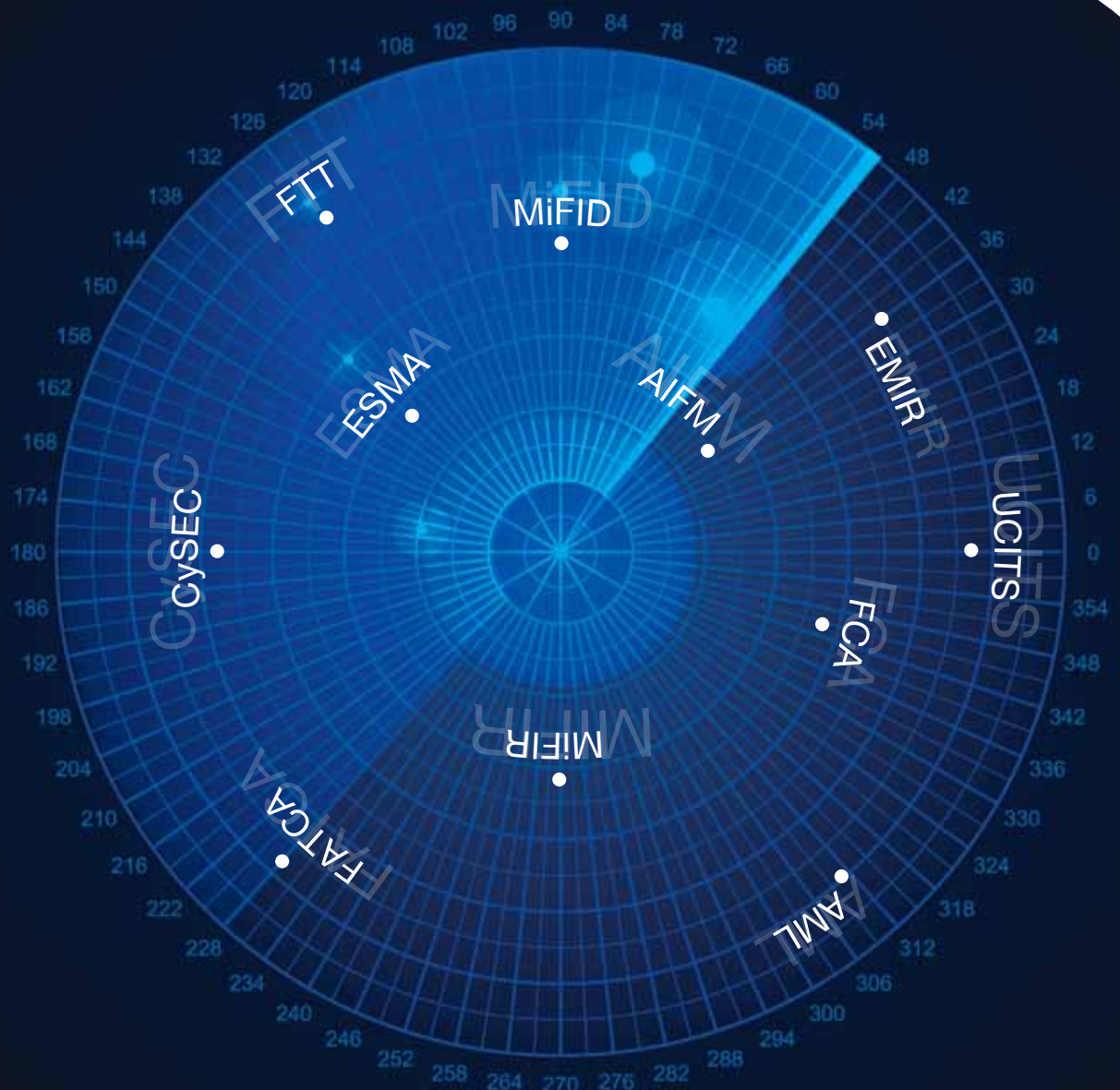
MAP S.Platis

Your Partner in Financial Services!

Issue 010 / February 2016

REGULATORY RADAR

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



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

I. MiFID II

The MiFID II legislative proposal consists of an amending Directive (MiFID II) and a new regulation (the Markets in Financial Instruments Regulation = MiFIR). The final texts of MiFID II and MiFIR were published in the Official Journal on 12 June 2014. These texts are often referred to as "Level 1" texts; further detail is provided in subsequent, secondary legislation often referred to as "Level 2" text.

Originally national transposition is required by 3 July 2016 and the new rules were to take effect from 3 January 2017. This was a 30 month implementation period.

However, on 10 February 2016, the EU Commission has published a proposal to extend the application date of MiFID2 by one year to 3 January 2018.The proposal takes the form of a draft Directive amending MiFID2 and draft Regulation amending MiFIR as regards certain dates. The proposals set out an extension of the entire MIFID 2 MIFIR package for one year to 3 January 2018 due to technical implementation challenges faced by ESMA and the national competent authorities. The national transposition date remains 3 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, 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 published:

- 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 awaited. 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.

