MAP S.Platis

Your Partner in Financial Services!

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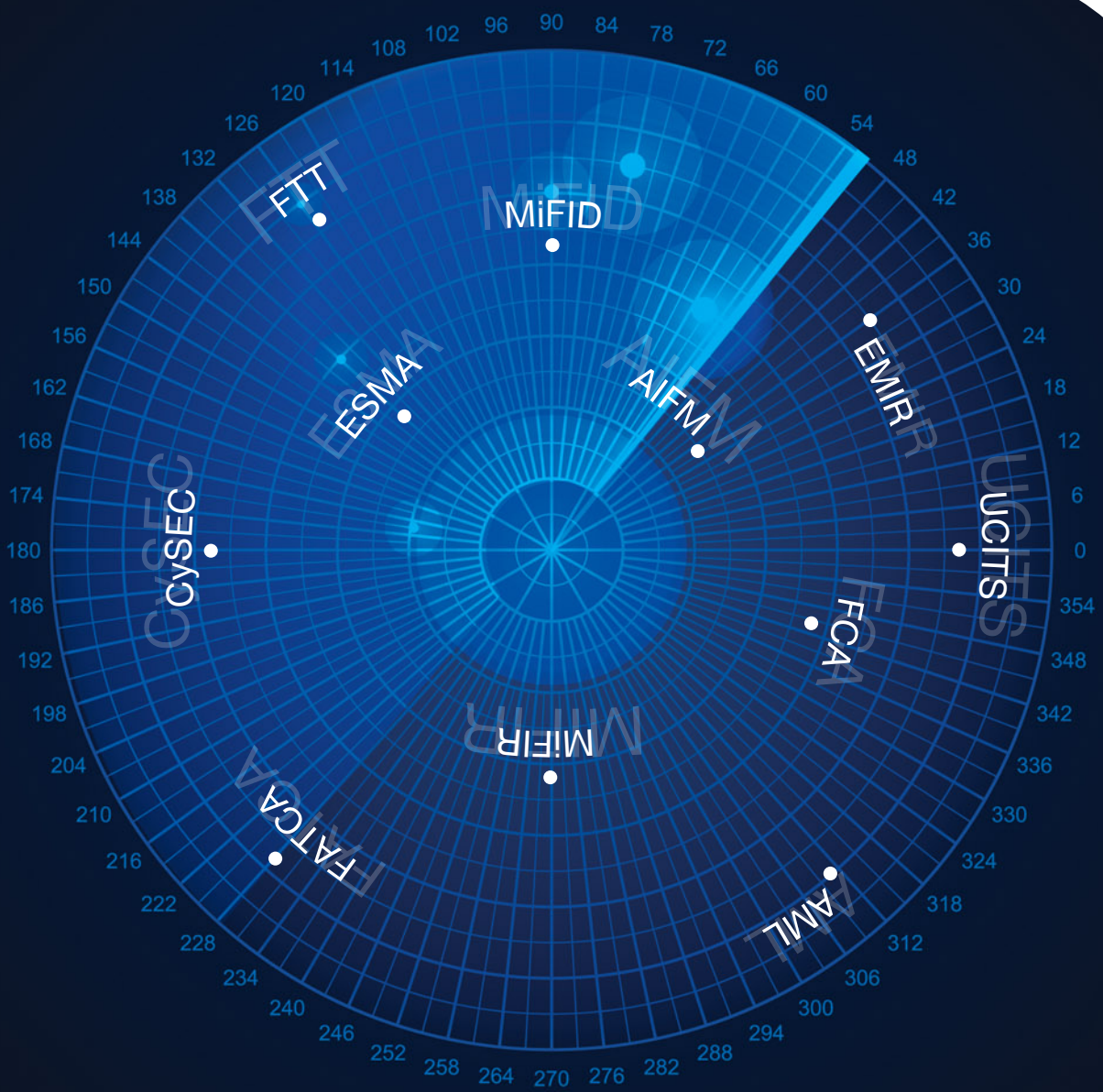
REGULATORY RADAR

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 MiFID II by one year to 3 January 2018. The proposal takes the form of a draft Directive amending MiFID II and draft Regulation amending MiFIR as regards certain dates. 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. The national transposition date will now also be moved by one year to **3 July 2017**. The final Directive amending MiFID II and Regulation amending MiFIR are currently being finalised and will be published in the Official Journal in due course.

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).

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.

On 11 December 2015, ESMA published:

- Final Report on draft ITS with the draft texts

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.

Level 3 measures

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 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.

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.

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

On 22 December 2015, ESMA published Consultation Paper on Guidelines on transaction reporting, reference data, order keeping & clock synchronisation. This consultation contains draft guidance on RTS 22, 23, 24 and 25.

Market Guidelines on Cross-Selling Practices

On 23 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 and engaged in cross-selling practices.

Summary of what is next?

ESMA submitted a Final Report (dated 28 September 2015, with 28 draft RTS) to the European Commission on 28 September 2015. ESMA submitted a Final Report (dated 11 December 2015, with 8 draft ITS) to the European Commission on 11 December 2015. The Commission had three months (this period can be extended by one additional month) to decide whether to endorse the technical standards. The Commission is still working through these draft regulatory and implementing technical standards. To date, only a few have been adopted by the Commission. Three RTS (RTS 2, 20 and 21) have been sent back to ESMA.

The new Market Abuse regime

The pre-existing Market Abuse regime (an EU-wide market abuse regime and a framework for establishing a proper flow of information to the market) has been extended and aligned with MiFID II. There is now a new Market Abuse Regulation (MAR) (which replaces the old Market Abuse Directive in its entirety and creates a single rule book for market abuse) and a supplementing Directive on Criminal Sanctions for Insider Dealing and Market Manipulation (MAD). MAR will apply from 3 July 2016 even though 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 Technical Standards 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 2015, 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 closed on 31 March 2016.

The Commission published the final texts of the following Level 2 measures:

- Commission Delegated Regulation supplementing MAR with regard to regulatory technical standards for the criteria, the procedure and the requirements for establishing an **accepted market practice** and the requirements for maintaining it, terminating it or modifying the conditions for its acceptance (26 February 2016)
- Commission Delegated Regulation supplementing MAR with regard to regulatory technical standards for the technical arrangements for objective presentation of **investment recommendations** or other information recommending or suggesting an investment strategy and for disclosure of particular interests or indications of conflicts of interest (9 March 2016)

- Commission Delegated Regulation supplementing MAR with regard to regulatory technical standards for the appropriate arrangements, systems and procedures as well as notification templates to be used for **preventing, detecting and reporting abusive practices or suspicious orders** or transactions and related annex (9 March 2016)
- Commission Delegated Regulation supplementing Regulation MAR with regard to regulatory technical standards for the conditions applicable to **buy-back programmes and stabilisation** measures (8 March 2016)
- Commission Delegated Regulation supplementing MAR with regard to regulatory standards setting out appropriate arrangements, systems and procedures for disclosing market participants conducting **market soundings** (17 May 2016)

