial ownership given the topic's priority in both the FATF and G20 agendas and its particular interest to the international community overall.

The misuse of legal persons and arrangements focused attention on the need to improve implementation of controls against the misuse of corporate structures.

On the beneficial ownership, participants discussed measures to ensure the accuracy, quality and timely access of beneficial ownership information collected at both domestic and international levels, including national experiences of establishing central registries, and how the information is being used to enhance AML/CFT and anti-corruption efforts while balancing transparency and data protection.

Financial Action Task Force (FATF) report to G20 on beneficial ownership

The Financial Action Task Force (FATF) published its report to G20 Finance Ministers and Central Bank Governors which sets out its on-going work to improve the implementation of international standards on transparency, including on the availability and exchange of beneficial ownership information, to prevent the misuse of companies, trusts, and other corporate vehicles.

3. Regulatory Developments in the European FX Industry

Definition of FX Forward

The issue of where the boundary between an FX financial instrument (i.e. an FX Forward) and a spot FX contract has been resolved. Article 7 of the 25 April 2016 delegated act defines a spot contract for the purposes of FX as being a 2 trading days for delivery or the period generally accepted in the market for that FX spot contract as being the standard delivery period, if it is longer than two days.

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.

ESMA updated questions and answers (Q&A) on CFDs and other speculative products (such as binary options and rolling spot forex)

On 11 October 2016, following on from the questions and answers (Q&As) on the provision of CFDs and other speculative products to retail clients in April, June and July 2016 (see Issues 11 and 12 of MAP S.Platis Regulatory Radar), ESMA published a further version of its Questions and Answers relating to the provision of CFDs and other speculative products to retail investors under MIFID.

The Q&A includes 5 new questions and answers in sections 6 to 9, which address the following topics:

- the use of trading benefits when offering CFDs or other speculative products;
- the withdrawal of funds from trading accounts;
- the use of leverage when offering CFDs or other leveraged products to retail clients; and
- best execution obligations for firms offering CFDs or other speculative products to retail clients.

ESMA's view is that the complexity of CFDs and other speculative products means it may be difficult for the majority of retail investors to understand the risks involved although they are widely advertised to the retail mass market by a number of firms, often via online platforms; that there is also a considerable degree of cross-border activity across Europe in these products; many competent authorities have concerns about the protection of investors in this area. The Q&As are targeted at competent authorities. The purpose of the Q&A is to promote common supervisory approaches and practices in the application of MiFID and its implementing measures to key aspects that are relevant when CFDs and other speculative products are sold to retail clients. However, the answers are also intended to help firms by providing clarity on MiFID rules.

ESMA has reiterated that it will continue to work on this topic and aims to publish further Q&As in the coming months. ESMA will also consider the need for any further work, in the medium term, in light of MiFID II requirements.

4. EU Financial Transaction Tax (FTT)

The 10 FTT Member States (Austria, Belgium, France, Germany, Greece, Italy, Portugal, Slovakia, Slovenia, Spain; Estonia has dropped out and referred to as the FTT10) still have fundamental disagreements on the scope of the proposed Financial Transaction Tax.

To show progress as the end of the presidency approaches, Slovakia drafted a state of play note for the Finance Ministers meeting on 8 November 2016. The document states that there has been "a certain degree of progress in the FTT negotiations".

5. Taxation

There was no further public information since September 2016 on FATCA or CRS. Please refer to Issue 12 of MAP S.Platis Regulatory Radar for the latest information on FATCA.

6. Fund Regulation

Money Market Funds (MMFs)

On 14 July 2016, the first political trialogue discussions between the Commission, the Council and the European Parliament took place. Trialogues continue and there is a momentum to reach an agreement before the Slovak Presidency concludes at the end of the year. The Council of the EU published the final compromise text of the proposed Money Market Funds Regulation resulting from the trialogue discussions held on 14 November 2016.

UCITS

UCITS 5 came into force on 18 March 2016. On 24 March 2016, the Commission Delegated Regulation on the obligations of depositories (the Level 2 text) was published in the Official Journal.

UCITS 5 contains amendments to the UCITS Directive to address perceived weaknesses in the UCITS regime in particular with regard to the duties and liability of depositories. This Regulation sets out detailed provisions about the obligations and rights of depositories. The text principally sets out the level 2 depositary requirements and broadly tracks the equivalent depositary provisions in AIFMD. This Regulation was applicable from 13 October 2016.