Knowledge and competence

On 17 December 2015, ESMA published its Final Report on guidelines for the assessment of knowledge and competence. 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. ESMA is required, by 3 January 2016, to develop guidelines specifying criteria for the assessment of knowledge and competence of investment firms' personnel.

The guidelines will come into effect on 3 January 2017 (now 2018). The final guidelines are set out in Annex VI and 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.

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.

Market Guidelines on Cross-Selling Practices

On 22 December 2015, 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 2017 (now 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.

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

On 23 December 2015, ESMA published its Guidelines on Transaction Reporting Reference Data Order Record Keeping and Clock Synchronisation in order to provide guidance to investments firms on compliance with the provisions of regulatory technical standards (RTS) 22, 23, 24 and 25.

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 be in force 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 for it to decide whether to endorse ESMA's draft regulatory and implementing technical standards.

On 28 January 2016, ESMA published a Consultation Paper on draft guidelines on Market Abuse Regulation setting out guidelines for persons receiving market soundings (MSR).The draft proposed guidelines cover the following areas:

- MSR can designate contacts for market soundings
- MSR can communicate that they do not wish to receive market soundings
- MSRs to assess whether information communicated during the sounding is inside information
- Written minutes or notes of unrecorded meetings or conversations in relation to a market
- Sounding to be signed by MSR
- Internal procedures to control the flow of information received during a market sounding
- Insider lists of MSR staff
- Internal training
- Record keeping

The consultation closes on 31 March 2016.

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.
- **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 (i.e. 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 6 August 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 1 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 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.

ESMA Q&As

On 4 February 2016, ESMA published the 15th update to its Q&As on the implementation of EMIR. The updated Q&As include new answers regarding:

- central counterparties' default management;
- competent authorities' access to trade repository data; and
- reporting of notional in position reports.

Mandatory rules for margin for non-cleared trades

This is the summary of relevant dates:

- **1 September 2016:** 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
- **1 September 2016 – 1 September 2020:** Initial margining requirements for non-centrally cleared trades will apply from 1 September 2016 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.

(Implementation dates are subject to change depending on the progress of EU implementation.)

Please also refer to Issue 5 of MAP S.Platis Regulatory Radar.

III. 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 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 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 12 January 2017.

The collateral arrangement obligation comes into force six months after the entry into force of the Regulation – so 12 July 2016. An 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.

2. Anti-Money Laundering

European Supervisory Authorities issue responses to consultation on AML/CFT guidelines

On 2 February 2016, the European Supervisory Authorities (ESAs) published the responses received to their joint consultation on proposed anti-money laundering and counter terrorist financing (AML/CFT) guidelines. See Issue 9 of MAP S.Platis Regulatory Radar, for more details.

The Fourth Money Laundering Directive

The Fourth Money Laundering Directive was published on 5 June 2015 and, as currently drafted, requires transposition into national law by 26 June 2017. However, on 2 February 2016, the European Commission called for Member States to implement the Directive six months earlier than that, by the end of 2016 at the latest. The call for early implementation is part of a new Action Plan to strengthen the fight against terrorist financing.

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.

IOSCO/CPMI joint statement on clearing of deliverable FX instruments

On 5 February 2016, the Committee for Payments and Market Infrastructures (CPMI) and the International Organization of Securities Commissions (IOSCO) issued a joint statement clarifying that:

- a Central Counterparty (CCP) intending to clear deliverable FX instruments is not obliged to use any particular settlement process for deliverable FX instruments but the CCP shall remain responsible for that process and for ensuring that it satisfies the CPMI-IOSCO Principles for financial market infrastructures (PFMI);
- According to PFMI 7, a CCP intending to clear deliverable FX instruments should ensure that it maintains sufficient qualifying, highly reliable liquid resources to cover, on time, liquidity shortfalls that could arise in the settlement of cleared transactions in all settled currencies in default scenarios;
- The CPMI and IOSCO expect CCPs, irrespective of the settlement model used, to ensure the same level of confidence in the completion of same day settlement of obligations on the originally specified settlement date, irrespective of whether a potential liquidity shortfall on default relates to the obligation of the CCP itself or to obligations of one participant to another;
- Regardless of the settlement model used, a CCP must conduct appropriate due diligence on its participants' ability to understand, quantify and manage the associated contingent liquidity obligations under its rules; the CCP must identify the point at which other qualifying liquid resources would be exhausted and any rules-based arrangements would need to be invoked.

4. EU Financial Transaction Tax (FTT)

Following the Council meeting (ECOFIN) on 8 December 2015 a public announcement was made by ten out of the eleven FTT Member States: Austria, Belgium, France, Germany, Greece, Italy, Portugal, Slovakia, Slovenia, Spain; Estonia has dropped out for the moment.

The short statement sets out a tax covering shares issued in the participating Member States and derivatives without mentioning of the tax rate or any operational details. Open issues are set to be resolved by June 2016 "by experts in close coordination with the commission".