The following level texts have now been published in the Official Journal:

- The Commission Implementing Regulation laying down implementing technical standards (ITS) with regard to the precise format of insider lists and for updating insider lists in accordance with the Market Abuse Regulation was published on 11 March 2016 in the Official Journal

- Commission Delegated Regulation supplementing MAR with regard to regulatory technical standards for the content of notifications to be submitted to competent authorities and the compilation, publication and maintenance of the **list of notifications** with its related Annex was published on 1 March 2016 in the Official Journal

- The Commission Implementing Regulation laying down implementing technical standards (ITS) with regard to the format and template for the notification and public disclosure of manager's transactions in accordance with the Market Abuse Regulation was published on 5 April 2016 in the Official Journal

- The Commission Implementing Regulation laying down implementing technical standards (ITS) with regard an exemption for certain third countries public bodies and central banks, the indicators of market manipulation, the disclosure thresholds, the competent authority for notifications of delays, the permission for trading during closed periods and types of notifiable managers' transactions in accordance with the Market Abuse Regulation was published on 5 April 2016 in the Official Journal

On 1 April 2016, ESMA published its updated Q&A on the Common operation of the Market Abuse Directive with a new question on investment recommendations.

On 30 May 2016, ESMA published a new Questions and Answers document on the Market Abuse Regulation addressing the scope of the obligation of prevention and detection of market abuse.

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

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 IRS RTS for the first batch of cleared OTC derivatives published in the OJ; for these specific OTC derivatives:
  - **21 June 2016**, clearing obligation takes effect for Category 1 counterparties ie clearing members
  - **21 December 2016**, clearing obligation takes effect for Category 2 counterparties
  - **21 June 2017**, clearing obligation takes effect for Category 3 counterparties
  - **21 December 2018**, clearing obligation takes effect for Category 4 counterparties
- **1 December 2016**, variation margin for non-cleared OTC derivatives and initial margin on a phased implementation timetable will begin.
- **19 April 2016**, the CDS RTS was published in the OJ; for these specific OTC derivatives:
  - **9 February 2017**, clearing obligation takes effect for Category 1 counterparties ie clearing members
  - **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

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 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 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. The Annex confirms that 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 10 November 2015, ESMA published its final report 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 16 February 2016, ESMA published the 16th update to its Q&As on the implementation of EMIR. The updated Q&As clarifies how the clearing obligation should apply to swaps resulting for the exercise of a swaption, including during the frontloading period and the approach on frontloading that was adopted in the ESMA's first RTS on the clearing obligation, which entered into force on 21 December 2015.

On 4 April 2016, ESMA published a further 17th update to its Q&A. The updated document includes a new Q&A regarding the population of the "Clearing obligation" field in the trade reports. In particular, this Q&A explains how the description of the field should be interpreted, how it should be populated during the frontloading period and how long the counterparties are allowed to report value "X" (standing for "not available").

On 6 June 2016, ESMA published a further 18th update to its Q&A. The updated Q&A includes new answers regarding CCP's default management, competent authorities' access to trade repository data and reporting of notional in position reports.

ESMA List of pension scheme arrangements exempted from clearing obligation

In accordance with Art 89(2) of EMIR, on 18 February 2016, ESMA has published a list of pension scheme entities and arrangements that benefit from an exemption from a temporary exemption from the clearing obligation for over-the-counter derivative contracts.

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 clear 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.

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.

Timing for physically settled FX 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 the date of entry into force of this delegated act and 31 December 2018**.

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

ESMA fines DTCC Derivatives Repository Limited (DDRL)

On 31 March 2016, ESMA has fined the trade repository DTCC Derivatives Repository Limited (DDRL) €64,000, and issued a public notice, for negligently failing to put in place systems capable of providing regulators with direct and immediate access to derivatives trading data. This is a key requirement under EMIR in order to improve transparency and facilitate the monitoring of systemic risks in derivatives markets.

This is the first time ESMA has taken enforcement action against a trade repository registered in the EU. DDRL is the largest EU registered trade repository.

ESMA found that DDRL failed to provide direct and immediate access to derivatives data from 21 March 2014 to 15 December 2014, a period of about nine months in which access delays increased from two days to 62 days after reporting and affected 2.6 billion reports. This was due to its negligence in:

- failing to put in place data processing systems that were capable of providing regulators with direct and immediate access to reported data;
- failing, once they became aware, to inform ESMA in a timely manner of the delays that were occurring; and
- taking three months to establish an effective remedial action plan even while delays were worsening.

DDRL's failures caused delays to regulators accessing data, revealed systemic weaknesses in its organisation particularly its procedures, management systems or internal controls and negatively impacted the quality of the data it maintained.

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 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 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.

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. ESMA will use the responses to develop detailed rules on which it will publish a follow-up consultation in the second half of 2016. ESMA shall send its draft rules for approval to the European Commission by 13 January 2017.

IV. ESMA Statement on MIFID practices for firms selling financial instruments subject to BRRD resolution regime

On 2 June 2016, ESMA published a Statement reminding banks and investment firms ('firms') of their responsibility to act in their clients' best interests when selling bail-in-able financial instruments. New Banking Recovery and Resolution Directive (BRRD) rules in force since January 2016 mean firms are likely to issue a significant amount of potentially loss-bearing instruments to fulfil their obligations and ESMA is concerned investors – in particular retail investors - are unaware of the risks they may face when buying these instruments.

The Statement emphasises that firms must comply with their obligations under MiFID and the importance of:

- providing investors – existing and new – with up-to-date, complete information drafted under the supervision of the compliance function;
- managing potential conflicts of interest, in particular, when a firm sells its own bail-in financial instruments directly to its customers - a practice known as self-placement; and
- ensuring the product is suitable and appropriate for the investor which may entail collecting more in-depth information about the client than usual to reflect the fact a client could lose money without the firm entering into insolvency.

2. Anti-Money Laundering

Financial Action Task Force (FATF) Plenary meeting

The main issues dealt with by this Plenary held on 17-19 February 2016 in Paris were:

- Work on terrorist financing, which remains the top priority for the FATF, including:
- Approval of a Consolidated FATF Strategy on Combating Terrorist Financing
    - Focus on enhancing effective exchange of information
    - Considering whether changes are necessary to the FATF Standards for combatting terrorist financing
    - Assessing and improving implementation of counter terrorist financing measures
- A statement on Brazil's continued failure to address the serious deficiencies identified in its mutual evaluation reports.
- Two public documents identifying jurisdictions that may pose a risk to the international financial system:
    - Jurisdictions with strategic anti-money laundering and combating the financing of terrorism (AML/CFT) deficiencies for which a call for action applies
    - Jurisdictions with strategic AML/CFT deficiencies for which they have developed an action plan with the FATF

- An update on AML/CFT improvements in Algeria, Angola and Panama
- Malaysia welcomed as a member to the FATF
- Israel welcomed as an observer to the FATF
- Adoption of Guidance for a Risk-Based Approach for Money or Value Transfer Services
- Revising the FATF/FATF-Style Regional Body High-Level Principles and Objectives
- Developments on de-risking

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 contact 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 Question & Answer on CFDs and other speculative products

On 8 April 2016, ESMA published a new question and answer document (Q&A) on the application of the Markets in Financial Instruments Directive (MiFID) to the marketing and sale of financial contracts for difference (CFDs) and other speculative products to retail clients (such as binary options and rolling spot forex).

