MAP S.Platis

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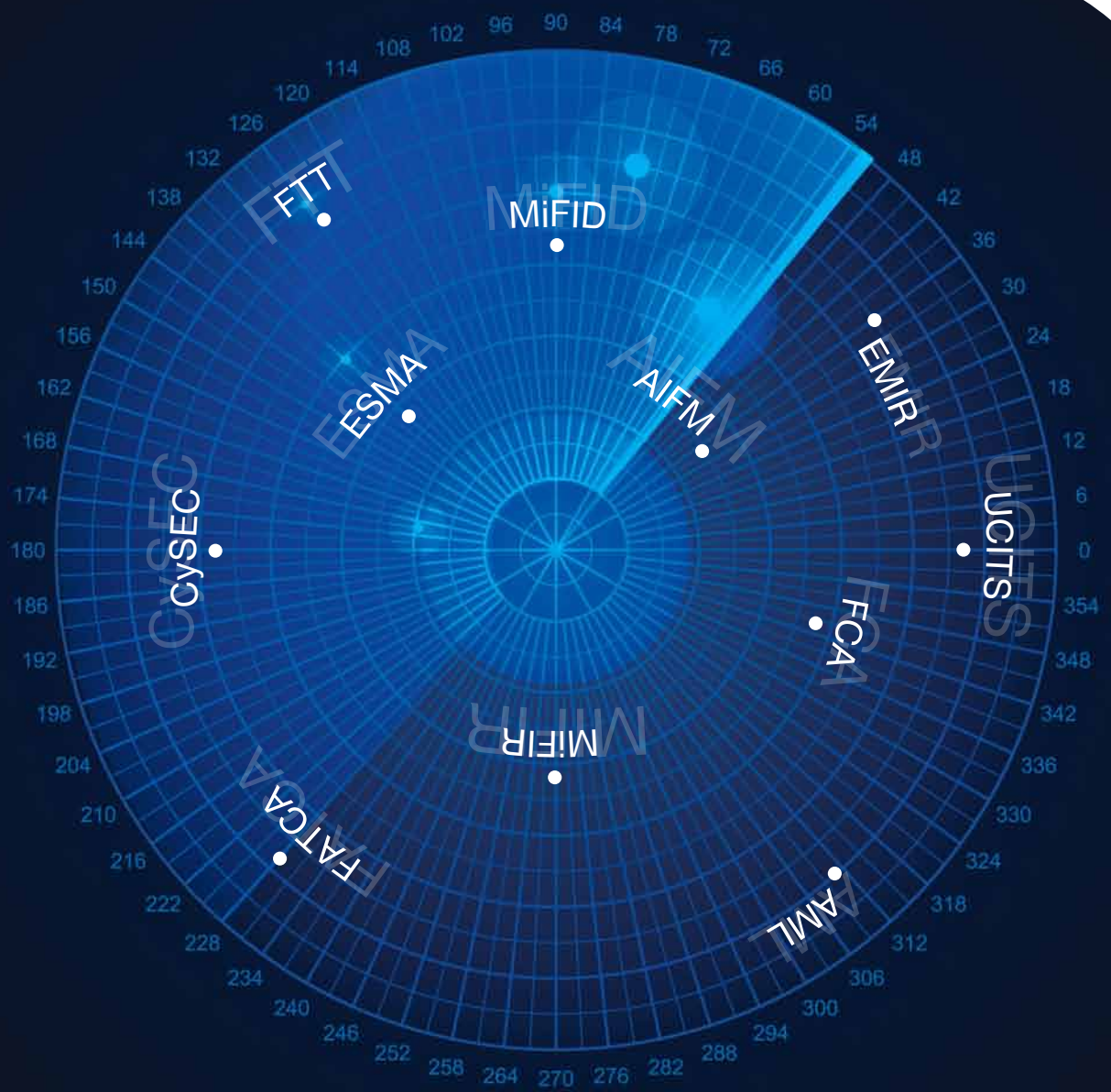
REGULATORY RADAR

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



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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. EU implementing texts have been published. EU Questions and answers and guidance continue to be developed.
  - 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 took 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 took 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 took 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
  - The clearing obligation for certain financial counterparties with a limited volume of activity has been postponed till 21 June 2019
  - 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
  - European Supervisory Authorities issued a joint statement on the exchange of variation margin deadline of 1 March 2017
  - A review of EMIR has begun

- **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; implementing regulations are being prepared
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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 was required by 3 July 2016 and the new rules were to take effect from 3 January 2017.

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

Secondary legislation (known as "Level 2 measures")

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

The Commission's Delegated Acts referred to above have been published in the Official Journal on 31 March 2017, as follows:

- Commission Delegated Directive on safeguarding of client assets and funds, governance and inducements of 7 April 2016
- Commission Delegated Regulation on organisational requirements and operating conditions for investment firms of 25 April 2016

The various Regulatory Technical Standards (RTS) and Implementing Technical Standards (ITS) have been published in the Official Journal.

Level 3 measures

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

On 5 April 2017, ESMA published two updated Questions and Answers (Q&A) documents regarding implementation issues relating to market structures and transparency topics under MiFID II and MiFIR:

- an updated Q&A document on market structures which provides clarifications on the types of arrangements that qualify as organised trading facilities (OTFs); on the steps to be taken by market operators or investment firms operating an OTF, including in relation to the execution of orders on a discretionary basis and to the provision of best execution to clients; and that the key characteristics of a systematic internaliser's (SI) activity is to provide liquidity bilaterally to clients by trading at risk, but that SIs which are similar functionally to a trading venue would need to seek authorisation.
- An updated Q&A on transparency which provides clarifications on the obligations of trading venues to make available their arrangements for the publications of quotes and transactions; the application of flags and details for the purpose of post-trade transparency; and the application of the transparency regime for primary market transactions.

