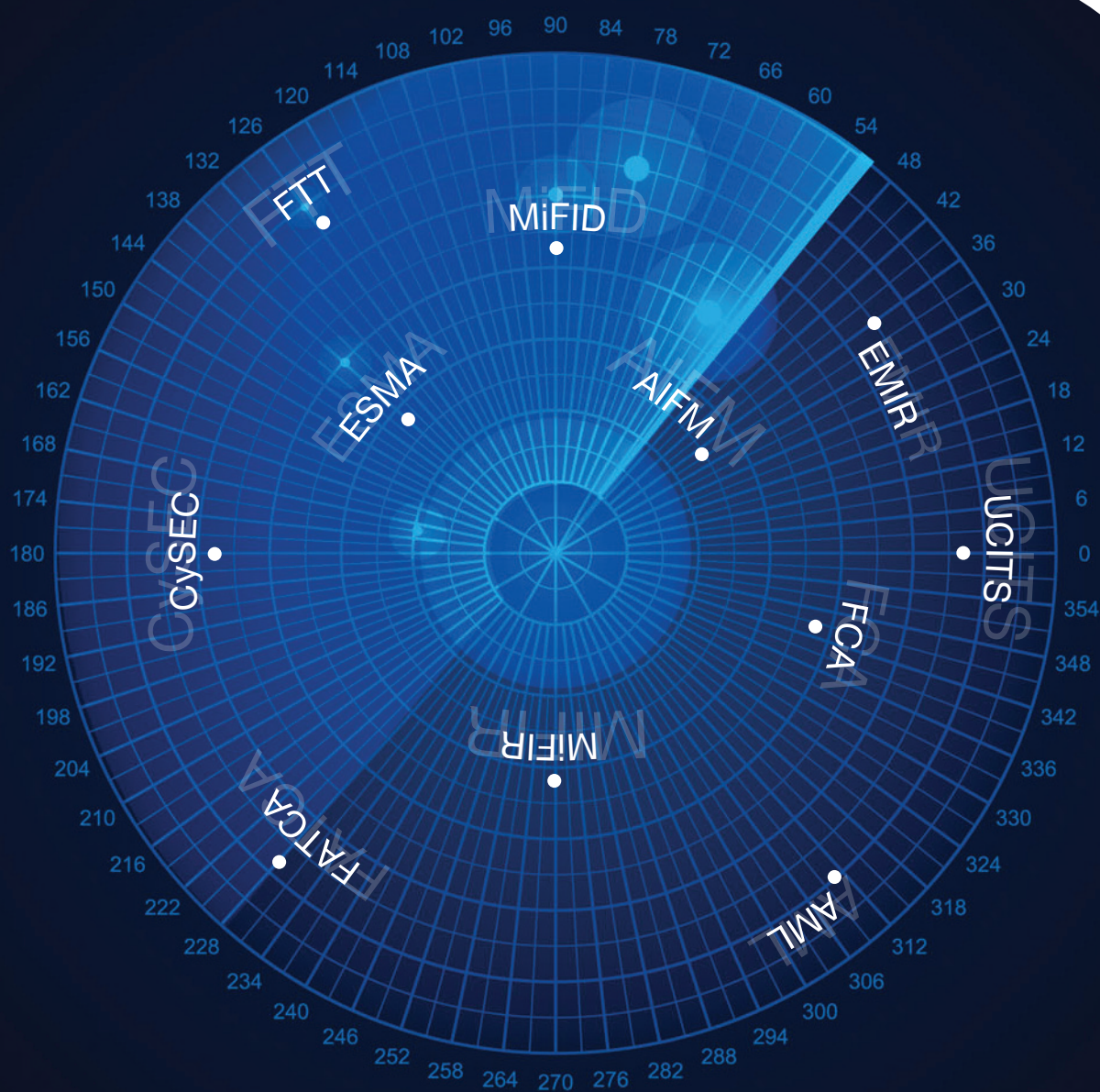


REGULATORY RADAR

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





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

- **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.
 - ESMA warns firms to obtain Legal Entity Identifiers
 - ESMA finalises the share trading obligation for derivatives
- **EMIR**
 - Mandatory margin requirements for non-cleared OTC derivatives introduced on a staggered basis: variation margin already effective except that requirements for physically settled FX forwards (as newly defined in MiFID II) will apply from 3 January 2018; initial margin from 4 February 2017 to 1 September 2020
- **PRIIPS**
 - PRIIPS Regulation applies from 31 December 2017; further guidance issued