ESMA views these products as complex products and states that although it may be difficult for the majority of retail investors to understand the risks involved, they are widely advertised to the retail mass market by a number of firms, often via online platforms. 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 and 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.

This first Q&A covers key aspects relevant to the authorisation of firms offering CFDs and other speculative products to retail clients.

On 1 June 2016, ESMA published an updated version of its question and answer to include a new question and answer in section 2, which addresses conflicts of interests arising from business models that firms offering speculative products to retail investors may adopt. In particular, ESMA clarifies the conflicts of interest aspects that national competent authorities should consider where a firm uses other parties to perform activities on its behalf and highlights that firms must manage conflict of interests that may arise as a result of remuneration between the parties, which could incentivise behaviours that are not in the best interests of retail clients.

ESMA 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.

Although Q&As are targeted at competent authorities, the answers are also intended to help firms by providing clarity on MiFID rules.

Bank for International Settlements - global code for the FX market

On 17 March 2016, Guy Debelle, Assistant Governor, Reserve Bank of Australia, gave a speech at the FX Week Australia conference, in which he outlined further information on the proposed global code of conduct for the foreign exchange market.

The work to develop the Global Code commenced in May last year, when the Bank for International Settlements (BIS) Governors commissioned a working group of the Markets Committee of the BIS to facilitate the establishment of a single global code of conduct for the wholesale FX market and to come up with mechanisms to promote greater adherence to the code.

The Global Code is aiming to set out global principles of good practice in the foreign exchange market to provide a common set of guidance to the market, including in areas where there is a degree of uncertainty about what sort of practices are acceptable, and what are not. This should help to address the lack of trust as well as promote the effective functioning of the wholesale FX market.

To that end, one of the guiding principles underpinning the Code is to promote a robust, fair, liquid, open, and transparent market. A diverse set of buyers and sellers, supported by resilient infrastructure, should be able to confidently and effectively transact at competitive prices that reflect available market information and in a manner that conforms to acceptable standards of behaviour. There are two important points worth highlighting: first, it's a single code for the whole industry and second, it's a global code. It's intended to cover all of the wholesale FX industry.

On 26 May 2016, the Bank for International Settlements released the first phase of the Global Code of Conduct for the Foreign Exchange Market. The FX global code does not impose legal or regulatory obligations on market participants and is not a substitute for regulation. The code sets standards of market practice.

UK Serious Fraud Office closes Forex investigation

On 15 March 2016, the Director of the Serious Fraud Office closed the Serious Fraud Office's investigation into allegations of fraudulent conduct in the foreign exchange market (Forex).

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) will issue a "state of play" document. It is not clear if there is a consensus among the group of 10 FTT Member States.

5. Taxation

Common Reporting Standard (CRS)

Please refer to Issue 8 of MAP S.Platis Regulatory Radar, Issue 9 of MAP S.Platis Regulatory Radar and Issue 10 of MAP S.Platis Regulatory Radar for more information regarding CRS.

Foreign Account Tax Compliance Act (FATCA)

Please refer to Issue 5 of MAP S.Platis Regulatory Radar, Issue 6 of MAP S.Platis Regulatory Radar and Issue 8 of MAP S.Platis Regulatory Radar for more information regarding FATCA.

6. Fund Regulation

Money Market Funds (MMFs)

There has been some progress with the negotiations and we should expect some new draft texts shortly which will be the basis of trialogue discussions between the Commission, the Council and the European Parliament.

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 text principally sets out the level 2 depositary requirements and broadly tracks the equivalent depositary provisions in AIFMD. This Regulation will apply from 13 October 2016.

On 31 March 2016, ESMA published the final new UCITS 5 remuneration guidelines. 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 Guidelines will ensure a convergent application of these provisions and provide guidance on the governance of remuneration, requirements on risk

alignment and disclosure. The Guidelines will apply to UCITS management companies and national competent authorities from 1 January 2017.

While finalising its UCITS Remuneration Guidelines, ESMA had to balance the alignment with the AIFMD Remuneration Guidelines and the obligation to closely cooperate with the European Banking Authority (EBA) in order to ensure consistency with requirements developed for other financial services sectors, in particular credit institutions and investment firms. The UCITS Directive prescribes that proportionality shall apply to the full set of remuneration principles set out under this Directive. However, the Guidelines do not include guidance on the possibility of dis-applying certain specific requirements on the pay-out process. This follows recent work and legal analysis, including the EBA's Guidelines under Capital Requirements Directive IV (CRD IV), which have called into question the existing understanding that the proportionality provisions as set out under the UCITS Directive and AIFMD may lead to a result:

a) where – under specific circumstances – the requirements on the pay-out process i.e. the requirements on variable remuneration in instruments, retention, deferral and ex post incorporation of risk for variable remuneration are not applied; or
b) where it is possible to apply lower thresholds whenever minimum quantitative thresholds are set for the pay-out requirements e.g. the requirement to defer at least 40% of variable remuneration.

ESMA considers that these scenarios should remain possible in certain situations and, in its letter to the European institutions, suggests that further legal clarity on this possibility could be beneficial to all the interested parties. Legislative changes in the relevant asset management legislation could be one way to further clarify the applicable regulatory framework.

ESMA believes that it would be inappropriate for the following fund managers to be subject in all circumstances to the requirements on the pay-out process:

(i) smaller fund managers (in terms of balance sheet or size of assets under management);
(ii) fund managers with simpler internal organisation or nature of activities; or
(iii) fund managers whose scope and complexity of activities is more limited.

ESMA also considers that it would be disproportionate to apply the requirements to relatively small amounts of variable remuneration and to apply certain requirements to certain staff when this would not result in an effective alignment of interests between the staff and the investors in the funds.

AIFMD remuneration guidelines

The amendments relate to the section of the guidelines dealing with the application of the remuneration rules in a group context and are intended to acknowledge the potential outreach of the amended Capital Requirements Directive and associated Regulation rules in a banking group.

The guidelines will apply from 1 January 2017.

AIFMD – ESMA updated Q&As

On 5 April 2016, ESMA published an updated questions and answers document (Q&A) for AIFMD. The updated document includes a new Q&A on notification requirements relating to additional investment in existing AIFs.

On 3 June 2016, ESMA published a further Q&A including a new question and answer on requirements regarding the domicile of EU alternative investment funds which are marketed in the home Member State of the Alternative Investment Fund Manager, as well as a new question and answer relating to the marketing of EU feeder AIFs which have a non-EU master AIF. The Q&A also contains two new questions and answers regarding the influence that committed capital can have on the calculation of the total value of assets under management and additional own funds.

