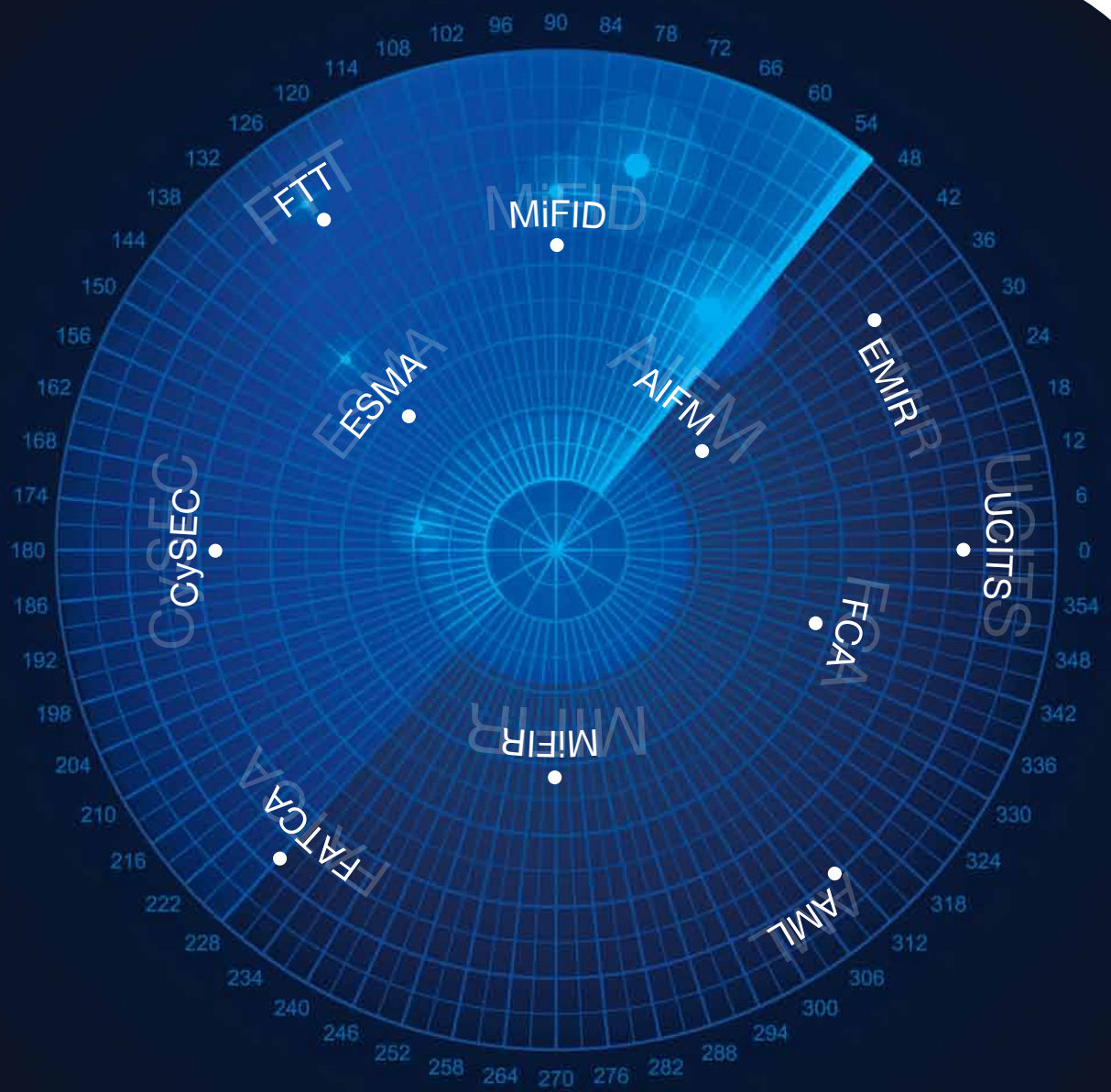
MAP S.Platis

Your Partner in Financial Services!

Issue 014 / February 2017

REGULATORY RADAR

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



Index

60 Second Summary

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

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

- **EMIR**
  - The first Interest Rate Swaps RTS was published in the Official Journal and the clearing obligation takes effect from June 2016 on a staggered basis depending on counterparty classification
  - The Credit default swap RTS was published in the Official Journal and the clearing obligation takes effect from February 2017 on a staggered basis depending on counterparty classification
  - The second Interest Rate Swaps RTS was published in the Official Journal and the clearing obligation takes effect from February 2017 on a staggered basis depending on counterparty classification
  - NDF mandatory clearing abandoned for now; clearing for certain other Interest Rate Swaps in EEA currencies is in ESMA review process
  - ESMA proposes postponing application of clearing obligation for certain financial counterparties with a limited volume of activity
  - Mandatory margin requirements for non-cleared OTC derivatives introduced on a staggered basis: variation margin on 4 February 2017 for large institutions and 1 March 2017 for all other counterparties; initial margin from 4 February 2017 to 1 September 2020; variation margin requirements for physically settled FX forwards (as newly defined in MIFID II) will apply from 3 January 2018

- **Other**
  - Securities Financing Transactions Regulation in force from 12 January 2016: the Regulation introduces a reporting regime for securities financing transactions; disclosure obligations in EU fund documentation and disclosures/risk warning and consents for all financial collateral arrangements came into force on 12 July 2016
  - The PRIIPS Regulation comes into force on 31 December 2016. On 23 December 2016, PRIIPS Regulation amended so that PRIIPS would be delayed till 1 January 2018. A new draft level two text is expected by end of February 2017

2. Anti-Money Laundering Legislation

- Fourth Money Laundering Directive: reminder that the transposition date into national law remains 26 June 2017
- Commission proposes a Directive on countering money laundering by criminal law

