

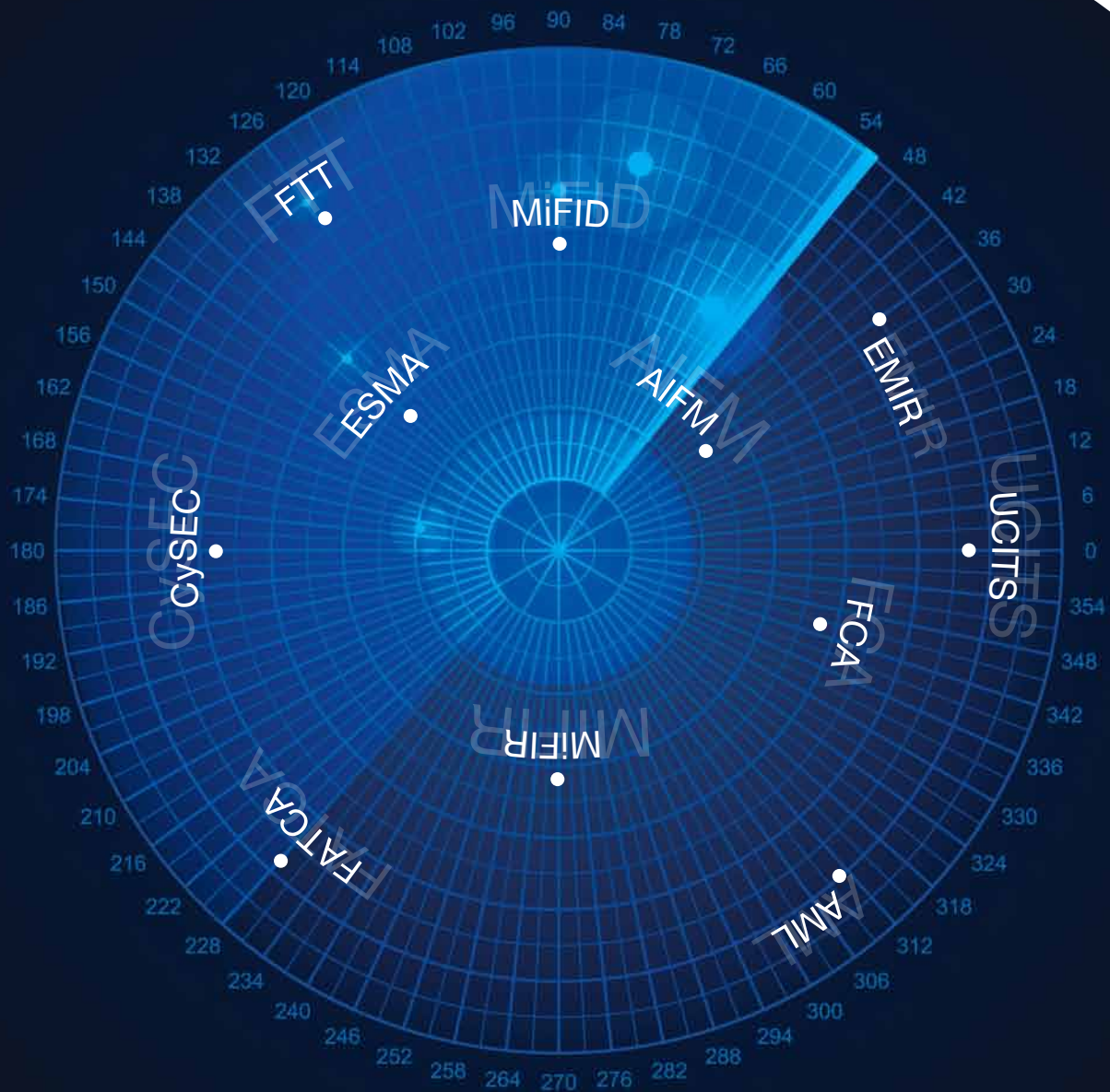


Your Partner in Financial Services!

Issue 016 / July 2017

# REGULATORY RADAR

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





# Index

Developments in the EU Financial Services Legislation Affecting Investment Firms	> 04
Anti-Money Laundering	> 08
EU Financial Transaction Tax (FTT)	> 09
FATCA/CRS	> 09
Fund Regulation	> 10
UK - Developments of Interest to Investment Firms	> 11
EU – Developments in the interest of CFDs and Binary Options providers	> 12
CySEC Developments	> 16
Acronyms & Definitions used	> 23
Remarks/Disclaimer	> 24

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 was required 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**
  - 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
  - A review of EMIR has begun
- **PRIIPS**
  - PRIIPS Regulation applies from 31 December 2017

### 2. Anti-Money Laundering Legislation

- Fourth Money Laundering Directive: reminder that the transposition date into national law was 26 June 2017. Cyprus has not met the deadline. A proposal of the new law was submitted by the government to the Parliament in June 2017 but has not still been voted.
- ESAs Guidelines on anti-money laundering and countering the financing of terrorism ('Risk Factors Guidelines')