On 14 October 2016, ESMA published Guidelines on sound remuneration policies under the UCITS Directive. The UCITS Remuneration Guidelines provide clarity on the requirements under the UCITS Directive for management companies when establishing and applying a remuneration policy for key staff. The purpose of the Guidelines is to ensure a convergent application of these provisions and provide guidance on the governance of remuneration, requirements on risk alignment, and disclosure. National Competent Authorities (NCAs) must notify ESMA whether they comply or intend to comply with the Guidelines, with reasons for non-

compliance, within two months. ESMA will publish a compliance table based on the responses from the NCAs. The Guidelines will apply from 1 January 2017 and have been translated into the 23 official languages of the European Union.

On 12 October 2016, ESMA published an updated Questions and Answers document for UCITS. The Q&A included four new questions and answers on: regulated markets in Member States under the UCITS Directive, translation requirements in relation to the remuneration disclosure, reinvestment of cash collateral, and the commencement of periodical reporting pursuant to Article 13 of the Securities Financing Transactions Regulation (SFTR).

On 21 November 2016, ESMA published a further Q&A to include two new questions and answers on how investment limits should be applied where a UCITS wants to invest in an umbrella fund. The Q&A dated 21 November 2016 is a Consolidated text and contains the questions and answers of 12 October 2016.

AIFMD remuneration guidelines

On 14 October 2016, ESMA published its Guidelines on sound remuneration policies under the AIFMD. The AIFMD remuneration guidelines amend the position under the current guidelines regarding the application of the remuneration rules in a group context. The purpose of the Guidelines is to ensure a convergent application of these provisions and provide guidance on the governance of remuneration, requirements on risk alignment, and disclosure. National Competent Authorities (NCAs) must notify ESMA whether they comply or intend to comply with the Guidelines, with reasons for non-compliance, within two months. ESMA will publish a compliance table based on the responses from the NCAs. The Guidelines apply from 1 January 2017 and have been translated into the 23 official languages of the European Union.

AIFMD – ESMA updated Q&As

On 6 October 2016, ESMA published an updated questions and answers document (Q&A) for AIFMD. The Q&A includes one new question and answer on the commencement of periodical reporting pursuant to Article 13 of the Securities Financing Transactions Regulation for Alternative Investment Fund managers.

On 16 November 2016, ESMA published a further Q&A to include two new questions and answers on the cross-border marketing of AIFs, clarifying issues around material changes of existing notifications, as well as two new questions and answers on the delegation of functions by an AIFM to AIFs or third parties. The latest questions are consolidated in the Q&A document dated 16 November 2016.

7. UK – Developments of Interest to Investment Firms

FCA proposes stricter rules for contract for difference products

On 6 December 2016, the FCA published a consultation paper proposing stricter rules for firms selling 'contract for difference' (CFD) products to retail customers to improve standards across the sector and ensure consumers are appropriately protected.

Contracts for differences, such as spread bets and rolling spot foreign exchange products, are complex financial instruments offered by investment firms, often through online platforms. Following an increase in the number of firms in the CFD market, the FCA has concerns that more retail customers are opening and trading CFD products that they do not adequately understand. The FCA's analysis of a representative sample of client accounts for CFD firms found that 82% of clients lost money on these products.

The FCA is therefore proposing a package of measures intended to enhance consumer protection by limiting the risks of CFD products and ensuring that customers are better informed. The new measures include:

- Introducing standardised risk warnings and mandatory disclosure of profit-loss ratios on client accounts by all providers to better illustrate the risks and historical performance of these products.
- Setting lower leverage limits for inexperienced retail clients who do not have 12 months or more experience of active trading in CFDs, with a maximum of 25:1.
- Capping leverage at a maximum level of 50:1 for all retail clients and introducing lower leverage caps across different assets according to their risks. Some levels of leverage currently offered to retail customers exceed 200:1.
- Preventing providers from using any form of trading or account opening bonuses or benefits to promote CFD products.

FCA interim findings of its asset management market study

On 18 November 2016, the FCA published the interim findings of its asset management market study, which suggests that there is weak price competition in a number of areas of the asset management industry. The FCA found that:

- there is limited price competition for actively managed funds, meaning that investors often pay high charges. On average, these costs are not justified by higher returns;
- there is stronger competition on price for passively managed funds, though the FCA did find some examples of poor value for money in this segment;
- fund objectives are not always clear, and performance is not always reported against an appropriate benchmark;

- despite a large number of firms operating in the market the asset management sector as a whole has enjoyed sustained, high profits over a number of years with significant price clustering;
- investment consultants undertake valuable due diligence for pension funds but are not effective at identifying outperforming fund managers. There are also conflicts of interest in the investment consulting business model which require further scrutiny.