3. Regulatory Developments in the European FX Industry

- The delineation of MiFID FX financial instruments vs spot FX contracts is resolved in MiFID II text

4. EU Financial Transaction Tax

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

5. Taxation

- No update

6. Fund Regulation

- Money Markets Funds – political agreement reached in December 2016
- UCITS 5 in force from 18 March 2016; Level 2 on depositaries will come in force 13 October 2016; the UCITS remuneration guidelines will apply from 1 January 2017

7. UK – Developments of Interest to Investment Firms

- FCA proposes stricter rules for contract for difference products
- FCA issues its fourth MIFID II consultation
- FCA fines Deutsche Bank £163 million for serious anti-money laundering controls failings

8. CySEC Developments

- CySEC adopts several ESMA’s Guidelines
- Warning regarding unauthorised domains/websites
- CySEC proposes a new bill on whistleblowers
- Submission of audited annual report of the AIFLNP
- New CPD requirements for the certification of persons and certification registers
- CySEC establishes procedures for the receipt and follow-up of reports of infringement on the market abuse regulation
- Key developments for CIFs when providing information to clients on the services and instruments offered
- Report on Good Supervisory practices for reducing mechanistic reliance on credit ratings
- Executive Summary in the Annual Reports of the Compliance Officer, Risk Manager, Internal Auditor and Anti-Money Laundering Compliance Officer

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

I. MiFID II

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

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

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

Secondary legislation (known as "Level 2 measures")

MiFID II/MiFIR contain over 100 requirements for ESMA to draft Regulatory Technical Standards (RTS) and Implementing Technical Standards (ITS). RTS drafted by ESMA are subject to approval by the European Commission. ESMA provided Technical Advice (TA) to the European Commission, to allow it to adopt delegated acts ("delegated acts" are drafted by the European Commission on the basis of advice from ESMA).

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

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

The status of the various RTS and ITS is set out in this update table (this is the latest version dated as at 1 February 2017).

Level 3 measures

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

On 20 December 2016, ESMA has published two Questions and Answers (Q&A) documents regarding implementation issues relating to market structures and transparency topics under MiFID II and MiFIR:

- a new Q&A document on market structures which provides clarifications on algorithmic trading and the mandatory tick size regime.
- A new Q&A on transparency which contains the waiver application schedule for 2017 in order for competent authorities and ESMA to handle applications in time for 3 January 2018. To obtain a waiver, trading venues must submit the application to the relevant national competent authority (NCA). Where the NCA considers the application is MiFIR compliant, it will submit it to ESMA for an opinion. The waivers will be processed in two tranches:
  - > equity and equity-like instruments; and
  - > bonds and derivatives.

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

On 16 December 2016, ESMA published its Questions and Answers on MIFID II and MIFIR investor protection topics. This Q&A provides clarifications on the following topics:

- suitability;
- post sale reporting;
- inducements (research);
- information on charges and costs; and
- underwriting and placement of a financial instrument.

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

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

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

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

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

Guidelines are designed to ensure consistency in the application of these requirements across EU Member States. In particular, they provide examples of transaction reports and of the order data records. Each example is accompanied by samples of xml-messages to be used to represent the expected reportable values.

ESMA consultation on product governance guidelines

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

Manufacturers

The proposed guidelines for manufacturers address the following main topics:

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

Distributors

The proposed guidelines for distributors address the following main topics:

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

Transversal issues applicable to both manufacturer and distributor

These address the following issues:

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

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

ESMA Q&A on implementation of the double volume cap

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

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

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

ESMA consults on trading obligation for derivatives

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

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

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

Market Guidelines on Cross-Selling Practices

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

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

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

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

Knowledge and competence

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

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

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

Complex debt instruments and structured deposits

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

(i) bonds, other forms of securitised debt and money market instruments incorporating a structure which makes it difficult for the client to understand the risk involved, and
(ii) structured deposits incorporating a structure which makes it difficult for the client to understand the risk of return or the cost of exiting the product before term.

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

II. The new Market Abuse regime

The pre-existing Market Abuse regime (an EU-wide market abuse regime and a framework for establishing a proper flow of information to the market) has been extended and aligned with MiFID II. There is now a new Market Abuse Regulation (MAR) (which replaces the old Market Abuse Directive in its entirety and creates a single rule book for market abuse) and a supplementing Directive on Criminal Sanctions for Insider Dealing and Market Manipulation (MAD). MAR came into force across the EU on 3 July 2016.

On 20 December 2016 and 27 January 2017, ESMA issued updated Questions and Answers documents on the Market Abuse Regulation. The updated Q&As include:

- new detailed answers on the notification of managers' transactions and how to handle investment recommendations;
- a new Q&A (question 6) relating to managers' transactions; and
- new Q&As (questions 9 to 11) relating to investment recommendation and information recommending or suggesting an investment strategy.

III. EMIR

Scope - FX spot contracts

The question of where the boundary between an FX financial instrument (i.e. an FX Forward) and a spot FX contract has now been settled by MiFID II Level 2 measures. See Art 7 of the 25 April 2016 delegated act.

EMIR implementation timetable

The EMIR Regulation was adopted 4 July 2012 and entered into force 16 August 2012. EMIR is being implemented on a staggered basis with certain EMIR obligations already in force.
Staged implementation timetable:

- **As of 16 August 2012**, record keeping requirement for OTC derivatives and Exchange Traded Derivatives (ETD) entered on or after 16 August 2012.
- **As of 15 March 2013**, confirmation and daily valuation requirements for non-cleared OTC derivatives entered on or after 16 August 2012.
- **As of 15 September 2013**, portfolio reconciliation and compression and dispute resolution requirements apply to non-cleared OTC derivatives outstanding as of 15 September 2013.
- **As of 12 February 2014**, reporting to Trade Repositories for all derivatives relating to all asset classes with "backloading" (i.e. trades outstanding on 16 August 2012 and live, or entered into on or after 16 August 2012 but not outstanding, need to be reported).
- **As of 12 August 2014**, reporting to Trade Repositories of data on exposure i.e. valuation and collateral for all derivatives.