### 3. EU Financial Transaction Tax

- No progress

### 4. FATCA/CRS

- Announcements related to FATCA and CRS annual reporting for the year 2016

### 5. Fund Regulation

- Money Markets Funds Regulation final text published in the Official Journal

### 6. UK – Developments of Interest to Investment Firms

- MiFID II implementation: FCA issues further policy statement and its sixth consultation
- FCA issues final findings of its asset management market study
- FCA statement on CFD firms failing to meet expectations on appropriateness testing

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

- Further statement by ESMA, including consideration of using its product intervention powers
- During the past months, several EU authorities issued restrictions or special requirements on the distribution of CFDs and Binary Options in their territories

## 8. CySEC Developments

- Proposed amendments of the Prevention and Suppression of Money Laundering and Terrorist Financing Law as part of AMLD 4
- Submission of notification(s) to the Office of the Commissioner of Personal Data Protection
- BaFin's restriction of marketing, distribution and sale of financial contracts for difference
- Revised guidelines on disclosure requirements under Part VIII of Regulation (EU) No 575/2013
- New requirements for the provision of warnings on complex financial instruments to retail clients residing in Spain
- Expansion of CySEC Portal to include CIF Record Content
- Electronic submission of information for the year 2016 (CIFs)
- Questions & Answers on 'Country-by-Country reporting' requirements
- Extension of the submission date for Circular C204 (Freedom to provide services in 3rd countries)
- Conclusion of CySEC's two year investigation into CommexFX
- Electronic submission of information for the year 2016 (UCITS MC, AIFMs and SM AIFs)
- Former Cyprus Popular Bank Public Co - Imposition of financial penalties
- Obligations regarding the changes in the persons who effectively direct the business of CIF
- Obligations when CIFs use of Affiliates
- ESAs Consultation Paper on draft regulatory technical standards to strengthen group-wide money laundering and terrorist financing risk management
- ESAs Guidelines on anti-money laundering and countering the financing of terrorism ('Risk Factors Guidelines')
- Polish Financial Supervision Authority's new rules regarding persons that are allowed to provide activities in the territory of Poland
- Transposition of MIFID II into national law

# 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.

National transposition is due to take effect from 3 July 2017.

The application date of the entire MiFID II and MiFIR package is 3 January 2018.

For further information on MiFID II and MiFIR please refer to previous versions of the Regulatory Radar found [here](#).

### **ESMA updates its MiFID II Q&As**

On 7 July 2017, the European Securities and Markets Authority (ESMA) updated its Question and Answers (Q&As) regarding the implementation of MiFID II and MiFIR. It provides responses to questions posed by the general public and market participants, in relation to the practical application of MiFID II and MiFIR on:

#### [Commodity derivatives issues:](#)

- Position limits and position reporting

#### [Market data issues:](#)

- Reporting details and data fields
- Reference date
- Order Record Keeping

#### [Market structure issues:](#)

- Multilateral trading systems
- Direct Electronic Access and algorithmic trading
- Access to CCPs and Trading Venues

On 31 May 2017, ESMA updated its Q&As on practical questions regarding the implementation of MiFID II. The updated Q&As include new answers regarding:

- [algorithmic trading](#);
- [the extension of a pre-existing MiFID I waiver to equity-like instruments](#);
- [the SI regime](#);
- non-equity instruments and data reporting services providers; and
- [commodity derivatives](#).

### **ESMA consults on draft standards for trading obligation for derivatives under MiFIR**

On 19 June 2017, ESMA published a [consultation paper](#) regarding its draft technical standards specifying the trading obligation for derivatives under MiFIR.

MiFIR's trading obligation will move over-the-counter (OTC) trading in liquid derivatives onto organised venues, thus increasing market transparency and integrity alike. MiFIR, which implements parts of the MiFID II framework, outlines the process for determining which derivatives should be traded on-venue.

The trading obligation for derivatives 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).

ESMA invites stakeholders to provide feedback on ESMA's approach, which was revised following an earlier consultation in 2016. Key elements of the published consultation include:

- liquidity analysis for interest rate derivatives and Index CDS based on a dataset covering the second half of 2016, incl. the proposal on which derivatives should be made subject to the trading obligation;
- the proposal on how to phase-in the trading obligation for derivatives;
- ESMA's approach concerning the instrument register to be maintained by ESMA for the trading obligation; and
- a high-level cost-benefit-analysis.

The consultation is open for comments until 31 July 2017. ESMA will use the feedback received to finalise its draft RTS on the trading obligation. ESMA will send the final draft standards to the European Commission for endorsement.

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

On 6 June 2017, ESMA added 14 new Q&As to its [Questions and Answers \(Q&A\)](#) document on the implementation of investor protection topics under the Markets in Financial Instruments Directive and Regulation (MiFID II/ MiFIR). The new Q&As cover the topics of 'information on costs and charges', 'post-sale reporting', and 'appropriateness'.

The overall MiFID II Q&As provides clarifications on the following topics:

- Appropriateness;
- Best execution;
- 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.

### **ESMA final report on product governance guidelines**

On 2 June 2017, ESMA published its [Final Report](#) on product governance guidelines under the Markets in Financial Instruments Directive II (MiFID II) regarding the target market assessment by manufacturers and distributors of financial products.

The requirements on product governance were introduced under MiFID II to enhance investor protection by regulating all stages of the life-cycle of products or services, in order to ensure that firms which manufacture and distribute financial instruments and structured deposits act in the clients' best interests.