Packaged Retail and Insurance-based Investment Products (PRIIPs) – final draft RTS published

On 31 March 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 have been submitted to the European Commission for endorsement. They will come into force on the 31 December 2016.

7. UK – Developments of Interest to Investment Firms

MIFID II Trade Association roundtable

On 22 February 2016, the FCA held a MiFID II Trade Association roundtable. The minutes were released on 14 March 2016. The meeting covered several topics, including:

- implementing measures and Commission proposal to delay the date of application of MiFID II
- CP 15/43 (FCA's consultation on MIFID II implementation of 15 December 2016)
- report on 19 February 2016 MiFID II transposition workshop

MIFID II Implementation - Conduct forum

On 18 April 2016, the FCA held a MIFID II implementation conduct forum. The minutes show that, inter alia, the presentation of costs and charges under MIFID II was discussed.

MIFID II – FCA interpretation of FX transactions

The Bank of England has published minutes of the foreign exchange joint standing committee's meeting held on 22 April 2016. A number of topics were covered during the meeting including a presentation by the FCA regarding the application of MIFID to FX transactions.

The FCA, noted that MiFID applied to FX derivative transactions and those FX spot transactions that are ancillary to transactions in MiFID instruments. Therefore, the FCA takes the view that such ancillary spot transactions are within the scope of MiFID and the rules on best execution. This is the case where the firm was dealing as a principal, including where dealing with a professional counterparty, where the counterparty was placing legitimate reliance on the firm.

However, in relation to other FX spot transactions, the FCA considers that the obligations arising would vary according to the nature of the relationship between market participants:

- Agents. Acting on behalf of a client and thus executing transactions in line with their mandate, with a responsibility to use the firm's efforts to secure an optimal outcome for the client. Best execution was an appropriate benchmark, even if there was not a MiFID best execution requirement;
- Principal. Acting on one's own behalf, providing two-way quotes to clients and without any obligations to execute an order with clients until both parties are in agreement. The client has the flexibility to seek other quotes and the principal has no best execution requirements; and
- Principal with some discretion. Where the client could be considered to have placed some legitimate reliance on the principal thus giving rise to corresponding obligations of the principal to try and achieve an optimal outcome for the client, for example as may be the case when managing stop-loss orders.

Serious Fraud Office – LIBOR traders ordered to pay £878,806 confiscation order

On 23 March 2016, Tom Hayes, the first individual to be convicted after trial for the manipulation of LIBOR, was ordered to pay a confiscation order of £878,806 at Southwark Crown Court.

Hayes was convicted of eight counts of conspiracy to defraud in August 2015 and sentenced to 14 years in prison, later reduced to 11 years on appeal.

During the confiscation proceedings, the court was asked to consider three questions: had the defendant benefited from relevant criminal conduct? if so, what was the value of the benefit he obtained? and what sum was recoverable from him?

Mr Justice Cooke, who oversaw the trial and confiscation proceedings, found that Hayes would not have been rated as highly as he was by UBS and Citi if he had not achieved success in the manipulation of LIBOR and therefore would not have been rewarded as highly as he was but for that activity.

Mr Justice Cooke concluded that the final amount to be confiscated is the sum of £878,806. The total available assets are in the sum of £1,705,167.56.

Mr Justice Cooke ordered that Hayes must satisfy the order within a specified period or incur a default prison sentence of three years.

Senior managers' regime

From 7 March 2016 the Senior Managers and Certification Regime replaces 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

Circular C115 - EMIR - European Regulation (EU) No 648/2012 on Over the Counter Derivatives, Central Counterparties and Trade Repositories

On 15 February 2016, through the issuance of Circular C115, and following Circulars CI144-2014-03 and CI144-2014-07, CySEC reminded all regulated entities i.e. CIFs, UCITS, Management Companies and Alternative Investment Funds ("AIF") managed by Alternative Investment Fund Managers ("AIFMs") about their obligation emanating by EMIR as well as to give an update on the latest developments in the European Union concerning this area.

The said Regulated Entities are required to:

A. Clearing Obligation:

1. Identify which of the products used are subject to the clearing obligation. These products must be cleared, through authorised/recognised Central Counterparties ("CCPs"). ESMA maintains on its website a list of European CCPs authorised and a list of third-country CCPs recognised to offer clearing services in the EU.

   By now, only the following interest rate OTC derivatives classes, denominated in the G4 currencies (GBP, EUR, JPY and USD) are subject to clearing obligation based on the RTS on interest rate OTC derivatives published in the EU's Official journal:

   i. Basis swaps classes;
   ii. Fixed-to-float interest rate swaps classes (known as "plain vanilla" interest rate derivatives);
   iii. Forward rate agreement classes;
   iv. Overnight index swaps classes.

   Further details on the dates from which the clearing obligation takes effect and the minimum remaining maturity of the OTC derivative contracts can be found in the relevant RTS.

   Moreover, ESMA developed and submitted to the European Commission ("EC") for endorsement the following:

I. Draft RTS for the central clearing of certain types of Credit Default Swap (CDS).
II. Draft RTS for the central clearing of Interest Rate OTC derivatives in additional currencies.

It is noted that as far as equity derivatives, contracts for differences and foreign exchange (non-deliverable forwards) contracts are concerned, no RTS are expected to be proposed at this stage.
Note: ESMA's Public Register with respect to the Clearing obligation under EMIR.

2. Put in place relevant clearing arrangements as soon as possible.

3. Determine their counterparty category and identify which of their counterparties also fall within scope.

4. Terminate any cooperation, for receiving clearing services, with third country Central Counterparties ("CCP") which have not applied to ESMA for recognition.

B. Reporting Obligation:
Ensure that they have an agreement with a registered/authorised Trade Repository (please refer to ESMA's List of Registered Trade Repositories) and that the details of any derivative contract they have concluded and of any modification or termination of the contract are reported to the relevant Trade Repository.

C. Risk mitigation techniques for OTC derivatives contracts not cleared by a CCP:
Ensure that suitable procedures and arrangements are in place to measure, monitor and mitigate operational and counterparty credit risks, regarding OTC derivatives not cleared by a CCP in accordance to Article 11 of EMIR and following the RTS 149/2013 and 285/2014.

Further to the above, CIFs were requested to fill in the **Form C115** that was attached as an Appendix on the aforementioned Circular and submit it to the electronic address supervision@cysec.gov.cy, **no later than Tuesday, March 8, 2016.**

Amendment of the Investment Services and Regulated Markets Law

On 17 February 2016, CySEC announced the amendment of Law 144(I)/2007 which provides for the provision of investment services, the exercise of investment activities, the operation of regulated markets with Amending Law 8(1)/2016 (in Greek). CySEC proceeded with the unofficial consolidation of the mentioned Laws which shall now be cited as the as the Investment Services and Regulated Markers Law of 2007-2016.