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

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

> **21 December 2016**, clearing obligation takes effect for Category 2 counterparties
> **21 June 2017**, clearing obligation takes effect for Category 3 counterparties
> **21 December 2018**, clearing obligation takes effect for Category 4 counterparties

- The CDS RTS was published on 19 April 2016 in the Official Journal; for these specific OTC derivatives:

> **9 February 2017**, clearing obligation takes effect for Category 1 counterparties
> **9 August 2017**, clearing obligation takes effect for Category 2 counterparties
> **9 February 2018**, clearing obligation takes effect for Category 3 counterparties
> **9 May 2019**, clearing obligation takes effect for Category 4 counterparties

- The second IRS RTS was published on 20 July 2016 in the Official Journal (with a corrigendum published on 21 July 2016); for these specific OTC derivatives:

> **9 February 2017**, clearing obligation takes effect for Category 1 counterparties
> **9 August 2017**, clearing obligation takes effect for Category 2 counterparties
> **9 February 2018**, clearing obligation takes effect for Category 3 counterparties
> **9 August 2019**, clearing obligation takes effect for Category 4 counterparties

- **4 February 2017**, initial and variation margin for non-cleared OTC derivatives and initial margin on a phased implementation timetable will begin.

IRS, CDS and NDF

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

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

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

On 19 April 2016, the Regulatory technical standard (RTS) for the central clearing of certain types of Credit Default Swap (CDS) was published in the Official Journal pursuant to which mandatory clearing shall apply to the following two iTraxx Index CDS:

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

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

On 11 May 2015, ESMA published a fourth consultation on proposed RTS 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 20 July 2016, the second IRS RTS on the clearing obligation was published in the Official Journal. The RTS covers fixed-to-float IRS and forward rate agreements denominated in Norwegian Krone (NOK), Polish Zloty (PLN) and Swedish Krona (SEK).

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

MAP S.Platis will continue to monitor all developments.

Extension of transitional period related to pension scheme arrangements

On 20 December 2016, the Commission issued a delegated act to further extend extended the transitional relief for Pension Scheme Arrangements (PSAs) from central clearing for their over-the-counter (OTC) derivative transactions until 16 August 2018. PSAs are active participants in the OTC derivatives markets, minimising cash positions to hold higher yielding investments to ensure strong returns for pensioners. Requiring such entities to clear OTC derivative contracts centrally leads to divesting a significant proportion of their assets for cash to meet the on-going margin requirements of central counterparties. The Commission concluded that central counterparties need additional time to find solutions for pension funds.

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

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

On 14 November 2016, ESMA published its final report regarding the amended application of the clearing obligation that financial counterparties with a limited volume of activity in OTC derivatives need to comply with under EMIR. ESMA's report confirms that it proposes to amend EMIR's Delegated Regulations on the clearing obligation in order to prolong, by two years, the phase-in for financial counterparties with a limited volume of derivatives activity - those ones classified in Category 3 under EMIR Delegated Regulations. ESMA is also

proposing to align the three compliance dates for Category 3 firms in the Delegated Regulations regarding Interest Rate Swaps and Credit Default Swaps. The newly proposed compliance date would be 21 June 2019.

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

ESMA EMIR Q&As

On 1 February 2017, the ESMA issued an update of its Q&A on practical questions regarding EMIR.

The updated Q&A includes a new answer in relation to transition to the revised technical standards on reporting, which will become applicable on 1 November 2017.The updated Q&A includes a new answer in relation to transition to the revised technical standards on reporting, which will become applicable on 1 November 2017.

The Q&A clarifies that the reporting entities are not obliged to update all the outstanding trades upon the application date of the revised technical standards and that they are required to submit the reports related to the old outstanding trades only when a reportable event takes place (e.g. when the trade is modified). Furthermore, the Q&A explains how those reports will be validated by the Trade Repositories.

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

On 15 December 2016, the Commission Delegated Regulation with regard to regulatory standards for risk-mitigation techniques for OTC derivative contracts not cleared by a Central counterparty was published in the Official Journal. The RTS came into force on 4 January 2017.

This is the summary of relevant dates:

- **4 February 2017**: Variation margining requirements for non-centrally cleared trades will apply for the largest institutions.
- **1 March 2017**: Variation margining requirements for non-centrally cleared trades will apply for all other institutions that are within scope.
- **4 February 2017 – 1 September 2020**: Initial margining requirements for non-centrally cleared trades will apply from February 2017 for the largest institutions. This will be followed by an annual phase in such that all other institutions that are within scope above a minimum threshold will be subject to initial margin from 1 September 2020.
- **Timing for physically settled FX Forward transactions**
  In the EU, there is currently no unique definition of physically settled FX forwards. This inconsistency at EU level is expected to be solved via the Commission delegated act defining theses type of derivatives under MiFID II. ESMA takes the view that introducing a requirement to exchange variation margins for physically settled FX forwards before such a common definition is introduced at Union level would have significant distortive effects.

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

IV. Securities Financing Transactions Regulation (SFTR)

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

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

The SFTR introduces:

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

The fund prospectus disclosure obligation comes into force:

- from 12 January 2016, for funds constituted after the date of entry into force for funds
- from 12 July 2017, for funds constituted before the date of entry into force

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

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

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

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

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

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

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

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

The consultation closed on 30 November 2016.

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

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

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

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

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

On 30 June 2016, the Commission adopted the Delegated Regulation and related annexes supplementing the PRIIPS KID Regulation. On 1 September 2016, the European Parliament's Committee on Economic

and Monetary Affairs unanimously voted to reject the Commission's proposed delegated regulation. On 14 September 2016, the European Parliament voted to reject the PRIIPS delegated regulation.