The proposed guidelines address issues specific to manufacturers and distributors as well as issues common to both.

The Final Report follows the [Consultation Paper](#) issued on 5 October 2016. Following the responses to the consultation and advice from the Securities Markets Stakeholder Group (SMSG), ESMA has modified the guidelines in some areas such as the topic of portfolio diversification and has provided further practical examples in the annex, in order to ease the application of the guidelines.

## **II. The new Market Abuse regime**

On 6 July 2017, European Securities and Markets Authority (ESMA) published an updated version of its [questions and answers \(Q&As\)](#) on the Market Abuse Regulation (MAR). Updates since the latest version include new answers regarding:

- disclosure of inside information; and
- a blanket cancellation of orders policy.

## **III. EMIR**

### **ESMA EMIR Q&As**

The latest Q&As are the Q&As issued on 10 July 2017: [Q&A on practical questions regarding EMIR](#).

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

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, 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 these 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.**

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

The Key Information Document (KID) is a mandatory, three-page A4 information document to be provided to consumers before purchasing a Packaged Retail and Insurance-based Investment Products (PRIIPs). PRIIPs include for example funds, structured products, unit-linked and with-profits life insurance contracts, and structured deposits. The KID will need to be provided from 1 January 2018.

The rules to be applied to for the use of the KID are outlined in the [Regulation \(EU\) 1286/2014](#) published on 9 December 2014. The supporting technical rules are presented by [European Commission Delegated Regulation \(EU\) 2017/653](#) published on 12 April 2017.

On 7 July 2017, the European Commission adopted [guidelines](#) on the application of the Regulation on key information documents (KIDs) for packaged retail and insurance-based products (PRIIPS) Regulation (PRIIPS KID Regulation).

The guidelines are intended to assist providers and distributors of investment products, funds and investment insurance policies in designing KIDs by smoothing out potential interpretative divergences throughout the EU. The guidelines address a number of issues, including:

- products covered by the PRIIPs KID Regulation;
- products made available to retail investors against no consideration;
- multi-option PRIIPs;
- insurance-based investment products with PRIIPs and non-PRIIPs as underlying investment options;
- territorial application;
- use of KIDs by undertakings for collective investment in transferable securities;
- PRIIPs only sold by intermediaries;
- distribution of a PRIIP without a KID; and
- a non-PRIIP product offered alongside a PRIIP.



On 5 July 2017, the European Supervisory Authorities (ESAs) published the first set of [Questions and Answers \(Q&A\)](#) related to the KID requirements for PRIIPs laid down in the European Commission Delegated Regulation (EU) 2017/653. This Q&A document aims at promoting common supervisory approaches and practices in the implementation of the KID. The Q&A document includes answers to questions linked with the presentation, content and review of the KID, including the methodologies underpinning the risk, reward and costs information. These questions were raised by different stakeholders, such as product manufacturers and distributors.

The ESAs will continue to answer further questions and will subsequently publish them.

MAP S.Platis will continue to monitor all developments.

## 2. Anti-Money Laundering

### **MLD 4 - ESAs final guidelines on risk factors and simplified customer due diligence**

On 26 June 2017, following an earlier consultation, the Joint Committee of the European Supervisory Authorities (ESAs) published its [joint final guidelines](#) on anti-money laundering and countering the financing of terrorism in accordance with Articles 17 and 18(4) of the Fourth Money Laundering Directive (MLD 4).

The guidelines set out the factors credit and financial institutions should consider when assessing the risk of money laundering and terrorist financing associated with a business relationship or occasional transaction, and set out how customer due diligence measures can be used and modified proactively to mitigate the risks that they identify.

It is envisaged that national competent authorities will use the guidelines when assessing whether the money laundering and terrorist financing risk assessment and management systems and controls of EU credit and financial institutions are adequate.

The ESAs will review and update the guidelines at appropriate intervals.

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

The formal transposition date for the Money Laundering Directive 4 (MLD4) was 26 June 2017. Cyprus has not met the deadline. A proposal of the new law was submitted by the government to the Parliament in June 2017 but has not still been voted.

### **Outcomes of the Financial Action Task Force (FATF) plenary meeting June 2017**

The FATF published a press release following its June 2017 Plenary meeting.

The main issues dealt with by the Plenary were:

- [Work on combating terrorist financing](#), which remains a priority for the FATF
- [Work on improving transparency and beneficial ownership](#)
- Adoption of the [Report to the G20 Leaders' Summit](#)
- [Impact of recent FATF work on de-risking](#)
- [Discussion of the mutual evaluation reports of Denmark and Ireland](#)
- [Statement on Brazil's progress in addressing the deficiencies identified in its mutual evaluation reports, since the FATF's statement of February 2017](#)
- Two public documents identifying jurisdictions that may pose a risk to the international financial system
  - [Jurisdictions with strategic anti-money laundering and countering the financing of terrorism \(AML/CFT\) deficiencies for which a call for action applies](#), including an update on [Iran's engagement with FATF](#)
  - [Jurisdictions with strategic AML/CFT deficiencies for which they have developed an action plan with the FATF](#), including an update on [AML/CFT improvements in Afghanistan and Lao PDR](#)
- [Adoption of a revision to the interpretative note to Recommendation 7 \(Targeted Financial Sanctions Related to Proliferation\)](#)
- [Proposals to strengthen FATF's institutional basis, governance and capacity](#)
- [Outcomes of the meeting of the FATF Forum of Heads of Financial Intelligence Units, that was held in the margins of the Plenary](#)
- Update on the activities of the FATF Training and Research Institute in Busan, Korea

### 3. 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. France has indicated that it will put the FTT on hold.

### 4. FATCA/CRS

The Cyprus Inland Revenue Department (IRD) issued several announcements in order to inform Cyprus Reporting Financial Institutions and their representatives about the annual FATCA and CRS Return submissions.