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

On 4 April 2017, ESMA published its updated 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.

Knowledge and competence

On 3 January 2017, ESMA published the final guidelines specifying the criteria for the assessment of knowledge and competence of investment firms' personnel. Article 25(1) of MiFID II states that Member States shall require investment firms to ensure and demonstrate to competent authorities on request that natural persons giving investment advice or providing information about financial instruments, investment services or ancillary services to clients on behalf of the investment firm possess the necessary knowledge and competence to fulfil their obligations under Article 24 and Article 25 of MIFID II.

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

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

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

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

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

The purpose of the Guidelines is to provide guidance to investment firms, trading venues and approved reporting mechanisms (ARMs) in order for them to prepare for compliance with their reporting and order record keeping obligations well in advance of their entry-into-force in 2018. The publication of these Guidelines provides firms with sufficient lead time to comply with their future record keeping and reporting obligations. The Guidelines are designed to ensure consistency in the application of these requirements across EU Member States. In particular, they provide examples of transaction reports and of the order data records. Each example is accompanied by samples of xml-messages to be used to represent the expected reportable values.

ESMA consultation on product governance guidelines

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

Manufacturers

The proposed guidelines for manufacturers address the following main topics:

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

Distributors

The proposed guidelines for distributors address the following main topics:

- Identification of the target market by the distributor: categories to be considered and differentiation on the basis of the nature of the product distributed;
- Identification and assessment of the target market by the distributor: interaction with the provision of different investment services;
- Regular review by the manufacturer and distributor to respectively assess whether products and services

are reaching the target market;
- Distribution of products manufactured by entities not subject to the MiFID II product governance requirements; and
- Application of product governance requirements to the distribution of financial instruments manufactured or issued before the entry into application of MIFID II.

Transversal issues applicable to both manufacturer and distributor
These address the following issues:

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

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

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 was 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.

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 10 of the Commission Delegated Regulation 2017/565.

EMIR implementation timetable

The EMIR Regulation was adopted on 4 July 2012 and entered into force on 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 2019**, 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
  - > **21 June 2019**, 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

> **21 June 2019**, 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 regulatory technical standards on the clearing obligation under EMIR in relation to fixed-to-float interest rate swaps denominated in in certain non-G4 European currencies CZK, DKK, HUF, NOK, SEK and PLN as well as forward rate agreements denominated in NOK, SEK and PLN. (The G4 currencies are EUR, GBP, JPY and USD). This consultation closed on 15 July 2015. We await feedback.

On 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.

On 31 March 2017, the delegated act was published in the Official Journal.

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.

On 29 April 2017, the Commission Delegated Regulation as regards the deadline for compliance with clearing obligation is for certain counterparties was published in the Official Journal. Counterparties in Category 3 will be subject to the clearing obligation from 21 June 2019 and this date will apply to transactions subject to the First IRS RTS, the Second IRS RTS and the CDS RTS (see above).

ESMA EMIR Q&As

On 3 April 2017, ESMA issued an update of its Q&A on practical questions regarding EMIR. The update to the Q&As follows the publication of revised technical standards on reporting under Article 9 of EMIR, which has rendered some of the questions in the Q&As obsolete. In addition the Q&As include an updated question regarding the obligation to report outstanding trades following the entry into force of EMIR. ESMA has published updated validation rules for reports submitted under the revised technical standards. The updated rules and Q&As apply from 1 November 2017.

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 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.**

On 23 February 2017, the three European Supervisory Authorities (ESAs) (European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and the European Securities and Markets Authority (ESMA) published a joint statement on variation margin exchange. The statement was made in response to industry requests relating to operational challenges (faced mainly by smaller counterparties) in meeting the deadline of 1 March 2017 for exchanging variation margin as required under the regulatory technical standards on risk mitigation techniques for over-the-counter derivatives not cleared by a central counterparty. In light of the two year implementation period and previously agreed extensions relating to similar concerns, the statement expresses the ESAs' disappointment that the financial industry has been unable to prepare for the implementation of the scheme.

While the statement is clear that neither the ESAs nor national competent authorities have any power to disapply the EU legal text, it is noted that the ESAs expect competent authorities to apply risk-based supervisory powers and, to this end, have due regard to the size of the counterparty. Nonetheless, the statement reminds financial industry participants that this approach does not entail general forbearance, but rather a case-by-case assessment from the competent authorities on the degree of compliance and progress.

EMIR review

On 4 May 2017, the European Commission published a proposal for a first Amending Regulation in respect of the European Markets Infrastructure Regulation (EMIR). The main changes to EMIR relate to changes to reporting requirements, changes to the clearing requirements for Non-Financial Counterparties so that Non-Financial Counterparties clear only the asset classes for which they have breached the clearing threshold, the introduction of a clearing threshold for small Financial Counterparties (such as small banks or funds) and a further proposal for a new three-year temporary exemption for pension funds from central clearing.

IV. Securities Financing Transactions Regulation (SFTR)

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

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

The SFTR introduces:

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

The fund prospectus disclosure obligation comes into force:

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

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

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

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

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

The discussion paper sets out proposals for implementing the reporting framework under the SFTR, including

tables of the fields with the proposed data to be reported, and the registration requirements for those Trade Repositories which want to accept reports on security financing transactions. The consultation closed on 22 April 2016.

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

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

ESMA has developed its proposals on reporting of SFTs building on its experience with the European Market Infrastructure Regulation (EMIR), and other EU-wide reporting regimes in order to align reporting standards to the maximum extent possible. The consultation closed on 30 November 2016.