On 9 November 2016, the Commission announced that it had proposed to extend the date of application of PRIIPS from 1 January 2017 to 1 January 2018. On 23 December 2016, the regulation amending the PRIIPS Regulation as regards the revised application date, was published in the Official Journal. The PRIIPS Regulation will become applicable from 1 January 2018.

The European Commission worked with the three European Supervisory Authorities to resubmit the revised RTS to the Commission by 21 December 2016. On 22 December 2016, the European Supervisory Authorities wrote to the Commission notifying that they were unable to provide an agreed opinion. A revised RTS is now expected by the end of February 2017.

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

MAP S.Platis will continue to monitor all developments.

2. Anti-Money Laundering

Commission proposes Directive on countering money laundering by criminal law

The European Commission has published its proposal for a Directive on countering money laundering by criminal law. The Directive would impose criminal liability in respect of money laundering activities.

This proposed Directive is part of the Action Plan against terrorist financing and will reinforce existing measures against money laundering across the EU, as well as bringing policies in line with international standards in the area.

Money Laundering Directive 4 – transposition into national law by 26 June 2017

The formal transposition date for the Money Laundering Directive 4 (MLD4) is 26 June 2017. In its Action Plan to strengthen the fight against terrorism financing of 2 February 2016, the Commission called on Member States to bring forward the date for effective transposition of the Directive to Q4 2016. The required amending legislation to bring the transposition date forward to 1 January 2017 has still not been agreed or voted upon so the transposition date remains as per the MLD4, namely 26 June 2017. Please refer to Issues 10 and 12 of MAP S.Platis Regulatory Radar for more details.

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

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

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

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

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

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

4. EU Financial Transaction Tax (FTT)

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

5. Taxation

There was no further public information since September 2016 on FATCA or CRS. Please refer to Issues 12 and 10 of MAP S.Platis Regulatory Radar for the latest information on FATCA and CRS, respectively.

6. Fund Regulation

Money Market Funds (MMFs)

On 7 December 2016, the Permanent Representatives Committee approved, on behalf of the Council, an agreement with the European Parliament on money market funds (MMFs). The regulation is expected to be approved by the Parliament at first reading. It will then be submitted to the Council for adoption.

The draft regulation lays down rules for MMFs, in particular the composition of their portfolios and the valuation of their assets, to ensure the stability of their structure and to guarantee that they invest in well-diversified assets of a good credit quality. It also introduces common standards to increase the liquidity of MMFs, to ensure that they can face sudden redemption requests. It establishes common rules to ensure that the fund manager has a good understanding of investor behaviour, and to provide investors and supervisors with adequate information. The regulation prohibits sponsor support from third parties, including banks.

An important new element of the regulation is the introduction of a permanent category of “low volatility net asset value” (LVNAV) MMFs. This new category has been made available as a viable alternative to existing CNAV MMFs.

Under the new regulation, money market funds will be subject to new and strengthened liquidity requirements as well as other safeguards. In the case of CNAV and LVNAV MMFs, there are also additional safeguards such as ‘liquidity fees and redemption gates’. These will be designed to prevent and limit the effects of sudden investor runs.

UCITS share classes

On 30 January 2017, the ESMA issued an Opinion on the extent to which different types of units or shares (share classes) of the same UCITS fund can differ from one another, having found diverging approaches in different EU countries. In its Opinion, addressed to national regulators, ESMA sets out four high-level principles which UCITS must follow when setting up different share classes in order to ensure a harmonised approach

across the EU:

- Common investment objective: Share classes of the same fund should have a common investment objective reflected by a common pool of assets. ESMA considers that hedging arrangements at share class level – with the exception of currency risk hedging – are not compatible with the requirement for a fund to have a common investment objective;
- Non-contagion: UCITS management companies should implement appropriate procedures to minimise the risk that features specific to one share class could have a potentially adverse impact on other share classes of the same fund;
- Pre-determination: All features of the share class should be pre-determined before the fund is set up; and
- Transparency: Differences between share classes of the same fund should be disclosed to investors when they have a choice between two or more classes.

AIFMD remuneration guidelines apply from 1 January 2017

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

AIFMD – ESMA updated Q&As

On 16 December 2016, ESMA published an updated questions and answers document (Q&A) for AIFMD. The Q&A includes one updated question and answer on reporting obligations by non-EU Alternative Investment Fund Manager ("AIFMs") under Article 42, which seeks to clarify the circumstances under which information on EU master AIFs should be reported to competent authorities.

7. UK - Developments of Interest to Investment Firms

FCA fines Deutsche Bank £163 million for serious anti-money laundering controls failings

On 31 January 2017, the FCA fined Deutsche Bank AG (Deutsche Bank) £163,076,224 for failing to maintain an adequate anti-money laundering (AML) control framework during the period between 1 January 2012 and 31 December 2015, in breach of Principle 3 (management and control) of the FCA's Principles for Business and Senior Management Arrangements, Systems and Controls (SYSC) rules. This is the largest financial penalty for AML controls failings ever imposed by the FCA, or its predecessor the Financial Services Authority

(FSA). This is in addition to a fine of $425,000,000 by the US regulators.

The FCA stated that Deutsche Bank exposed the UK financial system to the risks of financial crime by failing to properly oversee the formation of new customer relationships and the booking of global business in the UK and that as a consequence of its inadequate AML control framework, Deutsche Bank was used by unidentified customers to transfer approximately $10 billion, of unknown origin, from Russia to offshore bank accounts in a manner that is highly suggestive of financial crime.

The FCA found significant deficiencies throughout Deutsche Bank's AML control framework. The FCA specifically found that, during the relevant period, Deutsche Bank's Corporate Banking and Securities division (CB&S) in the UK:

- performed inadequate customer due diligence
- failed to ensure that its front office took responsibility for the CB&S division's Know Your Customer obligations
- used flawed customer and country risk rating methodologies
- had deficient AML policies and procedures
- had an inadequate AML IT infrastructure
- lacked automated AML systems for detecting suspicious trades
- failed to provide adequate oversight of trades booked in the UK by traders in non-UK jurisdictions.