FCA consultation on its future mission

On 26 October 2016, the FCA published a consultation on its future mission which will set out a framework to help it prioritise its work, ensuring it focusses our resources in the right places.

The future Mission document asks the key questions which need to be answered as a conduct regulator which include questions relating to consumer responsibility and vulnerability, the role in encouraging change and innovation in the industries it regulates, how the FCA identifies harm and then decide what action to take to address it, and the interaction between regulation and public policy. It also focuses on the tools to deliver its competition policy, firm supervision and enforcement work.

FCA fines Aviva Pension Trustees UK Limited and Aviva Wrap UK Limited £8.2m for Client Money and Assets failings

Mark Steward, Director of Enforcement and Market Oversight at the FCA said:

"Aviva outsourced the administration of client money and external reconciliations in relation to custody assets, but failed to ensure that it had adequate controls and oversight arrangements to effectively control these outsourced activities. With outsourced arrangements firms remain fully responsible for compliance with our CASS rules. Firms are reminded that regulated activities can be delegated but not abdicated.

"Other firms with similar outsourcing arrangements should take this as a warning that there is no excuse for not having robust controls and oversight systems in place to ensure their processes comply with our rules when CASS functions are outsourced.

"This is the first CASS case in relation to oversight failures of outsourcing arrangements and we will continue to take action against firms that fall short of our CASS Rules."

The CASS Rules are there to protect client assets. Aviva breached the FCA's CASS Rules and requirements that firms should have adequate management, systems and controls (Principle 3) and properly safeguard clients' assets (Principle 10) between 1 January 2013 and 2 September 2015.

MIFID II Implementation – Third FCA Consultation

On 29 September 2016, the FCA published its third consultation CP 16/29 on MIFID II implementation. This CP is split into two parts:

- Part I deals with conduct of business issues

- Part II deals with other matters covering a range of issues not covered in FCA's previous two CPs, including product governance and additional perimeter guidance

Key proposals of the consultation paper include:

- Strengthening inducement and research rules to drive better competition and ensure research is only produced and consumed where it adds value to investment decisions.
- Implementing requirements of full disclosure of costs and charges.
- Guidance on the responsibilities of providers for the fair treatment of customers.
- Extending the requirement of telephone taping to financial advisers, with the aim of providing benefits to both firms and their clients in resolving disputes in a quick and cost effective manner.

The third consultation is open until 4 January 2017, except for comments on Chapter 16 - Supervision manual, authorisation and approved persons – for which the closing date was 31 October 2016.

8. CySEC Developments

Circular C160 – MiFID II Guidelines on Cross Selling Practices

On 14 September 2016, through the issuance of Circular C160, CySEC informs Cyprus Investment Firms ("CIFs"), Management Companies when providing services pursuant to section 109(4) of Law 78(I)/2012, as in force, and Alternative Investment Fund Managers ("AIFMs") when providing services pursuant to section 5(6) of Law 56(I)/20013, as in force, about the adoption of ESMA's Guidelines on Cross Selling Practices under MiFID II which will apply from 3 January 2018.

For further information in regards to the content of the abovementioned Guidelines, please refer to Issue 12 of MAP S.Platis Regulatory Radar.

Circular C161 – Data collection exercise by the EBA

On 22 September 2016, through the issuance of Circular C161, CySEC informed CIFs, UCITS Management Companies (UCITS MCs) and AIFMs, about their option to participate to a data collection exercise launched by the European Banking Authority (the "EBA").

The scope of the said exercise is to support EBA's response to the European Commission's Call for Advice on a new prudential framework for MiFID investment firms that should be more simplistic, more risk sensitive and more proportionate than the current regime.

The above said Regulated Entities were guided to fill in and submit the relevant template(s) to CySEC, which in turn will forward the data to EBA, by 7 October 2016, the latest.

Directive DI131-2014-05 regarding the Depositary of AIFs and AIFLNPs

On 30 September 2016, Directive DI131-2014-05 (in Greek) was issued, in relation to the depositary of AIFs and AIFLNPs.

The Directive describes, inter alia, the obligations of the depositaries for Alternative Investment Funds ("AIFs) and AIFs with Limited Number of Persons ("AIFLNPs") which should correspond to the requirements set by Regulation (EU) No 231/2013.