More precisely, the most important updates regarding the aforementioned annual submissions were the following:

- The Cyprus Reporting Financial Institutions and their representatives were requested to register with the Government Gateway Portal called "Ariadni" (if not already registered) and then to the FATCA/CRS/DAC2 e-service (if not already registered with the e-service for FATCA purposes) using the option 'Financial Institution Registration' or 'Representative Registration'.

The Cyprus IRD also noted that the file submission shall be done through the option 'Submit XML Files'.

- The Cyprus IRD informed the Cyprus Reporting Financial Institutions and their representatives that are not obliged to register for FATCA/CRS/DAC2 e-service unless they have data to submit for the year of 2016.

Moreover, the Cyprus IRD noted that if a Cyprus Reporting Financial Institution has already registered to the aforementioned e-service but has no data to submit, then it may proceed with one of the following options available:

- I. Submit a nil/zero report, or
- II. Request to deactivate from the FATCA e-service.

Finally, the IRD stated that a registration with the Ariadni portal does not create an obligation to submit the Nil Report for FATCA purposes.

- The deadline for the submission of FATCA and CRS annual returns was finally set on the 14th and 21st of July, 2017, respectively.

## 5. Fund Regulation

### Money Market Funds (MMFs)

On 30 June 2017, the [Regulation on money market funds](#) (MMF Regulation) was published in the Official Journal of the EU.

With the exception of Article 11(4), Article 15(7), Article 22 and Article 37(4) which shall apply from 20 July 2017, the MMF Regulation will become applicable from 21 July 2018.

The 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.

## UCITS and AIFMD

### ESMA updated Q&As

On 24 May 2017, ESMA published an [updated questions and answers document \(Q&A\) for UCITS](#). The UCITS Q&As include one new question and answer on the application to UCITS of the exemption for intragroup transactions under Article 4(2) of EMIR, if subject to the clearing obligation of Article 4(1) of EMIR.

### UCITS share classes – 30 July 2017

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.

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 – ESMA updated Q&As

On 24 May 2017, ESMA published an [updated questions and answers document \(Q&A\) for AIFMD](#). The AIFMD Q&As include three new Q&As on (i) reporting to national competent authorities on the breakdown between retail and professional investors; (ii) notification of AIFMs on the AIFs to be managed, if domiciled in another Member State; and (iii) use by an AIF of the exemption for intragroup transactions under Article 4(2) of the European Markets Infrastructure Regulation (EMIR), if subject to the clearing obligation of Article 4(1) of EMIR.

## 6. UK - Developments of Interest to Investment Firms

### MIFID II Implementation – FCA second policy statement and sixth consultation on UK implementation

On 3 July 2017, following earlier consultations, the FCA published its [second policy statement](#) (PS17/14) with made rules on the implementation of the revised Markets in Financial Instruments Directive and associated Regulation. This policy statement deals with conduct issues, including research, inducements, client categorisation, best execution, the appropriateness test, taping, client assets and perimeter guidance.

In addition, the FCA published its [sixth consultation paper](#) (CP17/19) which proposes fees for recognised investment exchanges operating multilateral trading venues or organised trading venues. This is as part of the requirement in HM Treasury legislation for such venues to join the Financial Services Compensation Scheme. The consultation deals with a small number of FCA Handbook changes, as well as consequential and miscellaneous changes to the Handbook and new guidance on the use of third parties where firms are required to send the FCA financial instrument reference data or commodity derivative position reports. The

deadline for comments is 7 September 2017. The FCA envisages publishing the associated policy statement in November 2017.

## FCA publishes final findings of its asset management market study and a consultation paper

On 28 June 2017, the FCA has published the [Final report in its Asset Management Market Study](#).

The FCA's proposed remedies are largely in line with its interim report and are aimed primarily at:

- assisting investors in comparing and selecting funds by improving the transparency of fund charges and fund performance;
- increasing competitive pressure on asset managers; and
- increasing scrutiny of the so far unregulated investment consultancy market.

Key proposals in the final report include that the FCA:

- remains supportive of a single “all-in” fee that includes asset management charges, an estimate of transaction costs and intermediary fees so investors know costs upfront. Importantly, the FCA is still open to the views of the industry on how to implement this proposal and will consult on this later in 2017;
- confirms that the remedy package includes a proposal to strengthen fund governance, including certain steps to support independence in governance structures and strengthening the duty of fund managers to act in the best interests of investors;
- has decided not to refer the asset management market as a whole for an in-depth review to the Competition and Markets Authority but is proposing to make a reference of the investment consultancy market. It is expected to take a decision on this by September 2017; and
- indicated that it will imminently launch a market study on investment platforms

In addition, on 28 June 2017, the FCA published a [consultation paper](#) (CP17/18) on certain of these remedies (including strengthening the duty of fund managers to act in the best interests of investors and facilitating switching of investors to cheaper share classes). The FCA will publish further consultations on additional remedies later in 2017. The deadline for comments is 28 September 2017.