2. Anti-Money Laundering Legislation

- ESAs have published guidelines in connection to electronic transfers

3. EU Financial Transaction Tax

- Political decisions on FTT postponed until Brexit outcome is known

4. Taxation

- No update

5. Fund Regulation

- No major update

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

- ESMA in the process of discussing the possible use of its product intervention powers under MiFID

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- CySEC draws the attention of CIFs to AMF's Q&As regarding the prohibition of electronic advertising to retail investors when offering speculative, complex and risky products in the territory of France
- CySEC redefines threshold criteria of "Significant CIF"
- CySEC clarifies on the capital instruments that can be qualified as CET 1
- New application forms for granting CIF authorization under MiFID II
- CySEC informs CIFs about the main changes in relation to passporting issues and new notification forms under MiFID II
- CySEC draws the attention of CIFs to the Product Governance requirements under MiFID II
- CySEC clarifies that Negative Balance Protection applies per account
- CySEC informs CIFs about Transaction Reporting Requirements under MiFID II
- CySEC informs CIFs about the Latvian framework regarding the natural and legal persons that are allowed to provide/ perform investment services/ activities in the Republic of Latvia
- CySEC informs regulated entities about various EU developments pertaining to MiFID II/MiFIR requirements
- CySEC trading rules for virtual currency CFDs
- CySEC reminds CIFs on EBA's guidelines on sound remuneration policies

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**.

ESMA updates its MiFID II Q&As

On 10 October 2017, ESMA issued a first [Question and Answers on post-trading issues](#).

On 3 October 2017, ESMA updated its questions and answers (Q&As) on [market structure issues](#) and [transparency issues](#) regarding the implementation of MiFID II.

On 3 October 2017, ESMA added 12 new Q&As to its [Questions and Answers](#) (Q&A) document on the implementation of investor protection topics. The new Q&As cover the topics of client categorisation, post-sale reporting, recording of telephone conversations and electronic communications, best execution, and information on costs and charges.

ESMA briefing on the Legal Entity Identifier

On 9 October 2017, ESMA published a [Briefing](#) on the Legal Entity Identifier (LEI) as part of its efforts to raise industry awareness and facilitate compliance with the LEI requirements under MiFID II ahead of its 3 January 2018 launch.

The LEI is a 20-digit, alpha-numeric code that enables clear and unique identification of legal entities participating in financial transactions. It was developed, following the financial crisis, as a global system for the identification of legal entities. It has proven to be the most robust identification method for legal entities and as a result has been widely used by regulators in the EU and globally. The LEI:

- is key to improving market surveillance and transparency; it also generates important benefits for businesses in terms of costs reduction, improved risk management and increased operational efficiencies;
- plays a key role in the new harmonised data-reporting regime under MiFID II and it is crucial to ensure the quality of the data reported to EU supervisors; and
- is important for firms to fulfil their reporting obligations under financial regulations. LEIs are also key for matching and aggregating market data both for transparency and regulatory purposes.

ESMA expects market participants to take all necessary steps to ensure full compliance with the LEI requirements under MiFID II. Based on its previous experience with EMIR reporting, ESMA urges reporting entities not to delay in addressing this important matter, as advance preparation will help in avoiding backlogs and ensuring that all market participants are ready for the new regime.

ESMA finalises trading obligation for derivatives under MiFIR

On 29 September 2017, ESMA issued [final draft Regulatory Technical Standard \(RTS\)](#) implementing the trading obligation for derivatives under the Markets in Financial Instruments Regulation. ESMA's draft RTS provides the implementing details for on-venue trading of interest rate swaps (IRS) and credit default swaps (CDS).

MiFIR's trading obligation will move over-the-counter (OTC) trading in liquid derivatives onto organised venues. Trading derivatives on-venue will bring transparency into the OTC sphere, benefiting investors and regulators alike. Enhanced transparency will provide better information on prices, liquidity and risk thus fostering market integrity.

MiFIR, which implements parts of the MiFID II framework, outlines the process for determining which derivatives should be traded on-venue. The trading obligation only applies to classes of derivatives that are sufficiently liquid and available for trading on at least one trading venue. Therefore, ESMA has decided to make the following fixed-to-float IRS and CDS indices subject to on-venue trading:

- Fixed-to-float interest rate swaps denominated in EUR;
- Fixed-to-float interest rate swaps denominated in USD;
- Fixed-to-float interest rate swaps denominated in GBP; and
- Index CDS – iTraxx Europe Main and iTraxx Europe Crossover.