In addition, the Directive defines the entities that can act as depositaries and the prerequisite organisational and other requirements for each category:

- CIFs under the proviso they are authorised for the ancillary service of 'safekeeping and administration of financial instruments for the account of clients, including custodianship and related services such as cash/collateral management' and it has a minimum capital of €730.000.
- Credit Institutions as long as depositary services are covered under their authorisation subject to the applicable regulatory framework.
- Administrative Service Providers provided they have been authorised by CySEC for the provision of the ancillary service of safe keeping of financial instruments on behalf of clients. In addition ASPs are required to possess a professional liability insurance equal to at least 1% of the total assets of the AIFs or the AIFLNPs under custody.

Circular C162 – Capital adequacy requirements – Change in the treatment of the Investors Compensation Fund Contribution

On 10 October 2016, through the issuance of Circular C162 (for clarifications), CySEC informs all CIFs that the treatment of the contribution to Investor Compensation Fund ("ICF") that was categorised as an "exposure public sector entities" pursuant to paragraph 13(3) of the Directive DI144-2014-15, and risk weighted accordingly, when total risk exposure amount was calculated, has now changed.

In particular, as part of the CySEC's prudential supervision to ensure that institutions hold enough capital for the continuation of a safe efficient market, the treatment of the ICF contribution has changed as of 10 October 2016 with the following:

- The ICF contribution is deducted from Common Equity Tier 1 and thus reducing the own funds by the respective amount, and
- The ICF contribution will have to be presented in Form 144-14-06.1 as a deductible amount, and
- The ICF contribution will no longer be risk weighted.

It is important to note that if the own funds and/or capital ratio of a CIF falls below the minimum allowable limits, following the application of the abovementioned treatment, the CIF will have to rectify any possible minimum capital requirements by 31 December 2016. In this respect, CySEC is expecting that the own funds and capital adequacy ratio as at 31 December 2016 which will be reported by 11 February 2017 will be above the minimum allowable limits.

Consultation Paper CP (2016-08) – Maintaining merchant accounts with payment service providers for the clearing/settlement of payment transactions

On 12 October 2016, CySEC issued Consultation Paper CP (2016-08) in order to invite all market participants to submit comments and/or suggestions on a proposed Circular in relation to CIFs that maintaining merchant accounts with payment service providers (PSPs) for the clearing/settlement of payment transactions.

The proposed Circular, further to Circular C034 on the same topic, firstly reminds CIFs that the clients' funds, as per paragraph 20(1) of Directive DI144-2007-01, as amended, must be placed into account(s), denoted as "clients' accounts" and opened with any of the following:

(a) Central bank;
(b) Credit institution;
(c) Bank authorised in a third country;
(d) Qualifying money market fund.

As a general rule, CIFs that maintain merchant accounts with PSPs, need to ensure that clients' funds are transferred to the aforementioned "clients' accounts" **immediately** after the clearing/settlement of the payment transactions.

By way of derogation from the general rule, it is possible not to transfer the clients' funds immediately to the aforementioned "clients' accounts", **only** if the relevant PSP:

i. is a payment institution regulated in the EU; and
ii. holds the clients' funds with an EU credit institution in a segregated bank account, under which it is specifically and legally binding by the EU credit institution to make use of these funds **solely** for the benefit of the CIF's clients; and
iii. has provided a written confirmation to the CIF as to the above.

Furthermore, where the CIF credits a client's trading account before the clearing of the funds that the client has deposited, in order to allow him/her to trade with immediate effect, the relevant amount must be transferred **from the CIF's own funds to a "clients' account"**. A similar approach must be followed by CIFs in cases where the PSP withholds funds as rolling reserve/fix deposit for a period of time and therefore the amounts corresponding to rolling reserves/fix deposits must be transferred from the CIF's own funds to a "clients' account".

Finally, the proposed Circular clarifies that any amounts held by the PSPs shall not be considered as clients' funds for clients' funds reconciliation purposes.

The consultation closed on 31 October 2016.

Suspension of Fast Track Examination scheme for the examination of applications for authorisation by CySEC

On 14 October 2016, through the issuance of an announcement, CySEC informs that it has decided to suspend the 'fast track' examination scheme for the applications for authorisation until the end of the year 2016. CySEC will process the applications received already but will not accept any more applications for participation in the aforementioned scheme.

From 2 January 2017, the scheme shall be launched again but with a flat fee of €25.000 for each application.