On 31 March 2017, ESMA published its final report setting out draft RTS and ITS implementing the SFTR. The report sets out policy decisions and the final text of the following nine sets of RTS and ITS:

- Draft RTS on registration and extension of registration of TRs under SFTR (Article 5(7), SFTR).
- Draft ITS on registration and extension of registration under SFTR (Article 5 (8), SFTR).
- Draft amendments to RTS on registration under the **Regulation** on OTC derivative transactions, central counterparties and trade repositories (**Regulation** 648/2012) (EMIR) (Article 56(3), EMIR).
- Draft ITS on format and frequency of the reports to TRs under SFTR (Article 4(10), SFTR).
- Draft RTS on the details of reports to be reported to TRs under SFTR (Article 4(9), SFTR).
- Draft RTS on operational standards for data collection, data aggregation and comparison, public data and details of SFTs (Article 5(7)(a) and 12(3), SFTR).
- Draft RTS on access levels and terms of use under SFTR (Article 12(3), SFTR).
- Draft amendments to RTS on access levels under EMIR (Article 81(5), EMIR).
- Draft implementing technical standards on procedures and forms for submitting information on sanctions and measures (Article 25(4), SFTR).

ESMA has submitted its final draft technical standards under the SFTR and the amended technical standards under EMIR for endorsement to the European Commission. The Commission has three months to decide whether to endorse them.

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.

On 12 April 2017, a revised Commission Delegated Regulation supplementing the Regulation on key information documents for packaged retail and insurance-based investment products by laying down regulatory technical standards regarding the presentation, content, review and revision of KIDs, was published in the Official Journal. The delegated regulation will apply from 1 January 2018.

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

European Supervisory Authorities joint Opinion on the risk of money laundering and terrorist financing affecting the European Union's financial sector

On 20 February 2017, the ESAs published a joint Opinion addressed to the European Commission on the risks of money laundering (ML) and terrorist financing (TF) affecting the European Union's financial sector. This Opinion will contribute to the European Commission's risk assessment work as well as that of the ESAs of fostering supervisory convergence and a level playing field in the area of anti-money laundering (AML) and countering the financing of terrorism (CFT).

In particular, this Joint Opinion finds that problems exist in relation to firms' understanding and management of the ML/TF risk they are exposed to. The Opinion also highlights difficulties associated with the lack of timely access to intelligence that might help firms identify and prevent terrorist financing, and considerable differences in the way national competent authorities discharge their functions.

These issues, if not addressed, risk diminishing the robustness of the EU's AML/CFT defences and more action is needed to ensure their effectiveness. This is particularly important as Member States move towards a more risk-based AML/CFT regime that requires a level of ML/TF risk awareness and management expertise, which not all firms and all sectors currently have.

Several initiatives are already underway, for example the ESAs' work on a common approach to risk-based AML/CFT supervision that, in the short to medium term, will serve to address many of the risks identified.

Money Laundering Directive 4 – transposition into national law by 26 June January 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 10 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 31 March 2017, the following on from the questions and answers (Q&As) on the provision of Contracts for Differences ("CFDs") and other speculative products to retail clients in April, June, July and October 2016, 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.

This Q&A includes a new section 10 – pages 84-96 – and provides clarifications on:

- Passporting and the cross-border provision of services by investment firms offering CFDs and other speculative products to retail clients;
- Assessment of the use of third parties by investment firms; and
- Examples of poor practice observed by national competent authorities (NCAs) in respect of the use of third parties by investment firms.

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 will also consider the need for any further work, in the medium term, in light of MiFID II requirements that will enter into application in 2018.

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 5 April 2017, the European Parliament adopted the MMF Regulation. The MMF Regulation now needs to be formally adopted by the Council. It will then be published in the Official Journal enter into force 20 days after its publication.

On 27 April 2017, a final version of the text adopted by the European Parliament was published. The MMF Regulation is expected to enter into force in 2018.

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.

During 2017, the Commission and ESMA will start work on the delegated acts, technical standards and guidelines to be produced under the MMF Regulation.

ESMA updated Q&As

On 6 April 2017, ESMA published an updated questions and answers document (Q&A) for UCITS. The Q&A clarifies that a UCITS management company can notify cross-border activities without having to identify a specific UCITS.

UCITS share classes

On 30 January 2017, the European Securities and Markets Authority (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.

ESMA is of the opinion that share classes which do not comply with these new principles should be closed for investment by new investors from 30 July 2017, and for additional investment by existing investors from 30 July 2018.

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 6 April 2017, ESMA published an updated questions and answers document (Q&A) for AIFMD. The Q&A clarifies that the alternative investment fund marketing passport may only be used for the marketing to professional investors as defined in AIFMD.

7. UK - Developments of Interest to Investment Firms

MIFID II Implementation – Fourth FCA Consultation and near final rules you

On 31 March 2017, the Financial Conduct Authority ("FCA") published its 5th consultation on MIFID II implementation. This CP covers:

- applying three new MiFID II conduct standards to occupational pension scheme firms, including the standards for inducements (including research), best execution and taping;
- changing the Decision Procedure and Penalties Manual and Enforcement Guide, including the extension of the FCA's enforcement powers to cover persons subject to UK implementing legislation; and
- implementing consequential changes to the FCA Handbook and the guidance on reporting financial instrument reference data and positions in commodity derivatives.

The deadline for comments is 23 June 2017 for comments on chapter 2 and 12 May 2017 for comments on chapters 3 and 4.

On 31 March 2017, the FCA published its first Policy Statement setting out its near final rules in the areas of markets issues, systems and controls, client assets and commodity position limits and proposals for recording of telephone conversations.