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

On 29 June 2017, ESMA issued a [statement](#) updating on its work in relation to the sale of contracts for differences (CFDs), binary options and other speculative products to retail investors and on its consideration of product intervention measures under Article 40 of Markets in Financial Instruments Regulation (MiFIR). ESMA's product intervention powers can only come into effect from 3 January, 2018 at the earliest.

The statement text is as follows:

*“ESMA has been concerned about the provision of speculative products such as CFDs, rolling spot forex and binary options to retail investors for a considerable period of time and has conducted ongoing*

monitoring and supervisory convergence work in this area. In this context, ESMA has previously published a number of Q&As on CFDs and other speculative products to foster supervisory convergence, having established a CFD Task Force in July 2015, and also issued a further investor warning on the sale of CFDs, binary options and other speculative products in July 2016.

However, ESMA remains concerned that these supervisory convergence tools may not be sufficiently effective to ensure that the risks to consumer protection are sufficiently controlled or reduced. ESMA is therefore discussing the possible use of its product intervention powers under Article 40 of MiFIR to address investor protection risks in relation to CFDs, rolling spot forex and binary options.

ESMA is in the process of discussing the possible use of its product intervention powers under Article 40 of MiFIR, the possible content of any such measures, and how they could be applied. However, ESMA can confirm that the measures being discussed for (i) CFDs and rolling spot forex and (ii) binary options include proposals that take into account a number of measures that have been adopted or publicly consulted on by EU National Competent Authorities. These measures include leverage limits, guaranteed limits on client losses, and / or restrictions on the marketing and distribution of these products.

*In accordance with Article 40 of MiFIR, any intervention measures must be approved by the ESMA Board of Supervisors and can only come into effect from 3 January 2018 at the earliest.”*

## Local regulatory developments in several EU jurisdictions relevant to CFDs and Binary Options

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.

- On 29 June 2017, the FCA published [a statement on contracts for difference \(CFD\) products](#) and an update on its consultation paper (CP16/40) on “Enhancing conduct of business rules for firms providing contract for difference products to retail clients”.

Given progress in ESMA’s own consideration of the use of its product intervention powers in this area, the FCA decided to delay making final conduct rules for UK firms providing CFDs to retail clients, pending the outcome of ESMA’s discussions.

The FCA will continue to engage with ESMA to support the development of measures that promote a consistent level of investor protection across the European Union. In the event of a significant delay to possible ESMA measures, the FCA would reconsider making final rules at a domestic level in the first half of 2018.

As it monitors the progress of ESMA’s product intervention process, the FCA will conduct further policy work in light of consultation feedback. It expects this to include a further request for additional data from a sample of UK firms over the coming months. Information received during the consultation period suggests that lower leverage is associated with better client outcomes across a number of firms. However, more detailed and comparable firm data are required to provide clarity on the impact of different factors

on individual client outcomes. These data and analysis are intended to inform any future policy decisions, and provide a basis on which it can evaluate the impact of any prospective rules.

The FCA will continue its focus on the sector through its on-going programme of supervisory work.

- 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 licensed 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 19 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.
- 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. Specifically 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.

## FCA statement on CFD firms failing to meet expectations on appropriateness testing

On 29 June 2017, the FCA published a [statement setting out the findings of its multi-firm review of contract for difference \(CFD\) firms](#). The review was a follow-up to the "Dear CEO" letter raising concerns regarding the take-on process for non-advised sales of CFD products.

The review found the following key areas of concern:

- inadequate assessments of prospective clients' knowledge;
- insufficient account of clients' previous transactional experience;
- inadequate risk warnings to prospective clients who fail appropriateness assessments;
- failure to evaluate whether failed applicants should be allowed to make CFD transactions; and
- poor oversight, weak controls and inadequate management information.

The FCA continues to have serious concerns about the distribution of CFDs to retail clients. In particular, it is concerned that these complex, speculative products are reaching a wider target market than is likely appropriate. The quality of firms' policies and procedures in relation to client on-boarding and assessment of appropriateness will remain a key focus for the FCA. The FCA is considering what enforcement investigations or other action might be appropriate.



The FCA encouraged firms to assess their systems and practices in view of pending obligations under the amended Markets in Financial Instruments Directive (MiFID 2), which takes effect (for firms) on 3 January 2018. Firms should consider enhanced product governance requirements carefully and take steps to ensure compliance with the new rules. Future FCA reviews will assess firms' arrangements under the new provisions.

## 8. CySEC Developments

### **Consultation Paper CP (2017-03) regarding the amendments of the Prevention and Suppression of Money Laundering and Terrorist Financing Law**

On 15 May 2017, by way of harmonization with the [4<sup>th</sup> AML Directive](#), CySEC circulated the [Consultation Paper CP \(2017-03\)](#) regarding the amendments of the Prevention and Suppression of Money Laundering and Terrorist Financing Law (available only in Greek) and has invited the interested persons to submit their comments/suggestions by 1 June 2017.