Consultation Paper CP (2016-09) – Promoting CIF's services/ products and soliciting business

On 14 October 2016, CySEC issued Consultation Paper CP (2016-09) in order to invite all market participants to submit comments and/or suggestions on a proposed Circular regarding the promotion of CIF's services / products and solicitation of business.

The proposed Circular states that Introducing Brokers, Business Introducers and Affiliates (hereinafter "the Persons") may promote the services of a CIF, the financial instruments offered and to solicit business only in relation to potential clients and in no case perform the following:

i. communicate with existing clients for providing information on services and financial instruments offered by the CIF;
ii. receive and/or hold clients funds and/or facilitate the transfer of funds to and from clients;
iii. receive and transmit orders for execution of transactions, as well as, to provide investment advice (unless they are registered as tied agents);
iv. receive power of attorneys from clients for executing transactions;

In addition, CIFs must exercise due diligence when entering into, managing and terminating any agreement with the Persons and before entering into such agreement the CIFs have to ensure that the Persons are authorised, if required by national legislation, to perform those activities within the territories of the country in which the Person is located.

On the one hand, if the Persons are located in a Member State and they are acting solely for one CIF, then the CIF must assure that the Persons are registered as Tied Agents. If they acting for more than one CIF then the CIF must ensure that the Persons comply with the national requirements in their home Member State.

On the other hand, when the Persons are located outside European Union, then the CIF must ensure that the Persons comply with the national requirements in force in that country.

Generally, CIFs must establish, implement and maintain monitoring procedures in order to make sure that the Persons are operating only within the territories in which they are located and they have all the necessary qualifications and skills as per the provisions of the legislation of the respective home country.

Furthermore, CIFs must ensure that the Persons are adequately trained and they are remunerated in accordance with CySEC's Circulars C138 and C145 on remuneration policies and practices.

Moreover, the written agreement between the CIFs and the Persons shall clearly define the rights and the obligations of the Persons and the CIFs shall take appropriate actions if the Persons are not acting in accordance with the agreement signed between them.

For transparency purposes, CIFs should post on their websites the details of the Persons they cooperate (name, country of location), as well as whether they are acting on an exclusive or non-exclusive basis.

Finally, CIFs must keep record of all the relevant information (e.g. due diligence performed, copy of licence, agreements) concerning the Persons and be able to make available these information to CySEC, upon request.

The consultation closed on 31 October 2016.

Consolidation of Directives DI144-2007-08, DI144-2007-08(A) and DI144-2007-08(B) for the prevention of money laundering

On 18 October 2016, CySEC announced the consolidation of Directives DI144-2007-08 of 2012, DI144-2007-08(A) and DI144-2007-08(B) for the prevention of money laundering.

The amending Directive DI144-2007-08 (B), now, allows Financial Organisations, when establishing a business relationship with a non-face to face" customer, to keep records of their customers' identification information and documents in the form of data and information collected via **electronic verification**, provided that at least one enhanced due diligence procedure is followed, please refer to Issue 12 of MAP S. Platis Regulatory Radar.

It is noted that the collection of data and information from an electronic verification has to be in accordance with the following provisions:

1. Electronic identity verification is carried out either directly by the Financial Organisation or through a third party and shall satisfy the following conditions:

   i. the electronic databases kept by the third party or to which the third person or the Financial Organisation has access are registered to and/or approved from the Data Protection Commissioner in order to safeguard personal data (or the corresponding competent authority in the country the said databases are kept),
   ii. electronic databases provide access to information referred to both present and past situations showing that the person really exists and providing both positive information (at least the customer's full name, address and date of birth) and negative information (e.g. committing of offences such as identity theft, inclusion in deceased persons records, inclusion in sanctions and restrictive measures' list by the Council of the European Union and the UN Security Council).
   iii. electronic databases include a wide range of sources with information from different time periods with real-time update and trigger alerts when important data alter.

iv. transparent procedures have been established allowing the Financial Organisation to know which information was searched, the result of such search and its significance in relation to the level of assurance as to the customer's identity verification.
v. procedures have been established allowing the Financial Organisation to record and save the information used and the result in relation to identity verification.

2. The information must come from two or more sources. The electronic verification procedure shall at least satisfy the following correlation standard:

   i. identification of the customer's full name and current address from one source, and
   ii. identification of the customer's full name and either his current address or date of birth from a second source.