The main amendments are the following:

- Article 61 of Part VII - Investor Compensation Fund ("ICF")
  - Paragraph (c) of subsection (1) of Article 61 is amended as follows:
    "(c) two representative with their alternates, elected by General Meeting of the members of the ICF for the Clients of IFs"

- Subsection (3) of article 61 is amended as follows:
  "(3) Once the position of any member becomes vacant, this is filled as soon as possible, in accordance with the provisions of subsections (1) and (2):
  It is provided that, until the position of vacant member is filled, no vacancy shall affect the legal establishment and operation of the Administrative Committee, provided that the number of the remaining members is not less than the required number for the Administrative Committee to form a quorum."
- The following subsection is added right after Subsection (3) of Article 61 as above:
  "(4) The validity of any act or work performed by the Administrative Committee is not affected due to the vacancy of the member, if the number of the member is not less than three (3)."

Further to the above, the ICF invited all its members to an Extraordinary General Meeting that was held on **Wednesday, 27 April 2016, at 9am**. The Agenda of the said Meeting was mainly the election of the two members of the Administrative Committee of ICF as well as their replacements.

Candidacies for the election of the two members and their replacements were required to submit their interest to the Administrative Committee by fax or email, at least two days before the date of the extraordinary General Meeting.

Participation of ICF members to the above mentioned Meeting was optional and not mandatory. In case a member of Fund wished not to attend the said meeting, then the members' participation could be either through an authorised representative or via representation by another member of the Fund.

Circular C116 – The Rehabilitation of Offenders Regulations of 2015

On 18 February 2016, through the issuance of Circular C116, CySEC informed all regulated entities about the publication of the Rehabilitation of Offenders Regulations 2015 in the Official Gazette of the Republic on the 20 November 2015.

According to the abovementioned Regulations, CySEC clarifies that as part of its assessment on whether a person, who applied for a licence or approval for, inter alia, the following:

(1) acquisition or increase of a qualifying holding in a regulated legal person, or
(2) appointment as a member of a management body, or
(3) appointment as a compliance officer in a regulated legal person, or
(4) appointment in any other position, where the said person effectively directs the business or can influence the decision making process or the policy of the regulated legal person or controls a critical function of the regulated legal person,

will request and evaluate information related to previous convictions, criminal offences, conduct or incidents related to such person. In such cases, the offenders are not regarded as rehabilitated and/or their offences are not eliminated. Therefore, CySEC, as a supervisory authority, when assessing whether a person, who applied

for a licence or approval for the aforementioned cases, is fit and proper, will request and evaluate information of previous convictions, criminal offences, conduct or incidents related to such person. The said person shall be legally responsible to disclose such information.

Circular C117 – Categorisation of AIFs according to Directive DI131-2014-03 "Regarding the categorisation of AIFs and other related matters"

On 22 February 2016, through the issuance of Circular C117, CySEC informed AIFs of the Republic of their option not to include in their name any distinctive feature in relation to their main category of assets, since an AIF is free to use any other characteristic it may wish.

Nonetheless, if an AIF decides to include in its name a distinctive feature in relation to its main category of assets, then such feature should be consistent with its investment policy and strategy as these are included in the AIF's documents such as the Regulation or instruments of incorporation and Offering Memorandum.

As a result, the categorisation of an AIF into a specific category provided by Directive DI131-2014-03 (in Greek) is based on the AIF's main category of assets (which are evidenced in the AIF's documents).

According to the following provisions of the aforesaid Directive, an exception to the above is introduced under:

a) Paragraph 78 for Loan AIFs, and
b) Paragraphs 56 and 74 for Money market AIFs.

It is worth mentioning that if an AIF invests in a main category of assets (as provided by the Directive) then the AIF will fall in the relevant category and will be subject to the rules that govern that specific category.

Circular C118 - Risk Based Supervision Framework ("RBS-F") – Electronic submission of information for the year 2015

On 22 February 2016, through the issuance of Circular C118, CySEC informed the Administrative Services Providers ("ASPs") that, following the issuance of Circular C109 regarding the electronic submission of information concerning the implementation of the RBS-F for the year 2015, they needed to complete the Form RBS-F_ASPS_01 ("the Form") that is attached as an Appendix on the aforementioned Circular and submit it electronically between February 22 and March 18, 2016 for the respective reporting period (i.e. 01/01/2015 – 31/12/2015).

Moreover, CySEC has published a document with Frequently Asked Questions ("FAQ") regarding the completion of the Form and requested ASPs to read the said document before they address any enquiries to CySEC.

Circular C119 – Compliance Officer's Annual Report on the prevention of money laundering and terrorist financing – Electronic Submission

On 24 February 2016, through the issuance of Circular C119 CySEC informed all regulated entities about the new method of submission of the Anti-Money Laundering Annual Report ("the AML Annual Report").

According to the provisions of paragraph 9(1)(q) and 10 of the Directive DI144-2007-08 of 2012 for the Prevention of Money Laundering and Terrorist Financing, the regulated entities are obliged to prepare and submit their AML Annual Reports, along with the respective minutes of the board of directors meeting to CySEC within twenty days (20) from the date of the relevant meeting, and not later than three (3) months from the end of the calendar year. In this respect, CySEC required all regulated entities to submit the relevant Annual Report with the respective minutes **only electronically, in PDF format, via the Transaction Reporting System ("TRS").**

Through the abovementioned Circular, CySEC provided a detailed description for creating, signing and submitting the said PDF files to CySEC.

Circular C121 - AIF, AIFLNP, AIFM regarding AML and Internal Audit annual report obligations

On 9 March 2016, through the issuance of Circular C121, CySEC informed AIFs, AIFLNPs and AIFMs regarding their AML and Internal Audit annual obligations.

The said Circular lays down certain provisions emanating from the Prevention and Suppression of Money Laundering and Terrorist Financing Law of 2007, as in force, as well as from the relevant CySEC Directive DI144-2007-08 which obliged the aforesaid regulated entities to submit to CySEC the following:

- Annual Report of the Compliance Officer for the prevention and suppression of money laundering and terrorist financing together with the relevant Board of Directors meeting minutes, by 31 March of each year;
- Annual Report of the Internal Auditor together with the Minutes of the Board of Directors, by 30 April each year, the paragraph 6 of the Directive; and
- Monthly Prevention Statement within fifteen (15) days from the end of each month by completing Form 144-08-11.

Circular C124 – How to submit the Annual Financial Report for the financial year 2015 to CySEC

On 8 April 2016, through the issuance of Circular C124 (in Greek) and following the issuance of CI190-2009-02 (in Greek), CySEC informed the Issuers whose securities are admitted to trading on a regulated market about the new method for submitting their Annual Financial Report for the year ending 31 December 2015.

CySEC makes clear that the only acceptable method for submitting the said Annual Financial Report is **electronically, in PDF format, via an email to** financial.report@cysec.gov.cy.

CySEC also mentioned that according to the article 9(3) of the Transparency Law (in Greek), the Annual Financial Report needs to include the following:

- Annual financial statements,
- Management report,
- Statement made by either the members of the Board of Directors of the Issuer or the Chief Executive Officer or the person who exercises equivalent duties and the Chief Financial Officer.