The trading obligation for derivatives under MiFIR is closely linked to the clearing obligation under the 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 mandatorily traded on-venue on a regulated market (RM), multilateral trading facility (MTF), organised trading facility (OTF) or an equivalent third-country trading venue.

ESMA's draft RTS have been submitted to the European Commission for its endorsement. The Commission expressed to ESMA its strong commitment to apply the trading obligation from the start date of the MiFID II framework. ESMA has therefore maintained 3 January 2018 as the envisaged date of application.

ESMA updates its MiFID II guidelines on transaction reporting, order record keeping and clock synchronisation

On 8 August 2017, ESMA issued an [update of its Guidelines](#) on transaction reporting, order record keeping and clock synchronisation under MiFID II. The update corrects some unintended factual mistakes, typos and inconsistencies in the technical part of the Guidelines.

ESMA emphasises that none of the corrections aims to alter the substance or policy provisions of the Guidelines originally published on 10 October 2016. This revision exercise will not have an impact on the timeline for completion of the comply and explain procedure with the Guidelines. ESMA also makes available the compared [track changes version](#) to ensure full transparency on the changes made.

The Guidelines are currently undergoing translation in the official languages of the European Union. Upon completion of the translation process, the national competent authorities must notify ESMA whether they comply or intend to comply with the Guidelines, with reasons for non-compliance, within two months of publication of the guidelines in the official languages of the EU.

ESMA consults on certain aspects of MiFID II suitability requirements

On 13 July 2017, ESMA published a [Consultation Paper](#) on draft guidelines on certain aspects of the suitability requirements under MiFID II. The suitability requirements were introduced under MiFID to enhance investor protection by ensuring that firms which provide investment advice and portfolio management act in the clients' best interests. Suitability has to be assessed against clients' knowledge and experience, financial situation and investment objectives. In order to achieve this, investment firms have to obtain the necessary information from clients.

While the objectives of the suitability assessment under MiFID I remain unchanged under MiFID II, the obligations have been strengthened and specified further under the new legislative framework by including the following requirements:

- an explicit reference to the fact that the use of electronic systems shall not reduce the responsibility of firms;
- further details on conduct rules for firms providing a periodic assessment of the suitability;
- the requirement for firms performing a suitability assessment to assess, taking into account costs and complexity, whether equivalent products can meet client's needs;
- the requirement for firms to analyse the costs and benefits of switching from one investment to another one;
- the extension of suitability requirements to structured deposits; and
- the requirement for firms to provide clients with a suitability report prior to the conclusion of the recommended transaction.

The Consultation Paper includes proposals on the draft guidelines which confirm and broaden the existing guidelines, issued in 2012, in order to:

- consider recent technological developments of the advisory market, including the increasing use of robo-advice, i.e. automated or semi-automated systems for the provision of investment advice or portfolio management;
- give relevance to the results of supervisory activities conducted by national competent authorities (NCAs) on the suitability requirements;
- incorporate some insights of studies in the area of behavioural finance; and
- provide additional details on some aspects that were already covered under the ESMA's 2012 guidelines.

The consultation closed on 13 October 2017. ESMA will consider the feedback it receives to the consultation in Q4 2017/Q1 2018 and expects to publish a final report in Q1/Q2 2018.

ESMA opinion on the meaning of traded on a trading venue for OTC derivatives

On 22 May 2017, ESMA published an [opinion](#) to clarify the concept of traded on a trading venue (TOTV) in respect of OTC derivatives under the MiFID II and MiFIR.

In ESMA's view, only OTC derivatives sharing the same reference data details as the derivatives traded on a trading venue should be considered to be TOTV and, therefore, subject to the MiFIR transparency and transaction reporting requirements.

II. MARKET ABUSE REGULATION

The latest version of the ESMA [questions and answers on the Market Abuse Regulation](#) is dated 29 September 2017. ESMA has added: a new question addressing how an issuer should deal with the situation where it has delayed a disclosure of inside information in accordance with Article 17(4) of MAR but due to subsequent circumstances, the information loses the element of price-sensitivity and accordingly its inside nature (new question 5.2) and new detailed answers on:

- the scope of the financial instruments subject to the market sounding regime under MAR; and
- the persons subject to the insider list requirements.