3. For purposes of carrying out the electronic verification, the Financial Organisation shall establish procedures in order to satisfy the completeness, validity and reliability of the information to which it has access. It is provided that the verification procedure shall include a search of both positive and negative information.

Transitional Provisions of AIFM Law in relation to Depositaries

On 19 October 2016, through the issuance of an announcement, CySEC drew the attention of supervised entities that fall within the scope of the AIFM Law of 2013, that the transitional provisions of section 87(5) of the AIFM Law affording AIFMs the possibility to appoint a depositary in a member state other than home member state of the AIF will end on the 22 July 2017. Post 23 July 2017, all AIFs' depositories should be relocated in the home Member State of the AIF.

The Market Abuse Law of 2016

On 25 October 2016, CySEC announced the publication of the Market Abuse Law of 2016 (in Greek) – L.102(I)/2016 which replaces the repealing Insider Dealing and Market Manipulation (Market Abuse) Law (L.115(I)/2005) and the CySEC directives issued pursuant to it.

CySEC proceeded with the preparation of the said Law for purposes of harmonisation with the European Regulation (EU) No. 596/2014 of on market abuse (market abuse regulation) and repealing Directive 2003/6/EC, Directives 2003/124/EC, 2003/125/EC and 2004/72/EC.

CySEC notes that further information in regards to the changes brought forward by the abovementioned regulation and the new Law can be found in CySEC's past announcement as well as in the consultation CP(2016-01) (in Greek). CySEC also notes the existence of the relevant level II and III measures.

For information purposes, CySEC also notes the existence of Directive 2014/57/EU of the European Parliament and of the Council of 16 April 2014 on criminal sanctions for market abuse (Market Abuse Directive) ('MAD') which regulates the criminal aspect of any infringements. CySEC clarifies that it is not the competent authority for the implementation of this Directive as this falls outside the scope of its authorities. Nonetheless, CySEC

notes that the said Directive has been transposed into the relevant draft law that has recently submitted by the Ministry of Finance to the House of Representatives.

Directive DI114-2005-01 of 2016 on the language of a Prospectus

On 25 October 2016, CySEC issued Directive DI114-2005-01 of 2016 (in Greek) in relation to the language of a Prospectus, in order to set the languages accepted for the preparation, disposal and publication of a prospectus for the purposes of subsections (1), (2)(a), (3) and (4) of section 34 of the Securities to the Public and Prospectus Law of 2005 (hereinafter "the Prospectus Law").

The aforesaid Directive lays down the languages required for:

(a) Drafting the prospectus submitted for approval to CyCEC in the cases of subsections (1), (3) and (4) of Article 34 of the Prospectus Law;

(b) The placing of the prospectus in the Republic in the case of subsection (2)(a) of Article 34 of the Prospectus Law;

(c) The publication of a prospectus in the Republic in the case of subsection (4) of Article 34 of the Prospectus Law.

For the purposes of subsections (1) (2)(a), (3) and (4) of Article 34 of the Prospectus Law, the language accepted by CyCEC is the Greek language.

CyCEC may accept the English language in the following cases, provided that certain conditions are satisfied:

(a) the drafting of a prospectus to be submitted for approval under subsections (1) and (4) of Article 34 of the Prospectus Law;

(b) the publication of the prospectus in the Republic under subsection (4) of Article 34 of the Prospectus Law.

Consultation Paper CP (2016-10) – Obligations of CIFs concerning the safeguarding of clients' funds

On 27 October 2016, CySEC issued Consultation Paper (CP 2016-10) inviting market participants to submit comments and/or suggestions on a proposed Circular on the requirements relating to the safeguarding of clients' funds by CIFs.

In view of the requirement of section 18(1)(e) of CySEC's Directive DI144-2007-01, as amended, which requires CIFs to ensure that clients' funds are held in accounts identified separately from any accounts used to hold the CIF's own funds, the proposed circular specifies that CIFs are required to obtain a prior written confirmation from the credit institution with whom the client account is to be opened, which shall indicate the aforesaid segregation.

CySEC underscores that depositing client funds to a credit institution is conditional on the CIF first receiving the said confirmation.

Moreover, CySEC sets out the conditions that CIFs must fulfil in case the applicable law of the jurisdiction in which the client funds are held prevents them from complying with the above provision. In particular CIFs must:

- Satisfy CySEC that that they had no other alternative but to conduct such business given the risk to clients' funds in the event of the Person's insolvency, and
- Demonstrate to CySEC that they have done everything in their powers to obtain separately titled accounts, including using another third party.