For any technical issues/enquiries, Issuers are urged to contact CySEC via email to information.technology@cysec.gov.cy including their name in the email's subject.

Market Guideline on ETFs and other UCITS issues

On 8 April 2016, through the issuance of an announcement, CySEC informs the UCITS Management Companies and UCITS taking the form of self-managed investment companies of the adoption of the revised ESMA Guidelines on ETFs and Other UCITS issues (ESMA/2014/937) which amend the original Guidelines (ESMA/2012/832) and modify the provisions on diversification collateral.

The revised guidelines provide increased protection to investors by offering guidance on the information that should be communicated with respect to index-Tracking UCITS and UCITS ETFs together with specific rules to be applied by UCITS when entering into over-the-counter financial derivative transactions and efficient portfolio management techniques. Moreover, the said guidelines set out the criteria that should be respected by financial indices in which UCITS invest.

Finally, CySEC notes that is in the process of amending the relevant Directives that are affected by the above mentioned revised guidelines.

Leak of documents of the company Mossack Fonseca ("Panama Papers")

On 12 April 2016, through the issuance of Circular C125 in relation to the leaked documents of Mossack Fonseca which refers to persons who may be involved in tax evasion, corruption and/or money laundering activities (colloquially known as the "Panama Papers"), CySEC has requested from regulated entities to report back, by the 20th of April, the following:

- Whether regulated entities maintain or have ever maintained any relationship with the company Mossack Fonseca, either directly or with any other third person acting for or on behalf of Mossack Fonseca.
- Whether regulated entities maintain or have ever maintained any business relationship with customers introduced or managed by Mossack Fonseca or by any third person acting for or representing Mossack Fonseca.
- Whether regulated entities maintain any business relationship with any other person, who appears to be included in the said documents.
- The measures taken in relation to internal control, risk assessment and risk management in order to

prevent money laundering and terrorist financing taken, should the Company identify that any of its clients are mentioned in the Panama Papers.

Moreover, on 19 May 2016, through the issuance of Circular C132, CySEC informs regulated entities that MOKAS has issued a Directive with respect to their reporting obligations for the persons included in the Panama Papers, as follows:

- To review and update their customers' identification documents and economic profile,
- To review and examine their customers' activity and transactions in order to determine whether any suspicions over money laundering activities arise,
- To reassess their customers' risk categorisation and reclassify them where necessary.

The regulated entities are also reminded of Circular CI144-2014-06 with respect to 'Serious Tax Offences' which is relevant to this issue.

MOKAS notes that the mere enclosure of some persons (legal and natural) in the Panama Papers is not automatically equivalent to suspicious activities for money laundering.

Following the issuance of the abovementioned Circulars, CySEC, through the issuance of an announcement, informs the public that it has proceed with the collection of data from 413 regulated entities. Following a brief review of the information collected, CySEC has identified that 63 regulated entities had and/or have a business relationship with Mossack Fonseca and/or person(s) included in the Panama Papers. CySEC notes that such regulated entities will be further examined and inspected within the framework of onsite inspections.

Finally, CySEC calls its supervised entities to adopt measures for the continuous monitoring of matters related to "Panama Papers" as well as to always comply with the Cyprus Anti-Money Laundering framework.

Law 20(I)-2016 for the recovery of CIFs and Other Entities under the supervision of CySEC

On 13 April 2016, CySEC informs CIFs about the issuance of the Law 20(I)/2016 (in Greek) ("the Recovery Law") regarding the Recovery of CIFs and other entities under the Supervision of CySEC in the case of an impending systemic and/or financial crisis. The abovementioned law transposes all the relevant provisions of Directive 2014/59/EU or otherwise called the Bank Recovery and Resolution Directive ("BRRD").

The Recovery Law outlines the obligations of the aforesaid institutions in relation to preventative and early intervention measures to be taken for the recovery of such an institution from insolvency or likely insolvency. Preventative measures include, among others, the preparation and maintenance, by relevant entities, of recovery plans which include a series of measures to be taken in case of insolvency or likely insolvency of such institutions. The Competent Authority for the recovery of such an institution is CySEC.

Consultation Paper CP (2016-02) - Application of articles 61 and 62 of Law 188(I)-2007

On 13 April 2016, CySEC issued Consultation Paper CP (2016-02) in order to invite all market participants to submit comments and/or suggestions on a proposed Circular regarding the application of articles 61 and 62 of the Prevention and Suppression of Money Laundering and Terrorist Financing Law of 2007 (the "AML Law") following its recent amendment by Law 18(I)/2016 (in Greek).

The proposed Circular describes the application of the new article 62(2A) of the AML Law whereby the verification of identity of a customer/beneficial owner of a CySEC regulated may be completed during the establishment of a business relationship i) if this is necessary not to interrupt the normal conduct of business, and ii) where there is little risk of money laundering or terrorist financing occurring, and iii) where the process of verifying the procedure is completed as soon as practicable after the initial contact. Furthermore, the proposed Circular describes the situation where regulated entities may consider initiating the establishment of a business relationship with a client/beneficial owner whose identity has not been yet verified and provides, as a minimum, the following:

- The verification of the customer's identity shall be completed within a timeframe of 15 days from initial contact.
- Regardless of the number of accounts the Client/Beneficial Owner maintains with the regulated entity, the sum of the amounts deposited should not exceed the €2,000 threshold.
- Within the above timeframe, the regulated entity shall ensure that the percentage of clients, whose identity has not been verified, is considerably low.
- Where the verification of the customer's identity has not been completed within the above timeframe, then the regulated entity must terminate the commencement of the business relationship with the respective customer and automatically return to him the equity/balance of his account.
- During the abovementioned time interval, the regulated entity must undertake at least one enhance due diligence measure as set out in article 64 of the AML Law.
- In cases of suspicion of money laundering, regulated entities shall follow the designated procedure but they shall not withhold funds and/or froze accounts.

In addition, CySEC notes that the regulated entities must **appropriately, sufficiently, and in in due time** warn their customers of the above procedure and receive their **explicit consent**. Moreover, the designated internal practice, the measures, procedures and controls for the effective implementation of the aforesaid article must be duly recorded in the Risk Management/Money Laundering Manual of the regulated entity.

It is noted that regulated entities shall not accept any deposits, unless they have received from the prospective customer the following information:

i. the full identification information of the client, and
ii. the creation of an economic profile, and
iii. the completion of the suitability test and/or
iv. the completion of the appropriateness test.

Finally, CySEC notes its intention to proceed with the amendment of Paragraph 1 of the Fourth Appendix of its Directive DI144-2007-08, regarding the practical procedures that may be followed by a CIF for applying the enhanced measures described under the article 64 of the aforementioned Law, in relation to non-face-to-face customers.

The consultation closed on 20 April 2016.

Circular C126 - Trading in Binary Options

On 14 April 2016, through the issuance of Circular 126, CySEC informs CIFs, which are providing services or intend to provide services in relation to binary options, of the accepted practices for compliance purposes with 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.