FCA statement on the EMIR 1 March 2017 deadline

On 23 February 2017, the FCA issued a statement on the EMIR 1 March 2017 variation margin deadline. The FCA welcomed the statements made by the European Supervisory Authorities and the International Organization of Securities Commissions on 23 February 2017. The FCA noted that the new regime for variation margin may require a number of significant changes for many firms, in terms of documentation and other arrangements and that some firms may not be in a position to exchange variation margin fully in compliance by 1 March 2017 despite their efforts to date.

The FCA noted that in its supervision of firms' progress, it would take a risk-based approach and use judgement as to the adequacy of progress, taking into account the position of particular firms and the credibility of the plans they have made. Where a firm has not been able to comply fully, it will expect it to be able to demonstrate that it has made best efforts to achieve full compliance, and be ready to explain how it will achieve compliance in as short a time as practicable for all in-scope transactions entered into from 1 March 2017. The FCA will expect detailed and realistic plans to be in place, which it may request to see at any time. The FCA expects firms to have come into compliance within the coming few months.

8. EU – Developments in the interest of CFDs and Binary Options providers

Over the past year, various EU regulators have set or proposed new rules to govern the distribution, marketing, promotion and sale of financial contracts for differences (CFDs) and other speculative products, such as Binary Options, in an attempt to enhance protection of the retail market. The main developments are presented below in a summary form.

- The Polish Financial Supervision Authority (KNF) passed a legislation that came in to effect on 16 July 2015 and which restricts the level of margin call for derivative instruments being offered in Poland to retail clients and specifically allows a retail investor to invest in derivatives having a margin deposit that amounts to at least 1% of the nominal contract value of that instrument.

  The KNF also issued 16 Guidelines for "providing brokerage services on the OTC derivatives market". These guidelines apply to both Polish investment firms and EU licenced investment firms when offering e.g. Binary Options, CFDs and any other derivative not traded in a Regulated Market, or an MTF, to retail clients in the Republic of Poland. For further information in this regards, please refer to Issue 12 of MAP S.Platis Regulatory Radar.

  Moreover, the KNF has published an announcement dated 29 April 2017 about amendments in the laws for trading in financial instruments in Poland which are about to come into force, introducing significant changes in the group of entities that can perform activities related to brokerage services.

- The Belgian regulator (the "FSMA"), issued an announcement regarding an enacted Regulation that bans the distribution of certain derivatives such as binary options and leveraged CFDs and prohibits a number of aggressive or unsuitable distribution techniques used when distributing OTC derivatives in the territory of Belgium.

- The Spanish Financial Regulator (CNMV) has set in motion several measures to enhance the protection of retail investors in Spain on the marketing of CFD's and other speculative products. More specifically, it requires brokers that market leveraged products with leverage higher than 1:10 to include additional risk warnings for retail clients. Please refer to CNMV Communications on the publication (follow the link) dated 21 March 2017.

- The Maltese Financial Services Authority (MFSA) has recently issued a feedback statement on a consultation document issued on 17 October 2016 along with a policy statement that sets out the regulator's updated criteria regarding the requirements that entities which offer or would like to offer CFDs and/or rolling spot forex contracts under the MiFID regime shall apply. One of the main amendments is the imposition of leverage limits to retail clients being 1:50, for retail client electing to be treated as professionals 1:100 and for all other clients no leverage limits.

- The Irish financial regulator (the Central Bank of Ireland (CBI)) has recently published

a consultation paper on the distribution of CFDs which proposes either the prohibition of the sale or distribution of CFDs to retail clients residing in Ireland or the imposition of maximum leverage limit (25:1) along with negative balance protection.

- On 6 December 2016, the FCA published a consultation paper which proposes stricter rules for firms selling CFD products. Specifically, the proposals include, inter alia, the setting of lower leverage limits for inexperienced investors (1:25) and capping leverage at a maximum level for all retail clients (1:50).

- Following the example of other EU regulators, the Dutch regulator (Authority for the Financial Markets (AMF) recently issued a consultation paper proposing the ban on advertising of high-risk products, including binary options, CFDs without negative balance protections and CFD product with more than 1:10 leverage. The regulator states that it sees the ban as an important step in its fight against harmful financial products to which consumers are exposed.

- On 8 May 2017, through the issuance of an announcement, the Germany's financial regulator (BaFin) informed the interested parties about a General Administrative Act which set the new rules that govern leveraged CFD trading.

  The new rules focus on CFD providers that are not providing their Clients with negative balance protection and therefore are exposing to Client to greater risks and losses that can exceed the Client's initial outlay. Spcifically BaFin is now limiting the marketing, distribution and sales of CFDs that give rise to additional payment obligation.

- The French national competent authority, the Autorite de Marche Financiers (AMF), recently issued a Q&A document on the "Prohibition of marketing communications with regard to the provision of investment service on certain financial derivatives – DIC-2017-01" through which the AMF aims to provide further clarity about the scope of the respective prohibition.

  The aforesaid document provides a detailed analysis of the financial derivatives (e.g. Binary Options, CFDs, Forex) falling under the scope of this prohibition and further defines the types of marketing communications that are targeted. In addition, it lays down the criteria, rules and restrictions requirements under which a marketing communication on a financial derivative may be addressed to French retail clients and illustrates some examples for further understanding.

  The document also illustrates examples of derivative instruments which, under conditions, may be excluded from the ban.

9. CySEC Developments

Law regarding Criminal Sanctions for Market Abuse

On 10 February 2017, the Cyprus Securities and Exchange Commission (hereinafter "CySEC") published L.136(I)-2016 Law regarding Criminal Sanctions for Market Abuse (in Greek) – the Law was voted in December 2016. The aforesaid Law transposes all the relevant provisions of Directive 2014/57/EU.