MIFID II Implementation – Fourth FCA Consultation

On 19 December 2016, the FCA published its 4th consultation CP16/43 on MIFID II implementation.
This CP covers:

- changes to the Handbook relating to areas such as specialist conduct of business regimes, tied agents and SME growth markets;
- guidance on transaction reporting, including trading venues' use of Approved Reporting Mechanisms; and
- a transitional rule for fees relating to draft applications for authorisation in MiFID 2.

The third consultation is open until 17 February 2017. The FCA envisages publishing to policy statements, the first in March 2017 and the second in June 2017.

FCA proposes stricter rules for contract for difference products

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

Contracts for differences, such as spread bets and rolling spot foreign exchange products, are complex financial instruments offered by investment firms, often through online platforms. Following an increase in the number of firms in the CFD market, the FCA was concerned that more retail customers are opening and trading

CFD products that they do not adequately understand. The FCA's analysis of a representative sample of client accounts for CFD firms found that 82% of clients lost money on these products.

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

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

The FCA is also setting out its vision on a range of policy measures for binary bets that would complement existing conduct of business rules, once these products are brought into the FCA's regulatory scope.

On-going supervision work by the FCA over the past six years has identified instances of poor conduct across the CFD sector. This includes firms failing to adequately consider if CFDs are appropriate for their customers, failing to provide adequate risk warnings, and firms offering excessive levels of leverage to retail clients.

The FCA has also observed that binary bets are not transparent enough for investors to adequately value them, and have product features which are more akin to gambling products than investments.
The FCA's proposed measures are intended to ensure an appropriate level of consumer protection. Several EU member states have already introduced restrictions on CFD retail products.

8. CySEC Developments

ESMA's Guidelines adopted by CySEC

During the period covered by the 14th Issue of the Regulatory Radar, through the issuance of a number of Circulars, CySEC informs the relevant parties of interest about the adoption of various Guidelines issued and published by the European bodies of European Banking Authority ("EBA") and ESMA.

A summary of the abovementioned Circulars is presented below:

- Circular C169 addressed to Cyprus Investment Firms ("CIFs") that are authorised to provide the investment services of "dealing own account" and/or "underwriting with firm commitment", informs about the adoption, by the Central Bank of Cyprus ("CBC"), of the "Revised guidelines on the further specification of the indicators of global systemic importance and their disclosure' issued by EBA.

  The aforesaid Guidelines concern i) the specification of the indicators for the year 2016 set out in

Regulation (EU) No 1222/2014 as amended and ii) the reporting of the data and the annual disclosure of the values of the indicators.

- Circular C170 notifies persons receiving market sound/financial market participants about ESMA publishing Guidelines on person receiving market sounding under MAR that apply to them and to Competent authorities from 10 January 2017.

  The Guidelines, inter alia, specify the factors, the steps and the records that the aforesaid parties will have to consider and implement according to Article 11(11) of Regulation (EU) No 596/2014.

- Circular C171 informs (i) issuers who have requested or approved admission of their financial instruments to trading on a regulated market and (ii) issuers who have approved trading of their financial instruments on an MTF or an OTF or have requested admission to trading of their financial instruments on an MTF in a Member State about the adoption of EMSA's Guidelines on the delay in the disclosure of inside information under MAR.

  The above mentioned Guidelines provide an indicative list of legitimate interests of the issuers that are likely to be prejudiced by immediate disclosure of inside information and situations in which delay of disclosure is likely to mislead the public.

- Circular C173 that draws the attention of UCITS Management Companies and Self-managed UCITS investment companies, states that CySEC adopts the Guidelines on sound remuneration policies under the UCITS Directive (ESMA/2016/575).

  The purpose of these Guidelines is to ensure common, uniform and consistent application of the provisions on remuneration in various articles of the UCITS Directive.

- Circular C174 draws the attention of AIFMs to the fact that CySEC has adopted the amending Guidelines on sound remuneration policies under the AIFMD (ESMA/2016/579).

  The Amending Guidelines apply to AIFMs authorised pursuant to Article 8 of the AIMF Law, which are either external managers or, where the legal form of the AIF permits internal management and where the AIF's governing body chooses not to appoint an external AIFM, the AIF itself.

- Circular C182 refers to the adoption of the MAR Guidelines on information relating to commodity derivatives markets or related spot markets for the purpose of the definition of inside information on commodity derivatives.

  The above mentioned Circular is addressed to investors, financial intermediaries, operators of trading venues and persons professionally arranging and executing transactions in commodity derivatives and provide an indicative list of information which is expected or is required to be disclosed in accordance with legal or regulatory provisions in Union or national law, market rules, contract, practice

or custom, on the relevant commodity derivatives markets or spot markets.

The Guidelines apply to competent authorities and to: investors, financial intermediaries, operators of trading venues and persons professionally arranging and executing transactions in commodity derivatives.

Warning regarding unauthorised domains/websites

On 13 December 2016, through the issuance of an announcement, CySEC warns the investors and the public regarding unauthorized domains/websites. These are domains/websites that are not owned or operated by a CIF.

CySEC urges investors to be extremely careful before entering to a business relationship with an Investment Firm and to consult CySEC's website to confirm whether an institution is authorised to provide investment services in or from Cyprus.

A month later, CySEC issued another announcement which updates investors in regards to the above and provides the websites addresses that an investor may visit to find the lists of approved and non-approved domains.