5. Taxation

Ministry of Finance Common Reporting Standard Decree

On 30 December 2015, the Ministry of Finance issued a Decree (in Greek) conserving the implementation of Common Reporting Standard (CRS) in Cyprus. The said decree was issued in accordance with the Assessments and Collection of Taxes Laws of 1978 until 2015 by virtue of section 6 (16) of the Law.

Moreover, and as mentioned in the previous versions of the Regulatory Radar (refer to MAP S.Platis website) the purpose of the CRS is to improve the international tax compliance. In light of this, it is noted that under the CRS, Financial Institutions (FIs), including Investment Firms, that are in countries which implement the CRS (e.g. in Cyprus), are required to collect and review information from their clients in order to determine their tax residence. This information will need to be reported to the Cypriot Tax Department and the latter will exchange information with other foreign tax authorities of the countries of tax residence of each client who holds an account, provided that they are residents of countries that also implement CRS (follow the link).

Furthermore, and in light of the issuance of the aforementioned decree, the most important provisions which may require some additional actions from Cyprus Financial Institutions are the following:

- **Scope of the CRS:**
  The CRS is applied by all authorised credit and other FIs which are located in countries that apply CRS and is applied to both individuals and entities. The Reporting Cyprus FIs which fall under the scope of the CRS are the following:

  1. Authorised credit institutions;
  2. Investment Entities regulated by the Cyprus Securities and Exchange Commission (Cyprus Investment Firms 'CIFs');
  3. Custodial Institutions;
  4. Specified Insurance Companies.

- **Residency of Reporting Financial Institution:**
  A FI is resident in a Participating Jurisdiction (e.g. in Cyprus), if it is resident for tax purposes. If the aforesaid does not apply, the FI is resident in a Participating Jurisdiction if its incorporation falls under the Laws of the Participating Jurisdiction and its place of management and financial supervision is undertaken in the Participating Jurisdiction.

  In case of two or more residencies in Participating Jurisdictions, a FI's reporting and due diligence obligations are determined by the Participating Jurisdiction which its Financial Accounts are maintained.

  A partnership is deemed to be resident in the Republic of Cyprus if the control and management of the business takes place in the Republic of Cyprus.

- **Registration Requirements:**
  Each Reporting FI should submit its registration as soon as possible and after its establishment as a Financial Institution. In case it has not yet commenced its activities by the said date, the registration must be submitted at the latest 30 days after. Moreover, there is no registration obligation for the year 2016.

- **General Reporting Requirements:**
  The Reporting Cyprus FIs must comply with the following:
  1. Report information with respect to each Reportable Account;
  2. Identify the currency in which each amount is denominated.

- **General Due Diligence Requirements:**
  The Reporting Cyprus FIs are requested to report the account balance as of the end of the calendar year. The information to be reported must be reported annually and exchanged within nine months after the end of the calendar year to which the information relates to.

- **Due Diligence Procedures for New accounts:**
  The Decree requires FIs to widen their on-boarding procedures and obtain further documentation from Clients prior to the opening of an account, as from **1 January 2016**. FIs must, with respect to New Individual Accounts, obtain self-certification that allows them to determine the Account Holder's residence(s) for tax purposes and confirm the reasonableness of such self-certification based on the information obtained in connection with the opening of an account, including any documentation collected pursuant to Anti-Money Laundering/Know-Your-Client Procedures. In the event that the self-certification establishes that the Account Holder is resident for tax purposes in a Jurisdiction that there is an obligation to provide information to, the FI must treat the account as a Reportable Account and thus the self-certification must also include the Account Holder's Tax Identification Number (TIN) and date of birth or the FI must make proper endeavours to obtain the relevant TIN. Without the self-certification with the required information, the FI cannot open an account.

- **Due Diligence Procedures for Pre-existing accounts:**
  In the case that the FI has in its records a current residence address for the Account Holder based on documentary evidence, then it may treat the Account Holder as being a resident, for tax purposes, of the jurisdiction in which the address is located to determine whether he/she is a Reportable Person. In the absence of documentary evidence, the FI must review electronically searchable data for any of the indicia listed in Paragraph 11(b) of the Decree, such as mailing or residence address of the Account Holder in a foreign jurisdiction or a telephone number in Reportable Jurisdiction etc. In case of failure to obtain such self-certification or Documentary Evidence, the FIs must report such account as an undocumented account. Any pre-existing account, as defined in the Decree that has been identified as a Reportable Account must be treated as such in all subsequent years unless the Account Holder ceases to be a Reportable Person.

- **Due Diligence Procedures for Pre-existing High Value accounts:**
  The High Value Accounts are Pre-existing accounts with a balance or value that exceeds US$1.000.000 as of 31 December 2015 or 31 December of any subsequent year. For such accounts, the enhanced

review procedure shall apply (i.e. electronic record search, paper record search etc.). Where an account is defined as undocumented, the Reporting FI should re-apply enhanced review procedures annually until such account ceases to be undocumented. The due diligence procedure for identifying High Value Pre-existing individual accounts must be completed by **31 December 2016** and for low value Pre-existing accounts by **31 December 2017**.