CySEC states that the aforesaid CIFs must use trading platforms for reception and execution, or transmission, of orders, which, inter alia, provide adequate information to clients about binary options and operate in a way that is fair to clients.

Moreover, having in mind the need for full transparency and the protection to clients' interests, CySEC indicates various accepted practices applied in binary options trading platforms used by CIFs. These practices are summarised as follows:

a) The clients, before buying the binary option, must be provided with sufficient information in relation to the trading venue, the identification as well as the type of the underlying asset of the binary option.

b) A continuous presentation of the flow of the bid/ask prices of a binary option to be provided to the Client.

c) The bid/ask prices as well as the strike price of an underlying asset of a binary option must be adequately explained and disclosed in a prominent way in the trading platform.

d) Publication of the feed provided details.

e) The bid/ask and/or last prices at the expiry of the binary option must be provided to the clients.

f) A brief explanation of the expiry price of the binary option and the methodology used to determine this price.

g) The graphs presented in the trading platforms must be Information on the availability of the binary option.

h) The clients must have the option to cancel their transaction in binary options, within a reasonable time after its execution, (i.e. more than three seconds) indicating any applicable conditions.

i) Full and accurate explanation of the buyout methodology (if any) must be provided as well as information on the availability of the binary option.

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

Given the above, CIFs must review their arrangements/procedures applied in their trading platforms so as to ensure that these are in line and operated in accordance with the requirements of the legislation and where necessary establish additional arrangements/procedures, **not later than 14 July 2016**.

Interim Court Orders against regulated entities that are under the supervision of CySEC

On 15 April 2016, through the issuance of an announcement, CySEC notes that it has come to its attention a number of interim court orders from persons having financial disputes with entities that are supervised and regulated by CySEC. The aforementioned court orders do not specify the exact bank accounts of the regulated entities that are frozen or will be frozen in case of success and consequently, there are cases where the affected bank accounts are those used by the said entities for the safekeeping of its Clients' funds.

In this respect, CySEC has sent letters to the Cyprus Bar Association, the Association of Cyprus Banks and the Association of International Banks stressing that the aforesaid court orders must not freeze bank accounts that are used for the safekeeping of Clients' funds.

Further to the above, CySEC encourages the regulated entities to draw the attention of their lawyers to the content of the said announcement; in case they become recipients of such orders.

Circular C127 – Transposition of Directive 2014/59/EU (the "BRRD") – Recovery Plans

On 15 April 2016, through the issuance of Circular C127, CySEC informs that Cyprus has fully transposed the BRRD into national legislation. CySEC, draws the attention of CIFs and other regulated entities falling under its supervision of the following:

(1) The recovery of CIFs, which are required to hold initial capital of at least EURO 730,000 under section 10 of Law 144(I)/2007, in the case of an impending systemic and/or financial crisis is provided under Law 20(I)/2016 (the "Recovery Law"). CySEC is the competent authority for the recovery of the said firms.
(2) The resolution of the aforesaid entities is effected by the Resolution Authority (i.e. Central Bank of Cyprus) and all the relevant provisions are laid down under Law 21(I)/2016 (the "Recovery Law").
(3) Law 5(I)/2016 regarding the Deposit Guarantee Scheme and Resolution of Credit institutions and other institutions (the "DGS Law") provides the relevant provisions relating to the Resolution Fund (e.g. contribution and triggers for activation).

Moreover, CySEC brings to the regulated entities' attention the Practical Guide to the EU Bank Recovery and Resolution Directive and emphasises to their obligations in relation to preventative and early intervention measures that need to be taken for their recovery in the event of insolvency or possible insolvency. Such measures include, among others, the preparation and maintenance of recovery plans and thus CySEC

underlines the following Draft Regulatory Technical Standards ("DRTS") and Guidelines issued by the European Banking Authority (the "EBA"):

i. DRTS on the content of recovery plans;
ii. Guidelines on the range of scenarios to be used in recovery plans; and
iii. Guidelines on recovery plan indicators.

Finally, CySEC notes its intention to adopt the content of the above DRTS and Guidelines to the degree that is desirable or relevant.

Consultation Paper CP (2016-03) – Proposed amendments in Alternative Investment Funds Law ("AIF Law") and Alternative Investment Funds Managers Law ("AIFM Law")

On 22 April 2016, CySEC issued Consultation Paper CP (2016-03) (in Greek) in order to invite all market participants to submit comments and/or suggestions on proposed amendments to AIF Law and AIFM Law.

The main proposed amendment in relation to AIF Law is the introduction of the registered alternative investment funds ("RAIFs"). This introduction offers the possibility for the incorporation and the operation of AIFs which will not be subject to authorisation by CySEC however they will be supervised through their manager, who is required to be a authorised AIFMs within the provisions of AIFM Law or Directive 2011/61/EU.

The RAIFs will operate as open ended or closed ended funds taking the legal form of a common fund, or fixed or variable capital investment company or as a limited liability partnership. They will be constituted as externally managed AIFs and their manager may be an AIFM of the Republic or an EU AIFM or a non-EU AIFM given that the manager holds a passport within the provisions of Directive 2011/61/EU, having identified any Member State as the non-EU AIFM's reference state.

Moreover, the RAIFs will be addressed exclusively to professional investors or/and sufficiently informed investors and their statutory documents will expressly provide that RAIFs are subject to the provisions of the relevant RAIF part of the AIF Law,

The proposed amendments of AIF Law also introduce the Alternative Investment Partnerships ("AIPs") which can be incorporated and operate as limited partnership with a legal personality.

AIPs will not be subject to acquiring a license from CySEC, instead, they will be supervised through their manager. They will be addressed explicitly to professional clients and/or sufficiently informed investors by investing in illiquid assets and they will be categorised as a close ended type of AIFs.

Furthermore, an AIP takes the form of a limited liability partnership and operates as an externally managed AIF which must appoint as an external manager an: i) AIFM within the provisions of Directive 2011/61/EU or ii) an Investment Firm within the Provisions of Directive 2004/39/EC, or iii) a UCITS Management Company within the provisions of Directive 2009/65/EC.

The proposed amendment in relation to AIFM Law is the introduction of a new AIF Manager licence, the Mini Manager, for subthreshold AIF managers. Subthreshold AIF Managers are those AIF managers that do not fall within the scope of Directive 2011/61/EU i.e. manage AIFs whose assets under management do not exceed the thresholds of i) € 100 million including any leveraged assets or ii) € 500 million where the assets are unleveraged. A Mini Manager may be a limited liability company with registered office in the Republic and sole purpose the management of an AIF within the meaning of Article 6(5) of the AIFM Law.

With the introduction of the Mini Manager licence CySEC is considering replacing CIFs that currently act as subthreshold AIFMs.

The consultation closed on 17 June 2016.

Amending Law 52(I)/2016 regulating Open-Ended Undertaking for Collective Investment

On 22 April 2016, CySEC announced the amendment of the Open-Ended Undertakings for Collective Investment (UCI) Law with amending Law 52(I)/2016 (in Greek). CySEC has proceeded with the said amendment for the purpose of harmonization with Directive 2014/91/EU 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.