### **Obligation for submission of notification(s) to the Office of the Commissioner of Personal Data Protection**

On 17 May 2017, CySEC issued [Circular C207](#) and reminded the Regulated Entities of the legal obligation they have to notify the Personal Data Commissioner in writing about the establishment and operation of a filing system or the commencement of processing of personal data, by the end of April 2017. Where applicable, the Regulated Entities should also notify the Commissioner for the operation of any Closed-Circuit Television (CCTV).

CySEC urged the Regulated Entities to immediately comply with the above mentioned requirement in case they have not complied yet.

### **BaFin's restriction of marketing, distribution and sale of financial contracts for difference ("CFDs")**

On 17 May 2017, CySEC issued [Circular C208](#), through which it informed Cyprus Investment Firms ("CIFs") of the [General Administrative Act](#) issued by the German Federal Financial Supervisory Authority (the "BaFin") on 8 May 2017 (the "Act"). The Act prohibits the marketing, distribution and sale of CFDs to retail Clients in Germany, in so far as this may give rise to additional payment obligation (any payment exceeding the account balance).

The prohibition is to be implemented by the 10th of August 2017 and, therefore, providers of CFDs with an additional payments obligation have three (3) months from the date of publication of the Act to comply with BaFin's new measures.

CySEC advised CIFs to consult with their legal consultants regarding the necessary legal actions to be taken in order to ensure compliance with BaFIN's new regulatory measures.

## European Banking Authority “Revised guidelines on disclosure requirements under Part Eight of Regulation (EU) No 575/2013”

On 17 May 2017, CySEC issued [Circular C209](#) in order to inform CIFs of the final Guidelines ([EBA/GL/2016/11](#)) on disclosure requirements under Part Eight of REGULATION (EU) No 575/2013, issued by the European Banking Authority (“EBA”) on the 14th of December 2016. These guidelines currently apply to global systemically important institutions and other systemically important institutions.

The guidelines stipulate the form of guidance and presentation of information that institutions have to disclose as per the relevant articles of Part Eight.

Lastly, the said Circular provides that the Guidelines will apply as of 31st December 2017.

## New requirements regarding the provision of warnings on complex financial instruments to retail clients residing in Spain

On 17 May 2017, CySEC issued [Circular C210](#) in relation to the new requirements of the Spanish Securities and Exchange Commission (the “CNMV”) regarding the provision of warnings on complex financial instruments to retail clients residing in Spain.

In particular, the CNMV requires firms to expressly warn retail investors residing in Spain about the risk and complexity of financial contracts for differences (“CFDs”), rolling-spot foreign exchange with a leverage level greater than 10:1 and binary options. The Annex of the said Circular includes the texts of the warnings and statements (handwritten, recorded oral or typewritten statement) that should be made by the client, in accordance with the new Spanish requirements.

Finally, CySEC advised CIFs to consult with their legal consultants regarding the necessary legal actions to be taken in order to ensure compliance with CNMV’s requirements and adapt their procedures and systems as soon as practicable and at all events within one month from the date of issuance of the said Circular.

## Expansion of CySEC Portal to include CIF Record Content

On 19 May 2017, CySEC issued [Circular C211](#), through which it informed all CIFs about the launch of the new CIF Record Content, which replaced the existing one that was submitted using XML files via the TRS System.

The new CIF Record Content is part of the CySEC Portal and is a web-form based system, divided in various sections so that the information reported to CySEC is increased.

CySEC requested CIFs to complete, review and update (as applicable) all existing data in the relevant sections of their CIF Record Content in the Portal by Friday, 16 June 2017.

Moreover, through Circular C211, CySEC underlined the end of submission of XML files and noted that the TRS System will reject submissions of this kind.

## Electronic submission of information for the year 2016 (CIFs)

On 22 May 2017, following the implementation of the Risk Based Supervision Framework, CySEC issued [Circular C212](#) and requested CIFs that were authorised and operated by 31 December 2016 to complete Form T144/001 (found on [CySEC's website](#)) and submit the digitally signed version of the form electronically via CySEC's TRS System, the latest by Friday, 16 June 2017.

The forms should be completed in relation to the reporting period 01/01/2016 – 31/12/2016 and the relevant data should be reported on a single basis and based on audited financial statements.

CySEC also released [RBS-F Frequently Asked Questions](#) regarding the completion of the relevant Form.

Moreover, CySEC stressed that it will examine the possibility of enforcement of actions (e.g. administrative fines) against any CIFs that will not submit the Form within the abovementioned deadline.

CIFs are required to keep at their offices in the Republic, the completed Form in hard copy, which should be signed by the authorised person. CySEC reserves the right to inspect the hard copy Form at any time.

## EBA's Questions & Answers on 'Country-by-Country reporting' requirements

On 30 May 2017, CySEC issued [Circular C213](#) through which it informed CIFs that EBA has published questions and answers (the 'Q&A') regarding the 'Country-by-country reporting' requirements as set in Part II, Section 2, paragraph 18 of Directive DI144-2014-14 of CySEC for the Prudential supervision of investment firms.

The Q&A intends to provide summarised clarifications regarding the Country-by-country reporting requirements.