- **Client Accounts in the name of a Third Person:**
  In cases where a person acting as intermediary and keeps money on behalf of his/her clients, then if some prerequisites are met, the FI must carry out the due diligence procedures solely for the intermediary. Moreover, for specific client accounts (i.e. accounts where the funds that belong to a specific client are credited), the FI shall identify the identity of the beneficial owner prior to the opening of the account.

- **3rd party providers:**
  An FI can rely on third party service providers to fulfil its reporting and due diligence obligations arising under the Decree and the CRS. However, where it does so, the FI remains solely responsible for the fulfillment of its obligations.

- **Reporting Deadlines:**
  With regards to the reporting period of financial year 2016 and all subsequent years, the CRS reporting deadline is at 30 June of the year following the calendar year to which the information relates. For instance, **for the year 2016, the deadline for reporting is 30 June 2017**.

- **FI Obligations:**
  Any Cyprus Financial Institution that does not comply with its obligations under this Decree shall be subject to relevant penalties as provided in the Assessment and Collection of Taxes Laws of 1978 to 2015, as amended.

6. Fund Regulation

Money Market Funds (MMFs)

On 28 April 2015, the European Parliament in its plenary session voted to adopt the draft Regulation on Money Market Funds (MMFs). However, the trilogue negotiations cannot begin as there is no common position in the Council, since France and Germany are opposed to Luxembourg, UK and Ireland. There has been no tangible progress in the Council position under the Luxembourg presidency since July. With the outstanding political deadlock, it is not possible to estimate a timeline at the moment.

UCITS

The provisions of UCITS 5 will be applied from 18 March 2016.

On 1 February 2016, ESMA published a consolidated Questions and Answers (Q&A) on the application of the Undertakings for the Collective Investment in Transferable Securities Directive (UCITS).

- The consolidated Q&A includes new questions on additional documents funds need to provide for UCITS V. This new Q&A also brings together the following four existing ESMA Q&As on UCITS:
    - The Key Investor Information Document (KIID) for UCITS (2015/631);
    - Q&A on ESMA's guidelines on ETFs and other UCITS issues (2015/12);
    - Notification of UCITS and exchange of information between competent authorities (2012/428); and
    - Risk Measurement and Calculation of Global Exposure and Counterparty Risk for UCITS (2013/1950).

AIFMD

In July 2015, ESMA published its advice on the extension of the Alternative Investment Fund Managers Directive (AIFMD) passport to non-EU jurisdictions and its opinion on the functioning of the EU AIFMD passport and the national private placement regimes (NPPRs). In its advice, ESMA assessed the following six jurisdictions: Guernsey, Hong Kong, Jersey, Singapore, Switzerland and the United States of America. Given that only a short period of time has elapsed since the implementation of the AIFMD in the EU Member States, ESMA's preliminary view, which can be found in the said opinion, is that a longer period of time is required in order to provide a definitive assessment for the functioning of the aforementioned directive.

The advice and opinion were forwarded to the Commission, the European Parliament and the Council for their consideration on whether to activate the relevant provision to extend the passport through a delegated act.

On 17 December 2015, ESMA published the letter it received from the Commission in respect of its advice on the application of the AIFMD passport to non-EU Alternative Investments Fund Managers (AIFMs) and Alternative Investment Funds (AIFs), and ESMA's opinion on the functioning of the passport for EU AIFMs and on the national private placement regimes.

The Commission has asked ESMA to complete its assessment of the regimes of the USA, Hong Kong, Singapore, Japan, Canada, Isle of Man, Cayman Islands, Bermuda and Australia by 30 June 2016.
The Commission agreed with ESMA's suggestion that it can produce another opinion on the functioning of the EU passport and NPPRs once the AIFMD has been fully transposed in all Member States whereby ESMA will be more experienced on the functioning of this framework.

7. UK – Developments of Interest to Investment Firms

FCA fines former Head of JP Morgan's CIO International £792,900 for failing to be open and co-operative

On 9 February 2016, the Financial Conduct Authority (FCA) issued a fine of £792,900 to Mr. Achilles Macris for failing to be open and co-operative with the Authority. Mr. Macris was Head of CIO International for JPMorgan

Chase Bank, N.A. in London and he was responsible for a number of portfolios, including the synthetic credit portfolio, at the time of what became known as the 'London Whale' trades.

FCA "Dear CEO letter" on client take-on review in firms offering CFD products

On 2 February 2016, the FCA published a "Dear CEO" letter that sets out the results from its review of the procedures for soliciting new clients in a sample of ten firms that offer contracts for difference (CFD) products. The letter identifies several areas of concern and asks the CEOs to consider whether their respective firms comply with the FCA requirements for sales of CFD products. Contracts for difference, Spread bets and 'Rolling Spot' FX are all designated as a type of 'CFD' under the FCA's Handbook's Glossary of definitions, which in turn are a type of derivative.

The main focus of the review was to assess the client on boarding procedures against the requirements of the FCA's Conduct of Business Sourcebook (COBS) and Senior Management Arrangements as well as the Systems and Controls (SYSC) rules.