The purpose of the L.136 (I)-2016 Law is to establish rules imposing criminal sanctions on acts of persons which constitute insider dealing, unlawful disclosure of inside information and market manipulation in order to ensure the integrity of financial markets in the Republic and to enhance the protection and the confidence of the Investors in these markets.

Regulatory Obligations of CIFs when providing binary options

On 13 February 2017, CySEC issued Consultation Paper CP (2017-01) in order to invite market participants to submit their comments/suggestions about a proposed Circular relating to obligations of Cyprus Investment Firms ("CIFs") when providing investment services in binary options.

The propose Circular outlines essential amendments to the way investment services in binary options are provided to investors in terms of their nature, characteristics and trading methodology. The proposed Circular improves and strengthens the principles required for CIFs to meet their overarching obligation to act in the best interest of their customer.

The amendments proposed include, inter alia, the following:

1) **Improved transparency on strike pricing**
   Customers must know the exact strike price before the contract becomes tradeable. The calculated strike price at execution must be exactly the same as the strike price communicated when the order is placed. Strike prices must be the same for all clients and floating strike prices are not permissible.
2) **Quoting potential outcomes in real-time so as to enhance pre-trade transparency**
   Prices must be quoted as an evolving bid-ask spread, representing clearly the percentage probability of an outcome occurring.
3) **Removing any restrictions on exiting trades**
   In order for Clients to be able to exit their positions at any time throughout the life of the contract, CIFs must provide a continuous, two-way pricing. Clients shall not have to wait until the expiration of a contract in order to exit the position.
4) **Prohibition of all sub-5 minute duration trades**
   With the purpose to eliminate shorter-term volatility and for further protection against "binary bets", contracts must have a minimum duration of 5 minutes.
5) **Standardising trading and settlement methodologies**
   In order for the expiration value to be a fair representation of the true market at the moment of the Digital Option Contract's expiration and to avoid its manipulation therein, algorithms for the calculation of

expiration and settlement values of the underlying market must follow CySEC's predetermined methodology. Individual methodologies abnormal to one CIF are not permissible.

The consultation closed on 3 March 2017.

Certification of Persons and Certification Registers

On 20 February 2017, CySEC issued an announcement in relation to the amendment of the Directive R.A.D. 174/2015 regarding the Certification of Persons and the Certification Registers, by the Amending Directive R.A.D. 22/2017 (in Greek).

The purpose of the Amending Directive R.A.D. 22/2017 is, inter alia, to amend the provisions related to the re-registration, in the certification register, of persons who have been deleted from the register due to their failure to renew their registration, under certain conditions.

CySEC requested that all certified persons proceed with the renewal of their registration until the 28/02/2017, since the new conditions for the renewal of registration shall apply to cases of non-timely renewal.

CySEC also clarifies that the persons deleted from the certification register due to committing a criminal offended or being deemed inappropriate cannot re-registered in a certification register.

Please refer to Issue 14 of MAP S.Platis Regulatory Radar for more details on the Amending Directive R.A.D. 22/2017.

Updates on the Application for the granting of a CIF authorisation

On 21 February 2017, CySEC issued an announcement in relation to the updated application for the granting of a CIF authorisation (Form 144-03-01), which aims to facilitate the authorisation procedure by requesting additional information. More precisely, the update form now requests (further) information on the following subjects:

1. Operation of a Multilateral Trading Facility;
2. Business Plant of the applicant;
3. Internal Capital Adequacy Assessment Process ("ICAAP"); and
4. Clarifications for applicants which will market and cell CFDs and other speculative products

Moreover, the checklist for the Internal Procedures Manual that accompanies the Application for the granting of CIF authorisation (Form 144-00-05) has also been amended as to include provisions in relation to a CIF's Best Execution Policy, Business Continuity Policy and Leverage Policy.

CySEC, through the said announcement, also publishes the Checklist for Part B – Operation of a Multilateral Trading Facility that accompanies the Application for the granting of CIF authorisation (Form 144-03-04), as well as a Guide for Part B of the Application for the granting of CIF authorisation (Form 144-03-05).

Lastly, CySEC notes that all applications to be submitted to CySEC from the 15th of March 2017 onwards should be prepared and submitted using the updated forms.

Findings of the assessment of the Compliance Officers' and the Internal Auditors" Annual Reports on AML

On 22 February 2017, through the issuance of Circular C189, CySEC published its findings, following an assessment conducted on the Annual Reports of the Anti-Money Laundering Compliance Officer ("AMLCO") and the Internal Auditor (in relation to the prevention of money laundering and terrorist financing) (hereinafter, the "Reports") for the year 2015 and the relevant minutes of the Board of Directors (the "Board Minutes") that were submitted to CySEC in 2016.

The major findings of CySEC's assessment include, inter alia, the following commonly occurring weaknesses/ deficiencies:

A. With respect to the content of the Reports, CySEC identified the following:
   - Insufficient analytical reference to the content and the method of conduct of inspections and reviews performed by the AMLCO to determine the degree of compliance of the regulated entity with respect to the policy, practices, measures, procedures and controls applied for the prevention of money laundering and terrorist financing and the recommendations made with a relevant timeframe imposed or the actions taken to any deficiencies/weakness identified.
   - Insufficient reference to the enhanced due diligence measures applied in relation to high-risk customers.
   - Insufficient reference to information in relation to the systems and procedures applied by regulated entities for the ongoing monitoring of customers' accounts and transactions compared with their economic profile.
   - Insufficient information on the specific method with which the adequacy and effectiveness of staff training has been assessed and reference to the results.
   - The scope of the Internal Audit did not sufficiently cover all the key areas regarding the policy, practices, measures, procedures and control mechanisms applied for the prevention of money laundering and terrorist financing.
   - No reference was made to prior years' findings/recommendations and whether these have been rectified or not, within the reference year, and the key issues from previous years that are still pending.