Consultation Paper CP (2016-13) regarding a proposed bill and circular on whistleblowers

On 15 December 2016, CySEC issued Consultation Paper (CP 2016-10) regarding the following:

a) Proposed bill for the reporting of infringement and protection of the reporting and reported persons.
b) Proposed Circular for CySEC's procedures for the receipt and follow-up of reports of infringement of Regulation (EU) No 596/2014 on market abuse, which was finally published by CySEC as Circular C177, on 3 January 2017. (Please refer to Circular C177 below)

The aforementioned Consultation paper invited CIFs to submit their comments/suggestions by 23 December 2016.

The proposed bill named as "The Law for the Reporting of Infringements of 2016", was prepared by CySEC in order to regulate the procedures in relation to the receipt of reports regarding actual or potential infringements of CySEC's regulatory framework.

Below is a summary of the main points of the proposed bill as follows:

1. The proposed bill shall cover reports from any person towards CySEC and from any employee against his/her employer that is regulated and supervised by CySEC.
2. The proposed bill offers protection to both the reporting and the reported persons for actual or potential infringement of the Law from negative consequences due to the reporting of such incident.
3. The proposed bill offers the potential to submit anonymously an infringement report and safeguards the identity of the reporting person with the exception of criminal proceedings.

4. The proposed bill **does not** relate to the procedures for the submission of complaints to CySEC by the clientele of the regulated entities which usually relate to loss of funds and as such these forms of complaints do not fall under the proposed bill.
5. The need for the preparation of the proposed bill was based on the recent European Regulatory framework which notes the obligation of Member States to regulate the procedure for receipt and handling of infringement reports. The relevant European Regulatory framework is as follows:
   i) Article 32 of the Regulation (EU) No 596/2014 on market abuse;
   ii) Commission's Implementing Directive 2015/2392/EC;
   iii) UCITS Directive 2014/91/EU;
   iv) Regulation (EU) No 1286/2014 of the European Parliament and of the Council on key information documents for PRIIPs;
   v) Regulation (EU) 2015/2365 of the European Parliament and of the Council on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012
6. In case of violation, an administrative fine of up to EUR500,000 is imposed and in case of a repeated violation the fine may reach the amount of EUR1,000,000.

In addition, the cases where a person submits a "non-genuine" report for an infringement have been defined as criminal offence, punishable up to five years of imprisonment or a fine not exceeding € 350.000 or both.

Update of the CRD IV CoRep Forms

On 20 January 2017, CySEC published the updated Form 144-14-08.3 Exposures to Shareholders. The said update was prepared due to the recent amendment of Directive DI144-2014-14 with the amending Directive DI144-2014-14(A) which specifies that the large exposure limits with regards to shareholders and directors are applicable unless it concerns an exposure in the trading book. This is in compliance with the requirements of Article 395(5) of Regulation (EU) no. 575/2013.

For further information please also refer to Issue 12 of MAP S.Platis Regulatory Radar.

Submission of audited annual report of the AIFLNP

On 20 January 2017, CySEC issued the Circular C178 regarding the Submission the audited annual report for Alternative Investment Funds with Limited Number of Persons (AIFLNPs).

CySEC announced that in light of the forthcoming amendment to article 116(2) of the AIF Law of 2014 the following:

- AIFLNPs established and operated as Companies must submit the annual report of the aforesaid article to CySEC within 6 months following the end of the period the report refers to as per the definitions of the Companies Law of Cyprus.

- AIFLNPs established and operated as Limited Liability Partnerships must submit the Annual Report of the aforesaid article to CySEC within 6 months from the end of their financial period.

Certification of Persons and Certification Registers

On 30 January 2017, CySEC issued the Directive regarding the certification of persons and certification registers (R.A.D 22/2017) (in Greek) that amends Directive R.A.D 174/2015. Among other changes, the amending Directive increases the requirement for continuous professional development (CPD) hours required to be attended by persons registered in the public register and who wish to renew their registration.

More precisely, the aforesaid persons must now submit, accompanied by an annual renewal fee of eighty euro (€80), a statement of continued professional training of duration:

i) ten (10) hours for persons registered in the public register for the basic examination
ii) fifteen (15) hours for persons registered in the public register for the advanced examination,
iii) fifteen (15) hours for persons registered in the register for compliance officers

Circular C177 – Procedures for the receipt and follow-up of reports of infringement of Regulation (EU) No 596/2014 on market abuse

On 3 February 2017, through the issuance of Circular C177, CySEC informs the persons wishing to report cases of actual or potential infringement ("Whistle-blowers") about the procedures in place regarding the receipt and follow-up of reports of infringement pursuant to Article 32 of the Regulation (EU) No 596/2014 (hereinafter referred to as "Regulation").

According to Circular C177, CySEC notes the following:

A. Receipt and following-up of reports of infringements:

1. The members of the Market Surveillance and Investigations Department of CySEC (hereinafter referred to as 'dedicated staff members of the competent department'), are responsible for all the relevant procedures regarding the reports of infringements.

2. The reports can be submitted either by name or anonymously through phone line (with the consent of the reporting person the conversations can be recorded) and/or electronic mail and/or letter.

3. The person reporting an actual or potential infringement of Regulation to CySEC (hereinafter referred to as 'reporting person') may submit reports of infringements by completing the "Whistleblowing External Disclosure Form" (Appendix A of Circular C177) and send them via email and/or by post.

4. CySEC may request from the reporting person, provided that he enclosed his identity and his contact details, to clarify, orally or in writing, the information reported.

5. CySEC should inform the reporting person within how many days he will be notified about the results of the inquiry to his postal or electronic address.

B. Record-keeping of the reports of infringements received:

1. As soon as CySEC receives a written report, sends out to the reporting person a receipt confirmation unless the reporting persons explicitly requested otherwise or CySEC reasonable believes that acknowledging receipt of a written report would jeopardise the protection of the reporting person's identity.

2. Where a telephone line is used for the reporting of infringements (excluding the cases where the reporting person has not provided his consent for the recording) CySEC has the right to document the oral reporting in the form of an audio recording or a transcript.