The results of the FCA's review were, inter alia, the following:

- They saw a range of approaches to completing the appropriateness assessment, most of which were not in line with COBS 10;
- The majority of the risk warnings issued to clients who failed the appropriateness assessments were not adequate;
- Anti-money laundering controls in place in order to manage the increased risks posed by higher risk clients were insufficient; and
- Firms may not be acting in the best interest for their clients and not treating them fairly in accordance with COBS 2.1.1R and the Principles for Businesses.

The FCA letter concluded:
"Given the poor results that we observed across our sample, we are concerned that there is a high risk that CFD providers' industry-wide are not meeting the requirements of the rules when taking on new clients and/or are failing to do enough to prevent financial crime. (…)

We ask you to consider whether your firm complies with FCA requirements for sales of CFD products and the points we raise in this letter regarding the process that your firm follows when taking on new clients."

LIBOR defendants acquitted

On 27 January 2016, five individuals were found not guilty of conspiracy to defraud in connection with the SFO's ongoing criminal investigation for the manipulation of LIBOR by a jury at Southwark Crown Court following a four month trial.

The SFO alleged that all six conspired with Tom Hayes, who was convicted after trial and sentenced last year,

to defraud in that they agreed, upon instruction by Hayes, to influence the submissions of panel banks in the Yen LIBOR setting process.

Commenting on the case, Director of the SFO David Green CB QC said:
"The key issue in this trial was whether these defendants were party to a dishonest agreement with Tom Hayes. By their verdicts the juries have said that they could not be sure that this was the case. Nobody could sensibly suggest that these charges should not have been brought and considered by a jury."

A further trial of individuals charged with the manipulation of US Dollar LIBOR is scheduled to begin on 15 February 2016, while a trial of individuals charged with the manipulation of the Euro Interbank Offered Rate (EURIBOR) is scheduled to begin on 4 September 2017.

Andrew Bailey appointed chief executive of the FCA

On 27 January 2016, HM Treasury announced the appointment of Andrew Bailey as the new permanent Chief Executive of the Financial Conduct Authority. He will succeed Tracey McDermott, who has acted as interim CEO since Martin Wheatley stepped down from the post in September 2015. Mr. Bailey will take up his new role once his successor at the Prudential Regulation Authority has been found.

FCA drops review into bank culture

On 12 January 2016, the FCA announced that it was dropping its thematic review and report into bank culture.

- 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.

Senior managers' regime

From 7 March 2016 the Senior Managers and Certification Regime will replace the approved persons regime (APR) for UK banks, building societies, credit unions, PRA-designated investment firms and UK branches of foreign banks.
In October 2015, and as anticipated, HM Treasury announced proposals to extend the scope of the Senior Managers and Certification Regime to all UK authorised firms from 2018.The detail of those proposals is set out in the draft Bank of England and Financial Services Bill, which was laid before the House of Lords on 14 October 2015. Following the passage of the legislation necessary to extend the Senior Managers and Certification Regime, there will be consultations by the PRA and FCA on the detail of the extended regime.

The key components of the regime are:

- The **senior manager regime** which applies to individuals performing a senior management function.

Individuals performing a senior management function require pre-approval by either the PRA or the FCA and firms are required to have in place procedures to assess the fitness and propriety of the individual both before applying to the relevant regulator for approval and at least annually thereafter. Applications for approval must be accompanied by a statement of responsibilities (which sets out the areas of the business for which the senior manager is responsible) and a management responsibilities map (which describes the firm's management and governance arrangements and sets out how responsibilities have been allocated).

- The **certification regime**, which applies to individuals who do not perform a senior management function but who perform a role which has been deemed by the regulators as capable of causing significant harm to the firm or its clients. Such individuals are not pre-approved by the relevant regulator. Instead, firms are required to certify that the individual is fit and proper for their role both at the point of recruitment and annually thereafter.
- The **conduct rules**, which apply to all employees (including senior managers and certified persons) other than those employees who perform purely ancillary/support roles.

8. CySEC Developments

Consultation Paper CP (2015-10) regarding trading in binary options

On 14 December 2015, CySEC issued Consultation Paper CP (2015-10) in order to invite all market participants to submit comments and/or suggestions on a proposed Circular regarding the operation of binary options trading platforms by Cyprus Investment Firms (CIFs).

The scope of the proposed Circular is to resolve any compliance issues arising between the CIFs offering binary options and the provisions of Chapter C, Part V of the Investment Services and Activities and Regulated Market Law of 2009, as amended, which lays down conduct of business obligations when providing services to clients from CIFs. The above mentioned CIFs will be requested to use trading platforms that, among others, shall a) provide adequate information to clients about binary options, so that there is a full transparency and b) operate in a way that is fair to clients.

Furthermore, the proposed Circular shall include a detailed list of accepted practices to be followed by binary options trading platforms. This list includes the following:

- Information on the identification of the underlying asset of the binary option;
- Information regarding bid and ask prices of the underlying asset of the binary option - Strike price of the binary option;
- Information on the bid/ask, and/or last, prices, at the expiry of the binary option - Expiry price of the binary option;
- Explanation of the graphs presented to clients;
- Information on the availability of the binary option;
- Buyout option of the binary option from a CIF;
- Cancellation option of the transaction in a binary option;
- Provision of services in relation to binary options that have investment features.