III. EMIR

ESMA EMIR Q&As

On 2 October 2017, ESMA updated its [EMIR Q&A](#) in relation to guidelines regarding post-trading regulation under 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)

On 18 August 2017, the European Supervisory Authorities (ESAs) updated its [Questions and Answers](#) (Q&A) related to the KID requirements for PRIIPs laid down in the European Commission Delegated Regulation (EU) 2017/653.

In addition, on 16 August 2017, the ESAs published [flow diagrams](#) setting out the calculation steps for the summary risk indicator (market risk and credit risk assessment) and performance scenario calculations described in the Commission Delegated Regulation.

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

Wire Transfer Regulation – guidelines

The Joint Committee of the European Supervisory Authorities (ESAs) have published anti-money laundering (AML) and countering the financing of terrorism (CFT) [guidelines](#) in connection with electronic transfers.

The guidelines, prepared in accordance with Article 25 of the Wire Transfer Regulation, set out what payment service providers (PSPs) should do to detect missing or incomplete information on the payer or the payee and what they should do when managing a transfer of funds that lacks the required information or receive transfers of funds from a PSP that fails repeatedly to provide the required information.

The guidelines will become applicable from 22 March 2018.

3. EU Financial Transaction Tax (FTT)

Political decisions on the FTT are being postponed until the EU's future relationship with the UK is settled. This does not mean the end of FTT negotiations, with technical meetings on scope and further implementation mechanisms still ongoing.

4. Taxation

There was no further public information since July 2017 on FATCA or CRS. Please refer to [Issue 16](#) of MAP S.Platis Regulatory Radar for the latest information on FATCA and CRS, respectively.

5. Fund Regulation

UCITS and AIFMD

ESMA updated Q&As

On 5 October 2017, ESMA published an updated [questions and answers document \(Q&A\) for UCITS](#). The UCITS Q&A includes one new question and answer on:

- periodic reporting under Article 13 of the SFTR for UCITS and AIFs to investors on the use of SFTs and total return swaps.

AIFMD – ESMA updated Q&As

On 5 October 2017, ESMA published an updated [questions and answers document \(Q&A\) for AIFMD](#). The AIFMD Q&A includes three new Q&As on:

- the application of remuneration disclosure requirements to staff of the delegate of an AIFM to whom portfolio management or risk management activities have been delegated;
- the manner of disclosure of AIFM delegates' staff remuneration in annual reports; and
- periodic reporting under Article 13 of Securities Financing Transactions Regulation (SFTR) for UCITS and AIFs to investors on the use of SFTs and total return swaps.

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**.

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

On 29 June 2017, ESMA issued a [public statement](#) on preparatory work of ESMA in relation to CFDs, binary options and other speculative products.

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 confirms

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.

7. CySEC Developments

CySEC informs Regulated Entities about the CRS

On 14 July 2017, CySEC, through the issuance of [Circular C224](#), drew the attention of the Regulated Entities to their legal obligation to identify, maintain and report information to the Cyprus Tax Department in accordance with the [CRS decree 161/2016](#).

CySEC advised the Regulated Entities to read the [Guidance Notes](#), which were issued by the Cyprus Tax Department, in order to determine their entity's status for the various automatic exchanges of information agreements and to comply with the relevant requirements.

MAP S.Platis has been continuously monitoring the developments made in the Republic around the subject of the automatic exchange of information. For further details in regards to the CRS regime, please refer to Section "Taxation" or "FATCA/CRS" of the Issues [8](#), [9](#), [10](#) and [16](#) of MAP S.Platis Regulatory Radar.

Supplementary data collection exercise by the European Banking Authority- New prudential framework for investment firms

On 18 July 2017, CySEC issued [Circular C225](#), through which it informed the Regulated Entities that, on 6 July 2017, EBA launched a [supplementary data collection](#), which follows up on the first data collection launched on 15 July 2016, and is aimed at supporting the response to the European Commission's Call for Advice on the new prudential framework for investment firms.

CIFs that wished to participate should fill in and submit the relevant templates provided by EBA at the electronic address supervision@cysec.gov.cy by 3 August 2017.



AMF's Q&As regarding the prohibition of electronic advertising to retail investors when offering speculative, complex and risky products in the territory of France

Further to the issuance of [Circular C202](#), CySEC issued [Circular C226](#) on 18 July 2017, through which it draws the attention of CIFs to the [Q&As](#) published by AMF, which clarify the scope of the prohibition of electronic advertising to retail clients when providing investment services in relation to financial contracts for difference (CFDs) and other complex and speculative products in the territory of France.