The proposed circular also concerns situations where CIFs transfer client funds to persons other than banks or money-market funds, such as liquidity providers, market makers, and exchanges. It provides that such an arrangement may only be effected if a number of conditions are fulfilled.

It is moreover provided that CIFs must exercise due care, skill and diligence in selecting, appointing and periodically reviewing the persons who hold client funds and as far as Clients' funds account are concerned there must be at least two persons with combined signatory powers.

The consultation paper sets out the approach to be followed by CIFs in determining the term "regular basis" found under paragraph 18(1)(c) of Directive DI144-2007-0, which requires CIFs to "conduct reconciliations on a regular basis.

Finally, the proposed circular introduces reporting obligations on CIFs with respect to clients' funds. In particular, CySEC will provide CIFs with a reporting template that shall be used by CIFs for submitting to CySEC information on clients' funds on a quarterly basis. Attention is drawn to the fact that the figures reported in the second and fourth quarter must be verified by an external auditor and the auditor's verification report must be submitted to CySEC.

The consultation closed on 18 November 2016.

Notification of changes in the ASP following their authorisation – Submission of information to CySEC

On 04 November 2016, through the issuance of Circular C166 and pursuant to sections 7, 8, 9, 13 and 25 of the Law Regulating Companies Providing Administrative Services and Related matters of 2012, in relation to the Administrative Service Providers (ASPs) obligation to notify CySEC for changes in the ASP following its authorisation, CySEC informed the ASPs and other interested parties of the following:

i. Any changes to the shareholders of the ASP and to the persons who effectively manage the business of an ASP, are not subject to CySEC's approval, notwithstanding the ASP must comply with CySEC's potential requests and/or recommendations.
ii. In case the ASP proceed with the above changes, must submit the relevant documentation to CySEC's Authorisation Department and must ensure that these persons meet the requirements of the Law.
iii. In the event an ASP wishes to appoint a new compliance officer, the prior approval of CySEC is needed.
iv. In case the ASP wishes to proceed with the above change, then it must submit, in advance, the relevant documentation to CySEC's Authorisation Department and take into consideration the relevant "Fit

and Proper" evaluation criteria, which are stated in the FAQs of CySEC. The ASP cannot proceed with the appointment before obtaining CySEC's approval and any resignation of its compliance officer should not take place before its replacement has been approved by CySEC.

v. In case an ASP wishes to extend its authorisation to additional administrative services or wishes to amend its authorisation, then it must submit, in advance, a notification to CySEC. Such changes are not subject to CySEC approval, notwithstanding the ASP must comply with CySEC's potential requests and/or recommendations.

vi. In case the ASP wishes to proceed with the above change, must submit, in advance, all the relevant documentation and information to CySEC's Authorisation Department.

vii. The ASP must notify without delay any changes regarding the lisenced person's details, the administrative services provided, the names of its fully owned subsidiaries which offer administrative services, the names of its employees who offer administrative services and their work address, the name and communication information of the compliance officer, as well as any other information deemed necessary.

viii. Where ASPs (or other parties involved) are asked to attach documents, the originals shall be attached, or, where this is not possible, their duly certified true copies, in Greek or English.

ix. Failure of the interested parties to comply with the Circular C166, may lead to violation of sections 7, 8, 9, 13 and 25 of the Law as provided by the Law itself. Thus, interested parties must comply with the respective Circular to avoid unnecessary delays and burdens in their operation.

Review of the authorisation process for applicant Firms

On 18 November 2016, through the issuance of an announcement, CySEC informs all parties who have submitted or intend to submit an application for CIF, UCITS Manager and external AIF Manager authorisation, that the authorisation procedure, from 14 November 2016, is amended as follows:

(i) Following the assessment of an application, CySEC will inform the Firm about the conditions for the authorisation to be granted. At this point the Firm will not be granted authorisation and there will be no announcement on CySEC website.

(ii) During a 12-month period, the conditions need to be fulfilled (otherwise, the application may be rejected) and no significant changes will be accepted i.e. change of shareholder(s), change of over 1 director, change of business model or any derogation from the conditions. In the event of such significant change, the Firm must withdraw its application and resubmit it, bearing all the costs.

(iii) CySEC will carry out an on-sight inspection at the Firm's registered office, following the submission of information for the fulfilment of the conditions and, if satisfied, will bring the matter to the Board for the granting of authorisation. If the authorisation is decided to be granted, CySEC will proceed with the relevant publication on its website.