Finally, CySEC emphasises in the proposed Circular that the provision of services in relation to binary options with duration of 30 and 60 seconds will not be considered similar to other derivatives and the 'traditional' financial instruments included in the Law.

The consultation closed on 31 December 2015.

Circular C103 – Identification of Other Systemically Important Institutions

On 14 December 2015, through the issuance of Circular C103, CySEC informed CIFs about its decision to conduct a research aiming to achieve compliance with the European Directive 2013/36/EU according to which Member States must identify Other Systemically Important Institutions ('the O-SIIs') that have been authorised within their jurisdiction and henceforth require from them to maintain the applicable O-SII buffer. For such identification, the European Banking Authority (EBA) has issued relevant Guidelines.

O-SIIs are, among others, Investment Firms that meet the following two criteria:

I. They are authorised to provide the investment services of dealing on own account and/or underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis;
II. They are systemic important.

The systemic importance of these Institutions is weighed on the basis of at least one of the following benchmarks:

I. Size;
II. Importance of the economy of the Union or of the relevant Member State;
III. Significant of cross-border activities;
IV. Interconnectedness of the institution or group with the financial system.

The designated authority in Cyprus to identify O-SIIs and to set the O-SII buffer is the Central Bank of Cyprus that will work together with CySEC when performing its duties.

Finally, CySEC requested from the CIFs, which were included in Appendix 1 of the Circular, to complete the Appendix 2 of the Circular and to submit it to the electronic address crdsubmission@cysec.gov.cy by 31 of December, 2015, the latest.

Update of relevant COREP and other CySEC Forms

During the period of December 2015 – January 2016, CySEC notified all interested parties regarding the following updated/amended forms:

I. Form 144-14-09 Geographical breakdown of exposures;
II. Forms 144-14-06.1 Calculation of own funds and capital adequacy ratio;
III. Renewal Form for the registration in the Public Register of Certified Persons for the year 2016;

Directive 131-2014-03 regarding the classification of the AIFs of the Republic and other relevant issues

On 4 January 2016, CySEC issued Directive 131-2014-03 regarding the classification of the AIFs of the Republic and other relevant issues.

A. Categorisation of each AIF established in Cyprus.

The Directive categorises each AIF established in Cyprus in relation to the asset categories that the AIF invests to as well as the class of the investor that it is addressed to (retail, well-informed, professional investor) and establishes transparency requirements for reporting to Clients, specific to each AIF category.

B. AIFs established and addressed to retail Clients.

AIFs established in Cyprus that are addressed to retail Clients are permitted to invest in an array of asset categories that includes, inter alia, transferable securities, deposits, ABS, derivatives that meet certain criteria, commodities, foreign exchange etc.

The abovementioned asset classes may be subject to special investment limitations for the AIFs that are addressed to retail Clients These limitations relate to, inter alia, the maximum allowable exposure per counterparty, the maximum percentage of assets an AIF is allowed to invest in the abovementioned asset categories, as well as limitations on the nature of the underlying instrument of the derivatives.

C. Feeder AIFs established in Cyprus.

CySEC specifies the authorisation process and the operating conditions for 'Feeder AIF' established in Cyprus where this is an AIF that (a) invests, at least 85% of its assets in units of another AIF (the 'master AIF'); or (b) invests at least 85% of its assets in more than one master AIFs where those AIFs have identical investment strategies; or (c) has otherwise an exposure of at least 85% of its assets to such a master AIF.

Consultation Paper CP (2016-01) regarding Draft Law on Market Abuse

On 11 January 2016, CySEC published Consultation Paper CP (2016-01) in order to invite all market participants to submit comments and/or suggestions regarding its proposed Draft Law on Market Abuse. CySEC proceeded with the preparation of the said Draft Law for purposes of harmonisation with Regulation (EU) No. 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC.

For information purposes, CySEC 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 will not be the competent authority for the implementation of this Directive as this falls outside the scope of its authorities. Nonetheless, the Directive will be prepared in collaboration with the Ministry of Justice, Finance and Attorney General as well as CySEC.

The draft law on Market Abuse shall be cited as the Market Abuse Law of 2016 and shall replace the Law on Insider Dealing and Market Manipulation (Market Abuse) of 2005, as amended, as well as all the Directives issued pursuant to this Law.

The consultation closed on 02 February 2016. The MAD and Regulation (EU) No. 596/2014 will be in force from July 2016.

Circular C107 – Submission of audited annual report of the Alternative Investment Funds of Limited Number of Investors (AIFLNI)

On 22 January 2016, through the issuance of Circular C107, CySEC informed all interested bodies (i.e. AIFLNI and AIFLNI Managers) that according to the Alternative Investment Fund Law of 2014 which governs the Alternative Investments Funds and more precisely to Article 116 (2) of the said Law, Alternative Investment Funds with Limited Number of Persons (AIFLNP) will need to prepare an audited annual report in order to reflect the fulfilments of the conditions of Section 114 of the afore said Law. Moreover, the said report should be submitted to CySEC within one month from the end of the period that it refers to.