B. With respect to the content of the Board minutes for the Reports
   - On some occasions, minutes do not include the measures that need to be taken to ensure the rectification of any weaknesses and/or deficiencies which have been detected in the Reports, including implementation timeframes of these measures.

CySEC expects that all regulated entities took into account the above-mentioned findings when preparing the Reports for the year 2016 and from now onwards in order to ensure full compliance with their obligations emanated by the Law and Directive.

It is stressed that strict administrative sanctions can be applied in case of non-compliance with the requirements of the Law and the Directive.

Receipt of applications and correspondence of Authorisation Department of CySEC

On 22 February 2017, through the issuance of an announcement, CySEC informed the interested parties about the procedure that has been established regarding the incoming correspondence that relates to the Authorisations Department.

The respective procedure mentioned in the relevant announcement applies to the following documents:

1. Applications for the granting of authorisation.
2. Additional documents to an application.
3. Documents relating to material changes or other actions relating to the Authorisations Department.

Regulated Entities' compliance with reporting and other obligations

On 1 March 2017, CySEC issued Circular C191, regarding Regulated Entities' compliance with reporting and other obligations.

Through Circular C191, CySEC, inter alia, informs the Regulated Entities of the following:

1. From the date of authorisation and/or taking up duties (where applicable), Regulated Entities must comply with all their obligations in relation to the submission of reports and/or statements and/or information and their obligation to pay the annual fees/contribution towards CySEC.
2. The date of authorisation is the date when a Regulated Entity obtains the authorisation from CySEC, or takes up duties (where applicable), and not the date when the Regulated Entity becomes operational. In other words, Circular C191 provides that a CIF which is authorised by CySEC but has not yet made use of its authorisation must, from the date of its authorisation, comply with all its reporting and other obligations referred to in the said Circular.
3. All reports, including those related to a period during which a Regulated Entity was not operational, must contain the minimum required information and must be submitted within the deadlines set by the relevant CySEC and/or European Regulations.

Lastly, CySEC requested that Regulated Entities take into account the provisions of Circular C191 when preparing and submitting their reports and warned Regulated Entities that strict administrative sanctions may be imposed under the relevant legislation, in case of non-compliance with the requirements referred to in the said Circular.

Freedom to provide investment and ancillary services and/or perform investment activities in a third country

On 3 March 2017, through the issuance of Circular C192, CySEC reminds all CIFs that they may provide/perform investment services/activities in the territories of third countries only when they are authorised to do so by CySEC and the respective competent authorities of the third countries, where applicable. Moreover, CySEC clarified that the CIF is solely responsible to acquire such authorisation by the competent Authorities of the third countries.

Furthermore, CySEC has decided that any new requests to CySEC must be accompanied with a certified copy of the authorisation from the competent Authority of the third country to provide such services, prior to CySEC allowing or prohibiting the provision of investment and ancillary services and/or performance of investment activities in a third country, in accordance with Article 79 of Investment Services and Activities and Regulated Markets Law of 2007 as in force. In case that the said third country does not require such authorisation, the CIF shall provide CySEC with a legal opinion issued by a qualified lawyer or a legal firm of the relevant jurisdiction stating that no such authorisation is required.

Following the issuance of Circular C192, CySEC issued on 04 May 2017, Circular C204 requesting from CIFs to assess their existing third-country-passports and obtain legal advice and/or letters/official documents from the competent authorities of the third countries, affirming that the CIF is authorised to provide investment services and activities in their territories.

CIFs must provide to CySEC a confirmation signed by all board members as to their compliance with the abovementioned Circular and a list of all third-countries to which they provide services stating for each one whether a legal advice or a letter/official document has been obtained, by the end of the 31st May 2017. The supporting evidence shall be available for inspection by CySEC when deemed necessary.

Finally, CySEC warns all CIFs that in case of non-compliance with this Circular, it may take the necessary supervisory decisions, including the imposition of administrative sanctions and/or the restriction of the CIF's access to provide investment and ancillary services and/or perform investment activities in a third country and/or other administrative measures.

The obligations of CIFs in relation to compliance with the provisions of section 79 of the Law, when they intend to provide investment and ancillary services and/or perform investment activities in the territories of third countries were also communicated by CySEC in its Circulars CI144-2013-24 and C096.

Offering bonuses to retail investors

Following the issuance of Circular C168, regarding the updated version of ESMA's Q&A for the provision of CFDs and other speculative products to retail investors under MiFID, CySEC issued Circular C194 on 16 March 2017, as further guidance to CIFs on the types of bonus incentives which are not permissible to be offered to retail clients.

Circular C194 includes a non-exhaustive list of examples of bonuses and other trading benefits

which CySEC considers as inconsistent with article 36 of the Investment Services and Activities and Regulated Markets Law of 2007 as in force (i.e. conduct of business obligations).

The said Circular further provides that a CIF wishing to reward its clients, may, instead of offering a return of an amount, offer lower spreads.

Finally, CySEC emphasizes that the protection of Clients' interests is of utmost importance and in case of non-compliance with the requirements laid down in Circulars C168 and C194 and ESMA's Q&A, CySEC will take strict supervisory actions.

For more details on Circular C168 and the offering of bonuses to retail investors, please refer to Issue 13 of MAP S.Platis Regulatory Radar.

Transactions in Virtual Currencies (XECOIN)

On 30 March 2017, through the issuance of an announcement, CySEC informs the public about XECOIN or cryptocoin which appears to be available in Cyprus. CySEC emphasises that the aforesaid is not a financial instrument and thus it does not fall within the scope of the Investment Services and Activities and Regulated Markets Law of 2007 as in force. CySEC also stated that currently there are no specific regulations for the protection of investors transacting in virtual currencies and urges the investors to exercise extreme caution in products promising high returns.