(iv) Within 1 month from the granting of authorisation, the authorised Firm shall notify CySEC of the Bank accounts where the Firm's own and clients' funds are held and of the persons authorised to sign for the transfer of the said funds.

The Firms which have already received authorisation and are in process of activation, the procedure as per the announcement dated 09 July 2015 shall apply.

Consultation Paper CP (2016-12) – Proposed amendments in the Alternative Investment Funds Law (“AIF”) and the creation of ‘Mini Managers’ regime

On 29 November 2016, CySEC issued Consultation Paper CP (2016-12) (in Greek). The Said Consultation paper is in continuation to Consultation Paper CP (2016-03), (MAP S.Platis Regulatory Radar, Issue 11) regarding proposed amendments to the AIF Law of 2014.

Under the new consultation paper, CySEC proposes the following:

- Registered Alternative Investment Funds (RAIFs) and Alternative Investment Partnerships (“AIPs”) are not obliged to have specific amount of initial capital. However, during a period of twelve (12) months after their registration should have amassed minimum net assets of €500.000.
- AIFs as well as AIFLNPs should amass net assets of €500.000 and €125.000 respectively, within 12 months post their activation.
- Self-managed AIFs and AIFLNPs should have own capital equivalent to €125.000 and €50.000 respectively, within 3 months of authorisation.

Finally, the Consultation paper proposes amendments with respect to AIF administrators and Mini Manager related issues.

CySEC clarifies its positions in relation to trading benefits, leverage and withdrawal of funds in light of ESMA’s Q&A on CFDs and other speculative products

On 30 November 2016, through the issuance of Circular C168, CySEC informs all CIFs about the new version of ESMA’s Q&A relating to the provision of CFDs and other speculative products to retail clients under MiFID.

The major points of Circular C168 are the following:

A. <u>Trading bonuses</u>

1. CIFs should avoid offering bonuses that incentivise retail clients to trade in CFDs, binary options and rolling spot forex as it is unlikely that they can demonstrate that they are acting honestly, fairly and professionally in accordance with the best interest of their clients.
2. CIFs should avoid launching any such bonus schemes henceforth and it is expected from them to let the existing ones lapse/expire.
3. All CIFs were requested to complete a table indicating whether they are offering such bonuses and submit it to CySEC electronically at the electronic address supervision@cysec.gov.cy.
4. CySEC requires to be notified beforehand in the cases were CIFs are intending to launch other trading benefits and shall demonstrate that they are not infringing on clients’ interests.

B. Withdrawal of funds

1. CIFs should enable their clients to withdraw funds from their account at any time.
2. CIFs should process clients' requests to withdraw funds from their accounts without delays. In the event of delay, clients should be informed, including the reasons for the delay and the expected timeframe before the funds will be withdrawn.
3. In case of a positive cash balance in a clients' account, CIFs must process the clients' fund withdrawal request on the same day it was made, or the next working day if the clients' requests are received outside of normal trading hours.

Section 7 of ESMA's Q&A can be used as reference for further guidelines regarding withdrawals of funds.

C. Leverage

Offering excessive leverage to retail clients is unlikely in the best interest of the clients, hence from now on all CIFs should:

(a) Design their systems to set as default a lower leverage and give them the option, if they wish to change the leverage to a higher level.
(b) The maximum default leverage should not exceed the cap of 1:50.
(c) Set limits to the leverage available to clients who have failed the appropriateness test, or the sum they can trade in any one transaction for a period of time.
(d) Ensure that clients cannot lose more than they have in their accounts (negative balance protection).
(e) Establish a leverage policy approved by the Board of Director and included in the internal operations manual.

Finally, CIFs are required to take appropriate measures and actions in order to operate in line with ESMA's Q&A and Circular C168, and are expected to comply with the relevant requirements no later than the 30th of January 2017.

Acronyms & Definitions used

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
ASPs	Administrative Service Providers
CDS	Credit Default Swap
CFD	Contracts for Difference
Commission	European Commission
CP	Consultation Paper
CySEC	Cyprus Securities and Exchange Commission
EBA	European Banking Authority
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
FCA	UK Financial Conduct Authority
FTT	Financial Transaction Tax
FX	Foreign Exchange
IRS	Interest Rate Swap
ITS	Implementing Technical Standards
LIBOR	London Inter bank Offered Rate
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
Q&As	Questions and Answers
PRIIPS	Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products

PSPs	Payment Service Providers
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 MCs	UCITS Management Companies
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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