Additionally, and for this year only, the submission of the aforementioned annual report can be done during the first six (6) months of the end of the reporting period.

Circular C108 - Change of name and/or trade name

On 26 January 2016, CySEC through the issuance of Circular C108, informed all interested parties, inter alia, about the following:

- The name chosen by Regulated Entities should reflect the activities the entities are engaged in, for purposes of not misleading the investors.

  For instance, a CIF which is active in asset management may be named ABC Asset Management but cannot use the same if is engaging the field of executing orders on CFDs.
- Moreover, CySEC has noticed that many regulated entities are changing their names without any substantial reason.
- In order not to provide misleading information and to avoid possible deception over the investors as well as to be in compliance with the applicable laws and regulations, CySEC neither encourages nor has a positive view for the change of name and/or trade name of the regulated entities, other than in exceptional cases. For instance an exceptional case may be the one, in which a takeover or merge occurred.
- Regulated Entities, which are or have been under investigation of CySEC or another supervisory authority, and/or allegations have been made against them and/or inspections take place in their officer, and/or they have attracted the attention of CySEC and/or and other supervisory authority in any way, and/or against of which sanctions have been imposed, should not proceed with a change of their name and/or trade name.
- Finally, and given the above, CySEC highlights the following two main points:
  - Regulated Entities will not be allowed to change the name and/or trade name they use without obtaining a prior consent from CySEC and all requests should be examined by it.
  - Upon receiving CySEC's approval on the change of its name, the Regulated Entity has to state for at least one year of the date of approval the old name of the entity along with its new name in all instances where the name is used e.g. "ABC Limited, previously DEF Limited".

Circular C109 - Risk Based Supervision Framework ('RBS-F') - Electronic submission of information for the year 2015

On 27 January 2016, through the issuance of Circular C109, CySEC drew the attention of all Regulated Entities and provided information that, following Circulars CI144-2014-31 and C037, CySEC intends to issue new Circulars, in the near future, informing Regulated Entities about the exact dates and timeframes regarding the electronic submission of information for the year 2015.

Finally, CySEC noted that Regulated Entities that were authorised and operating by 31 December 2015, inclusive, will have to complete and submit to CySEC, the updated forms through its Transaction Reporting System ("TRS") for the respective reporting period (i.e. 01/01/2015 – 31/12/2015).

Issuance of Directive DI131/56/02 regarding the procedures and conditions for the marketing of units of AIFs and AIFs with Limited Number of Persons and the organisation of the marketing network

On 28 January 2016, CySEC issued Directive 131-56-02 regarding the marketing of fund units in the republic and in 3rd countries applicable to authorised (captured by the AIFM Law of 2013) and subthreshold AIFMs (such as AIFLNPs or self-managed AIFs of the AIF Law of 2014).

The most major and relevant provisions of the new Directive are the following:

A. Requirements for marketing units to different investor classes in Cyprus:

1. Third country AIFMs and EU AIFMs who intend to market units of non-EU AIFs in Cyprus **to professional investors only,** must notify CySEC of their intention.

The relevant notification application shall include inter alia the following :

a. Financial Statements (balance sheet, income and expenses statement),
b. Investment strategy,
c. Liquidity risk management procedures,
d. Valuation methodology,
e. Relevant AIFM licence from their home competent authority.

It is provided that in case of AIFMs established in third countries that the home competent authority of the third country AIFM has signed a MoU with CySEC (or ESMA) for the exchange of information regarding AIFMs (the list is available on CySEC's webpage). After 2 months have elapsed from the submission date of the application folder, the AIFMs, who intend to market units of non-EU AIFs in Cyprus to professional investors only, can begin marketing AIF units to professional investors in Cyprus. In case CySEC decides to prohibit the marketing of the AIF units, CySEC shall notify the applicant within 2 months providing a detailed explanation.

Third country and/or EU Subthreshold AIFMs and/or AIFMs offering their services under the AIFMD passport that intend to market AIF units to **retail and/or well informed investors in Cyprus**, need to apply for a licence to CySEC. AIFMs of this section may begin to market units in the Republic, upon receiving the relevant licence.

B. Marketing network of AIFMs authorised or registered either in Cyprus or EU or 3rd country based under the proviso that the considerations of paragraph A have been fulfilled (for this section the AIFMs).

1. An AIFM's personnel may market units of AIFs in the Republic via a distribution network that may include "representatives" of the AIFMs. Representatives are defined as persons with whom the AIFM has entered into a contractual agreement for the distribution of AIF units in Cyprus. It is provided that these persons (where these persons are legal entities) could be Investment Firms authorised for the investment service of reception and transmission, Credit institutions, UCITS Management Companies and other AIFMs. A natural person can also be a representative.

   In any event the employees (be the representatives and/or the employees of the AIFM itself) engaged in the distribution of AIF units in the Republic should be **certified by CySEC with the basic examination certificate**.