Article 68C of the Prevention and Suppression of Money Laundering and Terrorist Financing Law of 2007

On 31 March 2017, through the issuance of Circular C196, CySEC reminds Regulated Entities of the provisions of Article 68C of the Prevention and Suppression of Money Laundering and Terrorist Financing Law of 2007 as in force, noting that ignorance of the aforesaid Law is no defense.

According to Article 68C of the abovementioned Law, the provision of false or misleading evidence or information and false or forged identification documents of customers or, ultimate beneficial owners is a criminal offence.

In case of conviction this offence is subject to imprisonment not exceeding 2 years or, to a pecuniary penalty of up to €100.000 or, to both of these penalties.

MiFID II – MiFIR: Main changes affecting the authorisation requirements for investment firms

On 11 April 2017, through the issuance of an announcement, CySEC notifies all interested parties of the main changes introduced by MiFID II, MiFIR and the relevant delegated and implementing regulations which affect the authorisation requirements for investment firms including the CIFs.

CySEC urges all market participants that fall within the scope of MiFID II and MiFIR to be prepared for the

implementation of the new legislative framework which introduces numerous new obligations as of 03 January 2018. Interested parties are also advised to consult and study the documents published by the European Commission and ESMA in this respect.

The market participants to be affected are, inter alia, the following:

- CIFs that will need to extend their authorisation to cover new investment activities and/or financial instruments introduced by MiFID II;
- Entities that will no longer be exempt from the scope of the legislation;
- Persons undertaking high frequency algorithmic trading that will now fall within the scope of MiFID II;
- Currently unauthorised businesses/entities that will have to be authorised under MiFID II.

In relation to the authorisation process, CySEC draws special attention to the:

- Commission Delegated Regulation (EU) 2017/565 as regards organisational requirements and operating conditions for investment firms and defined terms;
- Commission Delegated Regulation with regard to regulatory technical standards on information and requirements for the authorisation of investment firms;
- Commission Implementing Regulation laying down implementing technical standards with regard to notifications by and to applicant and authorised investment firms containing, among others, the templates for the new application forms (currently in draft version).

In addition, CySEC describes the main changes relating to, inter alia, the following:

- The scope of investment services and activities;
- The scope of ancillary services;
- The scope of financial instruments;
- Structured deposits;
- Exemptions;
- Systematic Internalisers;
- The authorisation procedure;
- Corporate Governance rules and management body;
- New organizational requirements for investment firms;
- Additional organizational requirements for MTFs and OTFs;
- SME Growth Markets;
- Algorithmic trading;
- Authorisation of Data Reporting Service Providers (DRSPs);
- Passporting Issues and Provision of investment services and activities by third country firms.

For further information with regards to MiFID II and MiFIR, please also refer to the current and previous Issues of MAP S.Platis Regulatory Radar.

France prohibits electronic advertising to retail investors when offering speculative, complex and risky products in its territory

On 12 April 2017, through the issuance of Circular C202, CySEC draws the attention of CIFs providing investment services relation to financial contracts for difference (CFDs) and/or other complex products such as Binary Options in the territory of France to a recently enacted regulation which prohibits the marketing of certain financial instruments with certain characteristics.

CySEc advises CIFs to consult with their legal consultants regarding the necessary legal actions to ensure compliance with abovementioned development in France.

CIFs that wish to read further information on the above legislation, may visit the following website of Autorite des Marches Financiers (AMF).

Acquisition of digital signature

On 12 April 2017, through the issuance of an announcement, CySEC informs the persons that would like to acquire a digital signature (token), that they have to complete all necessary documents/forms according to Appendix A of the Circular C144-2013-25 and arrange for a meeting with Mrs Christoulla Ignatiou and/or Mr Panicos Christoforou in order to confirm the documents and to get the device.

The respective persons should be present at the meeting, together with the documents and a payment receipt of €210 (purchase and one year renewal) issued by the Accounting Department of CySEC.

Consultation Paper CP (2017-02) - Replacement of the legal framework governing the operation of the Investor Compensation Fund

On 12 April 2017, CySEC issued a Consultation Paper (CP2017-02) on the Replacement of the legal framework governing the operation of the Investor Compensation Fund ("ICF").

CySEC prepared a Draft Proposed Directive, which is attached to the said Consultation Paper as Annex, in replacement of Directive 144-2007-15 of 2015 for the Operation and Continuance of Operation of the CIF Investor Compensation Fund and Directive 144-2007-09 of 2012 on the General Meeting of the Members of the ICF for IF clients.

The main changes under the Draft Proposed Directive are the following:

I. Participation in the ICF and Payment of Initial Contributions

Under the Draft Proposed Directive, all CIFs authorised to provide investment and any ancillary services continue to participate in the ICF, since participation in the ICF is a requirement for holding a CIF authorisation, pursuant to Article 17 of the Investment Services and Activities and Regulated Markets Law of 2007 as in force.

The participation in the ICF is an obligation of CIFs, irrespective of the services they are authorised to provide and irrespective of whether clients' funds and financial instruments are held.

The types of authorised services of a CIF determine the level of initial contributions and the level of safekeeping and custody of retail clients' funds and financial instruments determine the level of ongoing annual contributions of a CIF.