CySEC announced in the said Circular that it expects CIFs to take into account the above clarifications when disclosing their 'Country-by-country reporting' requirements.

## Extension of the submission date for Circular C204 regarding the Freedom to provide services in 3rd countries

Following [Circular C204](#), issued on May 4, 2017, CySEC issued [Circular C214](#) on 31 May 2017, through which it has extended the date of submission by the CIFs of the documents mentioned in paragraph 2 of Circular C204 to 31 July 2017.

For more details on Circular C204, please refer to [Issue 15 of MAP S.Platis Regulatory Radar](#).

## Conclusion of CySEC's two-year investigation into CommexFX

CySEC, through an [Announcement](#) issued on 8 June 2017, announced the conclusion of CySEC's investigation into CommexFX, the imposition of a series of financial penalties on a number of directors and relevant persons of the said company and the imposition of a ban to multiple key persons from exercising professional activity related to the financial sector for a number of years.

Additionally, CySEC announced the referral of the case to the Attorney General, in order to examine whether any criminal offences arise for CommexFX and its Management for the provision of false and/or misleading information and for the deception and embezzlement of clients' money.

Lastly, CySEC triggered the process of compensation payment by the Investor Compensation Fund to the covered clients of CommexFX.

## **Electronic submission of information for the year 2016 (UCITS MC, AIFMs and SM AIFs)**

On 12 June 2017, following the implementation of the Risk Based Supervision Framework, CySEC issued Circular C215 and requested UCITS Management Companies, Alternative Investment Fund Managers and Self-Managed Alternative Investment Funds in Cyprus (inclusive of AIFs with limited number of investors) that were authorised and operated by 31 December 2016 (inclusive) to complete Form T56-78-131-002 (found on CySEC's website) and submit the digitally signed version of the form electronically via CySEC's TRS System by Friday 7 July 2017 the latest, while no extension will be granted.

The forms should be completed in relation to the reporting period 01/01/2016 – 31/12/2016 and the relevant data should be reported on a single basis and based on audited financial statements.

Moreover, CySEC stressed that it will examine the possibility of taking actions (e.g. administrative fines, increase of own funds capital requirement) against the Regulated Entities that will fail to submit the requested information within the abovementioned deadline.

Regulated Entities are required to keep at their offices in the Republic, the completed Form in hard copy, which should be signed by the authorised person. CySEC reserves the right to inspect the hard copy Form at any time.

## **Former Cyprus Popular Bank Public Co - Imposition of financial penalties amounting to €1.14 million**

CySEC, through a Press Release issued on 22 June 2017, announced its decision to impose monetary fines on seven Directors and the Group Chief Financial Officer of the former Cyprus Popular Bank Public Co Ltd, for inadequate provisioning with respect to impaired credit facilities to various legal entities as well as the impairment of the bank's Greek loan portfolio. CySEC concluded that Cyprus Popular Bank Co Ltd should have recognized several billion Euro as provisions for loan impairments during 2010 and 2011.

The fines imposed (totaling €1.14 million) are based on the Directors' statement which formed part of the Company's financial statements released to the public (for periods ending 31.12.2010 and 30.6.2011 respectively) which confirmed that the consolidated financial statements therein provided a true and fair view of the bank's financial standing.

CySEC did not impose a fine on Cyprus Popular Bank Co Ltd as the bank is under resolution by the Resolution Authority and a special Administrator has been appointed to the bank.



## Obligations regarding the changes in the persons who effectively direct the business of CIF

On 22 June 2017, CySEC issued [Circular C216](#), through which it reminded CIFs about their obligations arising from Article 32 of the Investment Services and Activities and Regulated Markets Law, regarding the changes in the persons who effectively direct the CIF's business.

More specifically, CySEC clarified that a CIF is obliged to immediately notify CySEC in writing as soon as it is informed about the resignation of a person who effectively directs the CIF's business and should not postpone this until finding a replacement. The CIF is required to fill the vacancy within 15 days from the day it is notified of the aforementioned resignation.

Finally, the persons who effectively direct the CIF's business should notify CySEC in writing and without undue delay, of any new detail with regards their person that could affect the sound and prudent management of the CIF.



## Use of Affiliates

CySEC, through the issuance of [Circular C217](#) on 26 June 2017, reminded CIFs of their obligations in relation to the use of Affiliates (i.e. third parties across multiple jurisdictions, which promote the brand of the CIF online, use a website as portal displaying promotional and advertising content, diverting web-traffic to the authorised CIF's website, increase the online profile of the CIF through search engine optimisation and perform any other similar (with the abovementioned) activity).

- CIFs should exercise due skill, care and diligence when entering into business relationship with an affiliate (The Part V (Outsourcing) of [Directive DI144-2007-01 of 2012](#) is fully applied).
- Before entering into an agreement with an Affiliate, CIFs should check if their Affiliate has obtained the relevant authorisation from the local regulatory authority, if required.
- In accordance with Article 36 of the [Investment Services and Activities and Regulated Markets Law of 2007](#) (the "Law"), Affiliates' marketing material should be clear, fair and not misleading.
- The marketing material used by the Affiliates should be either produced by the CIF itself or pre-approved and subject to ongoing monitoring by the CIF.
- CIFs should closely monitor their Affiliates.
- CIFs should cooperate with the absolute minimum number of Affiliates, in order to be able to monitor their activities efficiently.
- CIFs using Affiliates are encouraged to develop/buy a marketing intelligence tool that will enable them to gather all the Affiliates' digital media data related to the CIF and ensure that these always comply with Article 36 of the Law.
- If the Affiliate is not acting within the scope of the agreement with the CIF and the Law, then the CIF should cease the cooperation with the said Affiliate and inform its clients through its website in this respect. In addition, the CIF should take appropriate measures against the Affiliate and disclose to CySEC the incident, the address of the Affiliate's website and details of the Affiliate's identity and its representatives (if any).