2. AIFMs must maintain a register with persons (either employees and/or representatives) who market the AIF units.

3. The Representatives of the AIFM must **submit to CySEC, on a semi-annual basis, the information on AIFM** as in Annex IV of the Directive.

4. Marketing of AIF units in Cyprus can also be done online by means of a webpage, provided that the AIFM states on the webpage the following (non-exhaustive):
   a. The class of investors that the units are being addressed to (retail, professional, well informed).
   b. If the AIFM is marketing an AIF to **professional and or well informed investors**, then a warning that "retail investor protection afforded by law does not apply to this particular AIF".
   c. The valuation methodology for the units.
   d. Maximum charges that may be borne by the investor.

C. Distribution of AIF units (including AIFLNPs) by subthreshold AIFMs established in Cyprus to the EU and/or third countries

1. Subthreshold AIFMs established in Cyprus, that do not benefit from the passport afforded under the AIFMD, that intend to market AIF units in the EU and/or third countries (for this section "host countries") **to well informed and professional investors only** must notify CySEC of their intention. The AIFMs in question must submit along with the notification a confirmation by the Competent Authorities of the host country. The confirmation should clarify that the host country's procedures with respect to the appropriateness of the AIFM's marketing of units has been followed.

Circular C110 – Reporting Obligations of AIFMs and Sub Threshold AIFMs

On 1 February 2016, through the issuance of Circular C110, CySEC informed the AIFMs in the Republic and the subthreshold AIFMs about their reporting obligations and reporting frequencies for each EU established AIF and for each AIF they market in the EU as per below.

- AIFMs managing unleveraged AIFs that invest in listed Companies for the purpose of acquiring their control need to report to CySEC on an annual basis no later than one month after the reporting reference date.

- AIFMs managing AIFs whose AuM are calculated between 100 million but do not exceed 1 billion Euro need to report to CySEC on half yearly basis no later than one month after the reporting reference date.

- AIFMs managing AIFs whose AuM exceed 1 billion Euro need to report to CySEC on a quarterly basis no later than one month after the reporting reference date.

- Subthreshold AIFMs need to report to CySEC on an annual basis no later than one month after the reporting reference date.

The first reporting reference date for providing information to the CySEC is December 31, 2015. The Regulated Entities must create, sign and submit the XML files, exceptionally for this reporting period, by March 11, 2016.

Suspension of the "Fast Track" examination Scheme in relation to the examination of applications for authorisation.

On 2 February 2016, through the issuance of an announcement, CySEC informed the public that on 25 January 2016, it decided to suspend the "Fast Track" examination scheme for the examination of application for authorisation due to the reason that an exceedingly large number of application were received.

Moreover, CySEC stated that the Scheme will be launched again, on 1 April 2016, with the same procedures and time schedules that were set as the previously issued Announcement dated on 2 November 2015.

Acronyms & Definitions used

ABS	Asset Backed Securities
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
AIFM	Alternative Investment Fund Manager
AuM	Assets under Management
CDS	Credit Default Swap
CFD	contracts for difference
Commission	European Commission
CP	Consultation Paper
CRS	Common Reporting Standard
CySEC	Cyprus Securities and Exchange Commission
EMIR	European Market Infrastructures Regulation – Regulation (EU) 648/2012 of the European Parliament and Council on OTC derivatives, central counterparties and trade repositories
ESMA	European Securities and Markets Authority
ETD	Exchange-Traded Derivative
EU	European Union
FCA	UK Financial Conduct Authority
FTT	Financial Transaction Tax
FX	Foreign Exchange
IRS	Interest Rate Swap
ITS	Implementing Technical Standards
MAD	Directive no.2014/57/EU of the European Parliament and of the Council on criminal sanctions for market abuse
MAR	Regulation no. 596/2014 of the European Parliament and of the Council on insider dealing and market manipulation (market abuse)
MiFID	Markets in Financial Instruments Directive – Directive 2004/39/EC of the European Parliament and the Council
MiFID II	Directive no. 2014/65/EU of the European Parliament and of the Council on markets in financial instruments repealing Directive 2004/39/EC of the European Parliament and of the Council (compromise reached, number to be assigned)
MiFIR	Regulation no. 600/2014 of the European Parliament and of the Council on markets in financial instruments and amending Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories [EMIR]
MMF	Money Market Fund
MoU	Memorandum of Understanding
NDF	Non-deliverable forwards
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
TA	Technical Advice
UCITS	Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009, on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)
UCITS V	Directive of the European Parliament and of the Council amending Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards depositary functions, remuneration policies and sanctions

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Contact Us

Mailing Address:

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

Main Offices in Cyprus

Limassol:

74 Archiepiskopou Makariou C'

Amaranton Court, 3rd Floor, Mesa Geitonia

4003 Limassol, Cyprus

Tel: +357 2535 1335

Fax: +357 2535 1330

Nicosia:

25 Demostheni Severi Avenue

Metropolis Tower, 4th Floor

1080 Nicosia, Cyprus

Tel: +357 2287 7744

Fax: +357 2287 7780

www.mapsplatis.com