3. Where an unrecorded telephone line is used for reporting of infringements, CySEC has the right to document the oral reporting in the form of accurate minutes of the conversation.

4. Where a person requests a physical meeting for reporting an infringement, CySEC ensures that complete and accurate records of the meeting are kept in a durable and retrievable form. CySEC has the right to document the records of the physical meeting in the form of an audio recording or minutes of the meeting.

C. Procedures applicable to the reports of infringements:

1. The reporting person cannot be subject to any discrimination (the definition of the discrimination is enclosed within the Circular C177) due to the submission of a report of infringement.

2. In case of a discrimination the reporting persons, can request from the court the issuance of an injunction for the termination of the discrimination and his restitution to the position he was prior the submission of the report of infringement, or the taking of other measures for claiming compensation for any damages or losses suffered.

3. The reporting persons are not subject to criminal or civil or disciplinary proceedings due to the fact that they have submitted a report of infringement.

4. The identity of the reporting person, who submitted a report by name, is revealed provided that his written consent has been granted.

5. The details of the identity of the reporting person will not be included in the administrative file of the case that CySEC inquiries or has inquired, if he did not give his written consent to do so.

6. The identity of the reporting person is not protected if and when revealing his identity is necessary in the context of criminal proceedings before the court or criminal investigation.

Circular C180 – Data collection by the EBA

On 1 February 2017, through the issuance of Circular C180, CySEC informed all Regulated Entities about their option to participate to a data collection exercise launched by the EBA.

The scope of the said exercise is to support EBA's response to the European Commission's call for technical advice on a new prudential regime for investment firms that should be more suitable for or adaptable to specialised commodity derivatives firms.

The above said Regulated Entities were guided on a voluntary basis to fill in and submit the relevant template(s) to CySEC, which in turn will forward the data to EBA, by 20 February 2017, the latest.

Circular C181 – Obligations of CIFs when providing information to clients on the services and instruments offered

On 2 February 2017, through the issuance of Circular C181, CySEC sets important standards to assist CIFs in meeting their obligations to act in the best interests of their clients.

This Circular applies only to persons (including Tied Agents) who communicate with potential and/or existing clients of CIFs with the purpose of promoting its services and products and providing information to clients with regards to investment/ancillary services as well as financial instruments offered to clients such as Sales and Retention Staff (hereinafter referred to as 'Staff').

The Circular does not apply to persons who only:

i. direct clients on a CIF's website to find information the client is seeking/ indicate to clients where they can find information on the CIF.
ii. Provide (technical) support to clients in relation to the platform, website and account opening procedure.
iii. Provide assistance in uploading documents in the platform.
iv. Accept clients' phone calls and redirect said clients to relevant departments.
v. Produce marketing and promotional material.
vi. Perform back office functions.
vii. Provide any other similar service.

The major points of Circular C181 are the following:

D. Organisational requirements for the Staff:

CIFs must ensure that the Staff:

a. does not provide investment advice (as per the definition under MiFID) in relation to financial instruments.
b. possess necessary level of knowledge and competence reflecting the scope and degree of the relevant services provided, in order to meet relevant regulatory, legal requirements and business ethics standards.
c. is appropriately qualified and experienced. Obtaining the basic CySEC Certification may be considered as an appropriate qualification according to the circular but it is not mandatory.
d. maintain and update on an ongoing basis their knowledge and competence by undertaking continuous professional development courses or training for the appropriate qualification, as well as specific

training relevant to its field.

e. are provided with a pro-forma information script or standard FAQ template of information that can be shared with Clients. This Template must be approved by the Compliance Function and Board of Directors.
f. know, understand and apply CIF's internal policies and procedures (e.g. marketing procedures and relevant IOM sections).
g. is remunerated in accordance with Circular C138 on the remuneration policies and practices.
h. do not use stage/fake names and provide false information regarding their credentials.
i. does not use aggressive sales pitches (e.g. frequent and repeated phone calls to clients), exert pressure, urge/advise the client e.g. to invest and/or to deposit funds.

E. Outsourcing of activities to third parties/service providers

It is noted that CySEC considers the provision of the services the Staff offers (i.e. Sales and Retention) as a critical or an important operational function of the CIF and should be performed internally either from the head office of the CIF or from a Branch in the Republic or in another Member State.

CySEC notes that it would be highly unlikely for CIFs that outsource the abovementioned activities to a service provided established in a 3rd country, to demonstrate that:

i) their authorisation conditions are not undermined at any time;
ii) they effectively supervise the outsource activities; and
iii) CySEC has effective access to the business premises of the service provider.

On the other hand, CIFs could demonstrate that the above points are met, if the service provider is situated in a Member State and it either is an Investment Firm licensed under the MiFID Directive or is registered as a Tied Agent under Article 40 of the MiFID Directive.

CySEC emphasises that CIFs must ensure adherence to the relevant outsourcing requirements when outsourcing to a service provider. In addition, the provisions of this Circular shall fully applied to the service provider as well as to the staff of the service provider.

F. Monitoring of Staff and its activities

The Compliance function must be able to monitor the Staff's activities (e.g. monitor the telephone conversations between the Staff and the CIF's clients) and assess its knowledge and competence.

CIFs must provide to CySEC to the electronic address supervision@cysec.gov.cy a confirmation signed by the board members as to their compliance with this Circular by the 2nd of May 2017 and, where applicable, provide reference to any corrective measures adopted.

Updates on CIFs Quarterly Statistics

On 7 February 2017, CySEC released an updated version of the Frequently Answered Questions ("FAQs") regarding the Quarterly Statistics as well as the sixth version of the respective Form T144-002. The updates concern the definitions of values of financial instruments and the cumulative margin amount used.

For further information related to Circular C144 please also refer to Issue 12 of MAP S.Platis Regulatory Radar.