Through the said Circular, CySEC also informed CIFs that it intends to publish on its website a warning list which

will include the website addresses of the Affiliates that are operating outside the parameters provided by the Law, CySEC's circulars and acceptable business practices, as well as the details of the Affiliates' representatives. In this way, CIFs will be informed of such malpractice in order to cease/avoid any cooperation with them.

## ESAs Consultation Paper on regulatory technical standards to strengthen group-wide money laundering and terrorist financing risk management

On 5 July 2017, through the issuance of [Circular C218](#), CySEC informed the Regulated Entities that the Joint Committee of the three European Supervisory Authorities (EBA, EIOPA and ESMA - ESAs) published a [consultation paper on draft Regulatory Technical Standards](#), which specify how money laundering and terrorist financing risks should be managed by credit and financial institutions in cases where a third country's law prevents the implementation of group-wide policies and procedures on anti-money laundering and countering the financing of terrorism in their branches or majority-owned subsidiaries.

These Regulatory Technical Standards are part of the ESAs' wider work on fostering a common approach to anti-money laundering and countering the financing of terrorism.

CySEC encouraged the Regulated Entities to respond to the said Consultation Paper, by using the consultation form on [EBA's website](#) by 11 July 2017, the latest.

## ESAs Guidelines on anti-money laundering and countering the financing of terrorism – 'The Risk Factors Guidelines'

On 5 July 2017, CySEC issued [Circular C219](#), through which it informed the Regulated Entities of the [final guidelines on anti-money laundering and countering the financing of terrorism](#) ("AML/CFT") which were published by ESAs on the 26 June 2017.

For more information regarding these Guidelines please refer to Section 2 above.

CySEC urged the Regulated Entities to take duly account of the ESAs Risk Factors Guidelines, which will apply by 26 June 2018.



## Polish Financial Supervision Authority's new rules regarding persons that are allowed to provide activities in the territory of Poland

On 5 July 2017, through the issuance of [Circular C221](#), CySEC informed CIFs of the new rules set by the Polish Financial Supervision Authority (the "KNF"), regarding the persons that are allowed to provide investment services in the territory of Poland in accordance with Article 79 of the Investment Services and Activities and Regulated Markets Law of 2007. The said rules entered into force on 29 April 2017.

According to the new rules, the activity of client/potential client acquisition and the activity of advising on the range of the investment services provided by a (foreign) investment firm or on financial instruments that are subject to those services, may only be conducted in the territory of Poland by a (foreign) investment firm or an

agent of a (foreign) investment firm. Entities other than a (foreign) investment firm or an agent of a (foreign) investment firm may only conduct the said activities if the information is, at the same time, communicated to a broad group of clients or potential clients of the investment firm or to an indefinite recipient (e.g. TV or radio advertisement).

CySEC advised CIFs to consult with their legal consultants with respect to the necessary actions/measures to be taken in order to ensure compliance with the KNF's new rules.

## **Law 87(I)/2017: Transposition of MIFID II into national law**

On 7 July 2017, the [Law 87\(1\)/2017](#) (currently available only in Greek), which implements MIFID II into National Law (the "Law"), was published in the official Gazette of the Republic of Cyprus. The Law will be effective from 3 January 2018.

For more information regarding the main changes of MiFID II please refer to Section 1 above as well as [CySEC's announcement](#) dated 11 April 2017 which is covered in [Issue 15 of MAP S.Platis Regulatory Radar](#).

# 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
BaFin	Bundesanstalt für Finanzdienstleistungsaufsicht (Federal Financial Supervisory Authority)
CBC	Central Bank of Cyprus
CDS	Credit Default Swap
CFD	Contracts for Difference
CIF	Cyprus Investment Firm
CNMV	Comisión Nacional del Mercado de Valores (Spanish Securities and Exchange Commission)
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
KNF	Komisja Nadzoru Finansowego (Polish Financial Supervision Authority)
LIBOR	London Interbank Offered Rate
MAD	Directive no.2014/57/EU of the European Parliament and of the Council on criminal sanctions for market abuse
MAR	Regulation no. 596/2014 of the European Parliament and of the Council on insider dealing and market manipulation (market abuse)
MiFID	Markets in Financial Instruments Directive – Directive 2004/39/EC of the European Parliament and the Council
MiFID II	Directive no. 2014/65/EU of the European Parliament and of the Council on markets in financial instruments repealing Directive 2004/39/EC of the European Parliament and of the Council (compromise reached, number to be assigned)



MiFIR	Regulation no. 600/2014 of the European Parliament and of the Council on markets in financial instruments and amending Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories [EMIR]
MMF	Money Market Fund Regulation
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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