Some of the most major and relevant changes in the amending Law are, inter alia, the following:

(a) The Variable Capital Investment Companies and, for each of the common funds that it manages, a management company shall ensure that a single depositary is appointed. The depositary can be:

- a credit institution established in the Republic or, established in a Member state that maintains a branch in the Republic, under the precondition that it is authorised to provide depositary functions under its licence;
- any other legal entity established in the Republic or, established in a Member state that maintains a branch in the Republic, that has been licenced to provide depositary functions .

The depositary shall meet a well-defined set of minimum organisational requirements. The appointment of the depositary shall be evidenced by a written contract.

Variable capital Investment companies or management companies which, before 18 March 2016, appointed as a depositary an institution that does not meet the minimum organisational requirements and the criteria of point (a) above, shall appoint a depositary that meets these requirements before 18 March 2018.

The Depositary may only delegate the safekeeping of assets function provided that the function is not delegated with the intention of avoiding the requirements laid down by the law, the depositary can demonstrate there is an objective reason for delegation, the depositary has exercised all due skill and diligence in the selection of the third party and monitors the performance of the third party on an ongoing basis.

Irrespective of the provisions of the Companies Law, in case of insolvency of the depositary and/or of any third party located in the EU to which custody of UCITS assets has been delegated, the assets of a UCITS held in custody are unavailable for distribution among, or realisation for the benefit of, creditors of such a depositary and/or such a third party.

The depositary is liable to the UCITS and to the unit-holders of the UCITS for the loss by the depositary or by the third party to whom the custody of financial instruments held in custody has been delegated. In the case of a loss of a financial instrument held in custody, the depositary returns a financial instrument of an identical type or the corresponding amount to the UCITS or the management company acting on behalf of the UCITS without undue delay. The depositary shall not be liable if it can prove that the loss has arisen as a result of an external event beyond its reasonable control, the consequences of which would have been unavoidable despite all reasonable efforts to the contrary.

The liability of the depositary shall not be affected by any delegation. In addition the liability of the depositary shall not be excluded or limited by agreement and any agreement that contravenes the aforementioned shall be void.

The same company cannot carry on simultaneously the duties of management company and the duties of depositary and the duties of Variable Capital Investment Company and the duties of depositary.

Moreover, management companies are required to establish and apply remuneration policies and practices that are consistent with, and promote, sound and effective risk management and that neither encourage risk taking which is inconsistent with the risk profiles, rules or instruments of incorporation of the UCITS that they manage nor impair compliance with the management company's duty to act in the best interest of the UCITS. The remuneration policies and practices shall apply to those categories of staff, including senior management, whose professional activities have a material impact on the risk profiles of the management companies or of the UCITS that they manage.

Finally, the new UCI Law also list enhanced administrative sanctions and fines that the CySEC may impose in case of a violation of the Law. Such sanctions may include inter alia:

i. the CySEC may proceed to a public statement naming the party responsible and specifying the nature of the violation (name and shame);
ii. fine to natural or legal persons up to five million euro (€5,000,000), in the case of a repeated offence a fine up to ten million euro (€10,000,000).

New Directive on exchange traded UCITS

On 13 May 2016, CySEC issued Directive DI78-2012-23 (in Greek) of 2016 on units of UCITS admitted to trading in a Regulated Market or a MTF of the Republic. The Directive covers, inter alia, such matters such as the procedure for the admission to trading of the UCITS units, the specific disclosures to investors regarding the exchange traded UCITS, as well as the treatment of investors who purchased an exchange traded UCITS units in the secondary market.

The current Directive repeals and replaces the Directive D178-2012-23 with reference R.A.D.390/2012.

Circular C129 - Risk Based Supervision Framework ("RBS-F") – Electronic submission of information for the year 2015

On 16 May 2016, through the issuance of Circular C129 and following the issuance of Circular C109, regarding the electronic submission of information concerning the implementation of the RBS-F for the year 2015, CySEC requested from CIFs, UCITs Management Companies, AIFMs and Self-Managed Alternative Investment Funds ("SM AIFs") to complete and submit the respective for each category Form.

The aforesaid obligation lies with the regulated entities that were authorised and operated by 31 December 2015, inclusive. The relevant Forms are enclosed to Circular 129 and the regulated entities can submit their respective Form electronically via the CySEC's TRS between May 16 and June 10, 2016 for the reporting period 01/01/2015 – 31/12/2015.

Finally, CySEC has enclosed with the said Circular a Frequently Asked Questions ("FAQ") document regarding the completion of the Form T144/001 and requested from CIFs to read it before they address any enquiries to CySEC.

Circular C130 – Monitoring of Risks due to possible Brexit

On 17 May 2016, through the issuance of Circular 130, CySEC informs CIFs, that in case of a Brexit upon the referendum that will be held in the UK on June 23, 2016, there may be an impact on the financial markets. Specifically, CIFs which are activated in the UK and/or maintain accounts in sterling pound or offer products with the sterling pound are asked to closely monitor the risks to which they or their customers could be exposed and take the relevant measures to minimise such risks.

Circular C133 –Statement of the ESMA with respect to Reference Data Submission under Article 4(1) of Market Abuse Regulation

On 31 May 2016, through the issuance of Circular C133, CySEC draws the attention of CIFs, market operators of MTFs as well as market operators of regulated markets to ESMA's statement with respect to Reference Data Submission under Article 4(1) of MAR.

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
AIFLNP	Alternative Investment Fund with Limited Number of Persons
AIFM	Alternative Investment Fund Manager
AIPs	Alternative Investment Partnerships
AML	Anti-Money Laundering
ASP	Administrative Service Provider
AuM	Assets under Management
BRRD	Bank Recovery and Resolution Directive
CDS	Credit Default Swap
CFD	contracts for difference
CIF	Cyprus Investment Firm
Commission	European Commission
CP	Consultation Paper
CRS	Common Reporting Standard
CySEC	Cyprus Securities and Exchange Commission
CSE	Cyprus Stock Exchange
DGS	Deposit Guarantee Scheme
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
FAQ	Frequently Asked Questions
FCA	UK Financial Conduct Authority
FTT	Financial Transaction Tax
FX	Foreign Exchange
ICF	Investors Compensation Fund
IRS	Interest Rate Swap
ITS	Implementing Technical Standards
LIBOR	London Interbank 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
MOKAS	Unit for Combating Money Laundering
MTF	Multilateral Trading Facility
NDF	Non-deliverable forwards
MoU	Memorandum of Understanding
Official Journal	The Official Journal of the European Union
OTC	Over-the-Counter
PSP	Payment Service Provider
Q&As	Questions and Answers
RAIFs	Registered Alternative Investment Funds
RBS-F	Risk Based Supervisions Framework
RTS	Regulatory Technical Standards
SFT	Securities Financing Transaction
SM AIF	Self-Managed Alternative Investment Fund
TA	Technical Advice
TRS	Transaction Reporting System
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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