Initial contributions for investment firms under the new proposals and the existing Directive are shown in the table below:

Type of service	Initial contributions	
	Under existing Directive DI144-2007-15	Under CP2017-02
Reception and transmission of orders	Not specified	€10.000
Execution of orders	€13.669	€16.000
Reception and transmission of orders and Execution of orders	€22.212	Not applicable
Dealing on own Account	€17.086	€35.000
Portfolio Management	€25.629	€32.500
Investment Advice	No contribution required	€10.000
Underwriting and/or placing of financial instruments on a firm commitment basis	€17.086	€20.000
Placing of financial instruments without a firm commitment basis	No contribution required	€10.000
Operation of a Multilateral Trading Facility	No contribution required	€10.000
Safekeeping and administration of financial instruments for the account of clients	€20.503	€35.000

In addition, Alternative Investment Fund Managers (AIFMs) providing the services of paragraph 6 of Section 6 of the Alternative Investment Fund Managers Law of 2013 and Management Companies of Undertakings for Collective Investment in Transferable Securities ("UCITS") providing the services of paragraph 4 of Section 109 of the Open-Ended Undertakings for Collective Investments Law of 2012 have been added to the Draft Proposed Directive as participating members. The Draft Proposed Directive includes provisions for specific contributions by AIFMs and UCITS Management Companies, subject to their service offering. Under the proposed changes, ICF members will not only consist of investment firms but also AIFMs and UCITS Management Companies, subject to their service offering.

II. Regular Annual Contribution

Members not holding in any way client assets (e.g. firms providing solely the investment service of investment advice) shall continue not paying a regular annual contribution. However, a new annual fee of €700 is introduced for all members, aiming at covering administrative and other operational expenses of the ICF.

Under the proposed directive, the regular annual contributions of the members seem to be calculated in a similar way as before, albeit with financial disincentives introduced for no clean audit certificate of assurance for the statement of eligible funds and financial instruments or for late payments. The effective contribution is still 0,1% provided payment is made on time, but there is a heavy penalty applying, increasing this contribution to 0,5%, for late payments (i.e. payments made after 15 May each year). For example, a firm holding a maximum of total retail client assets of €1million over the 12 months of a calendar year (with each retail client assets capped at €20,000), will need to contribute €1.000 to the ICF by 15 May of next year or €5,000 if the payment is made after 15 May of next year.

Moreover, the cap of 0,5% of the total eligible client assets of the CIF during a year applied to the overall amounts contributed to the ICF by any CIF is proposed to be removed

III. Payment of Extraordinary Contribution

Under the current framework, CySEC may call upon the members to pay an extraordinary supplementary contribution if it deems that the existing means for the payment of compensation are inadequate, particularly in the event of a liquidation procedure of a member of the ICF. The Draft Proposed Directive includes a provision which enables CySEC to calculate the extraordinary contribution per category or sub-category of members, in order for this to be effected on a basis reflecting the risk of each category or sub-category of members at the time, rather than on a single basis for all members

IV. Reduced Compensation

Under the proposed directive, compensation for valid claims is reduced from 100% with a maximum of €20,000, to the lower of 90% of the total claims of a client and €20,000. In other words, the amount of compensation payable to a client with claim(s) against a CIF amounting to €30,000 will be €20,000, while the amount payable to a client with claim(s) amounting to €10,000 will be €9,000.

V. Money Refund and Termination of Payment of Contributions

Under the current framework, contributions to the ICF form part of the assets of its contributing member. In other words, any amount contributed to the ICF, plus any return thereon, will be returned to the contributing CIF in case of withdrawal of its authorisation for any reason and provided that no claims arose against the CIF by its retail clients.

If the proposed directive comes into force, contributions and fees paid to the ICF shall not form an asset of its members and, therefore, no amount may be refunded to the CIFs at any stage, including when their authorisation is withdrawn.

In addition, the Draft Proposed Directive does not include any provisions regarding the termination of payment of contributions by members.

The Consultation Paper closed on 5th May 2017.

Possible impact of the UK's exit from the EU on the activities and services of CIFs

On 12 April 2017, through the issuance of Circular C201, CySEC requested from all CIFs to report on the possible implications that Brexit will have on their activities and services and to suggest measures to be adopted with immediate effect in order to mitigate the respective impact. CIFs were requested to submit a document including the aforesaid through CySEC's web portal by 28th April 2017.

Draft Guidelines by ESAs to prevent terrorist financing and money laundering in electronic fund transfers

On 27 April 2017, through the issuance of Circular C205, CySEC informed Regulated Entities that the Joint Committee of the ESAs launched a public consultation regarding draft Guidelines to prevent terrorist financing and money laundering in electronic fund transfers.

In particular, the ESAs' draft guidelines set out what intermediary payment service providers and the payment service providers of the payee should do to detect whether information on the payer or the payee is missing or is incomplete. They also set out what payment service providers should do to manage a transfer of funds that lacks the required information. The Guidelines have been drafted in accordance to Regulation (EU) 2015/847 on information accompanying transfers of funds.

The CySEC encouraged the Regulated Entities to respond to the aforementioned public consultation no later than 5 June 2017.

Acronyms & Definitions used

AIF	Alternative Investment Fund under Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers
AIFLNPs	Alternative Investment Funds of Limited Number of Persons
AIFMs	Alternative Investment Fund Manager
AMF	Autorite des Marches Financiers
ASPs	Administrative Service Providers
CBC	Central Bank of Cyprus
CDS	Credit Default Swap
CFD	Contracts for Difference
CIF	Cyprus Investment Firm
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
ICF	Investors Compensation Fund
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

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Contact Us

Mailing Address:

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

Main Offices in Cyprus

Limassol:

74 Archiepiskopou Makariou C'

Amaranton Court, 3rd Floor, Mesa Geitonia

4003 Limassol, Cyprus

Tel: +357 2535 1335

Fax: +357 2535 1330

Nicosia:

25 Demostheni Severi Avenue

Metropolis Tower, 4th Floor

1080 Nicosia, Cyprus

Tel: +357 2287 7744

Fax: +357 2287 7780

www.mapsplatis.com