Report on Good Supervisory practices for reducing mechanistic reliance on credit ratings

On 7 February 2017, through the issuance Circular C183, CySEC informs CIFs about a Report regarding the good supervisory practices for reducing mechanistic reliance on credit ratings that was issued by the Joint Committee of the European Supervisory Authorities ("ESAs")(i.e. EBA, ESMA, EIOPA).

The purpose of the aforesaid Report is to provide a level of consistency in the implementation of elements of the CRA Regulation regarding overreliance on credit ratings.

Finally, CySEC emphasizes its intention to use the practices included in the aforesaid Report for the purpose of assessing the credit risk to which CIFs are exposed.

Executive Summary in the Reports of the Compliance Officer, Risk Manager, Internal Auditor and Anti-Money Laundering Compliance Officer

On 8 and 14 February 2017, through the issuance Circular C184 and Circular C186, respectively, CySEC set standards to assist Regulated Entities in meeting their obligations (depending on the applicability to each category of Regulated Entities) emanated by the following pieces of legislation:

- Article 18(2)(a) and (f) of the Law 144(I)/2007, as amended;
- Paragraphs 5(3)(b),6(2)(b), 8(d) and 9(2), (3) of Directive DI144-2007-01, as amended;
- Paragraphs 6 to 10 of Directive DI144-2007-08, as amended;
- CySEC's Circulars with number CI144-2013-23, C030, C033, C050 and C056.

regarding the preparation of the reports of the Compliance, Risk Management, Internal Audit and Compliance on the prevention of money laundering and terrorist financing functions.

The aforementioned reports act as a tool to assist the senior management and board of directors of a Regulated Entity in carrying out their responsibility to assess and periodically review the effectiveness of the policies, arrangements and procedures put in place to comply with the abovementioned provisions.

Further to the above, and for purposes of a more efficient assessment, appraisal and review of the relevant Reports, CySEC requests from the persons responsible for the preparation of the respective reports (i.e. Compliance Officer, Internal Auditor, Risk Manager, and Anti-Money Laundering Compliance Officer) to include

an executive summary at the beginning of their reports.

The Executive Summary shall be in an integral part of the report and should be no more than 2-3 pages long. The reports may be structured as follows:

- Introduction.
- Purpose/ objectives/ terms of reference.
- Key findings/weaknesses (a summary of all key findings/weaknesses, regardless of whether they have been rectified, or not, within the year, and the key issues from previous years that are still pending).
- Suggestions.
- Conclusion.

CySEC expects that Reports for the year 2016 will be prepared in accordance with the aforesaid.

Acronyms & Definitions used

AIF	Alternative Investment Fund under Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers
AIFLNPs	Alternative Investment Funds of Limited Number of Persons
AIFMs	Alternative Investment Fund Manager
ASPs	Administrative Service Providers
CBC	Central Bank of Cyprus
CDS	Credit Default Swap
CFD	Contracts for Difference
Commission	European Commission
CP	Consultation Paper
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
EBA	European Banking Authority
ESAs	Joint Committee of the European Supervisory Authorities (EBA, ESMA, EIOPA)
ESMA	European Securities and Markets Authority
ETD	Exchange-Traded Derivative
EU	European Union
FCA	UK Financial Conduct Authority
FTT	Financial Transaction Tax
FX	Foreign Exchange
IRS	Interest Rate Swap
ITS	Implementing Technical Standards
LIBOR	London Inter bank Offered Rate
MAD	Directive no.2014/57/EU of the European Parliament and of the Council on criminal sanctions for market abuse
MAR	Regulation no. 596/2014 of the European Parliament and of the Council on insider dealing and market manipulation (market abuse)
MiFID	Markets in Financial Instruments Directive – Directive 2004/39/EC of the European Parliament and the Council
MiFID II	Directive no. 2014/65/EU of the European Parliament and of the Council on markets in financial instruments repealing Directive 2004/39/EC of the European Parliament and of the Council (compromise reached, number to be assigned)
MiFIR	Regulation no. 600/2014 of the European Parliament and of the Council on markets in financial instruments and amending Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories [EMIR]
MMF	Money Market Fund
NDF	Non-deliverable forwards
Official Journal	The Official Journal of the European Union
OTC	Over-the-Counter

Q&As	Questions and Answers
PRIIPS	Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products
RTS	Regulatory Technical Standards
SFT	Securities Financing Transaction
TA	Technical Advice
UCITS	Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009, on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)
UCITS MCs	UCITS Management Companies
UCITS V	Directive of the European Parliament and of the Council amending Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards depositary functions, remuneration policies and sanctions

Remarks/Disclaimer

(a) This document is made available without any representations or any kind of warranty (whether express or implied by law) to the extent permitted by law. In particular,
MAP S.Platis gives no warranties as to the accuracy of the content or its fitness for your purposes, or that the content does not infringe third party rights. MAP S.Platis does not accept any liability for error or omission in the content.

(b) The content must not be regarded as a substitute for reading or adhering to the provisions of the applicable law. Please note that we cannot confirm that such content will be suitable for all purposes or circumstances in which you may elect to utilise it and that we cannot, and do not, accept any responsibility or liability, nor do we provide any warranty, that such content shall be deemed valid, binding or enforceable under all circumstances or with whatever amendments, alterations, omissions or additions that may be made to such content.

(c) MAP S.Platis is not responsible for how the content is used, how it is interpreted or what reliance is placed on it, whether by you or by any other party.

(d) Under no circumstances will MAP S.Platis be liable for any losses or damage (whether foreseen, foreseeable, known or otherwise) including, but not limited to: (a) loss of data; (b) loss of revenue or anticipated profits; (c) loss of business; (d) loss of opportunity; (e) loss of goodwill or injury to reputation; or (f) losses suffered by third parties however arising (including under negligence).

(e) These terms shall be governed by and interpreted in accordance with the laws of the Republic of Cyprus.

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