CySEC advises CIFs to consult with their legal consultants regarding the necessary legal actions in order to ensure compliance with the abovementioned prohibition rules in France.

For more information regarding AMF's Q&As, please refer to [Issue 16 of MAP S.Platis Regulatory Radar](#).

Redefining threshold criteria of “Significant CIF”

On 26 July 2017, CySEC issued [Circular C228](#) through which it informed CIFs that the threshold criteria of a “significant CIF” are redefined and that [Circular C081](#), previously defining a significant CIF, is repealed and replaced by Circular C228.

According to Circular C228, a CIF is a ‘significant CIF’ if, according to the results of its audited financial statements, it meets one or more of the following criteria:

Criteria	Thresholds (€)
Total assets	> 43m
Annual fees /commission income/ turnover	> 50m
Clients' money	> 35m
Clients' assets	> 750m

The above criteria determine:

- the number of directorships an individual may hold
- the establishment of a nomination committee.
- the establishment of an independent risk committee.
- the establishment of an independent remuneration committee.

As per the requirements of Circular C228, CIFs must, within four months from the end of their financial year, assess whether they become a ‘significant CIF’ according to the results of their audited financial statements. If a CIF becomes a significant CIF’, then it is considered as a ‘significant CIF’ until the next assessment made according to the results of the audited financial statements of the following year.

If a CIF becomes a ‘significant CIF’, it must forthwith inform CySEC and take all necessary measures to comply with the requirements that apply to a ‘significant CIF’. The CIF must also submit to CySEC its new organisational structure.

A CIF may submit a written request to CySEC to waive any one or more of the above-mentioned criteria if it believes that one or more of the governance requirements that apply to a ‘significant CIF’ may be disproportionate to the said CIF. In this respect, the said CIF should demonstrate to CySEC why it should not be considered as a “significant” CIF.

ESMA Guidelines on the calibration of circuit breakers and publication of trading halts under MiFID II

On 1 August 2017, CySEC issued [Circular C230](#), through which it informs the Regulated Entities that ESMA published [Guidelines on the calibration of circuit breakers and publication of trading halts under MiFID II](#) (the “Guidelines”).

The Guidelines are aimed to ensure consistent application of Articles 48(5) of MIFID II, by developing common standards for the calibration of circuit breakers, to be taken into consideration by trading venues that allow or enable algorithmic trading on their systems.

CySEC urged the financial market participants to make all efforts to comply with the Guidelines, which will apply from 3 January 2018.

ESA's Joint Guidelines on the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector

On 1 August 2017, CySEC issued [Circular C231](#), through which it informed CIFs that ESAs published on 20 December 2016 [Joint Guidelines on the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector](#) (the "Guidelines").

The Guidelines establish a harmonised list of information that should be included in the notifications of proposed acquirers to the competent authorities and are aimed at clarifying the procedural rules and assessment criteria to be applied by competent authorities when assessing acquisitions and increases of qualifying holdings in the financial sector.

CySEC urged CIFs to make all efforts to comply with the Guidelines, which apply from 1 October 2017.



Capital instruments that can be qualified as Common Equity Tier 1

On 1 August 2017, CySEC issued [Circular C232](#), through which it provides CIFs with clarifications regarding the capital instruments that can be qualified as Common Equity Tier 1 ('CET1').

According to the said Circular, CET1 instruments are eligible only if they are paid up and their purchase is not funded directly or indirectly by the institution. The Circular clarifies that where an increase of share capital is paid through contribution in kind, these assets cannot be qualified as CET1 instruments. In this respect, in case a CIF possesses such assets, it cannot qualify these assets as CET1 instruments when calculating its capital requirements.



MiFID II New application forms for granting CIF authorisation

Further to its [announcement](#) issued on 11 April 2017, CySEC issued an [announcement](#) on 11 August 2017, through which it informed CIFs that MIFID II new application forms can be accessed on CySEC website, at the following links:

1. [Application for the granting of Cyprus Investment Firm \(CIF\) authorisation \(Form 87-00-01\)](#)
2. [List of members of the Management Body \(Form 87-00-02\)](#)
3. [Notification of information on changes to the membership of the management body of a Cyprus Investment Firm \(CIF\) \(Form 87-00-03\)](#)

According to the said announcement, as of 3 January 2018, any applications and notifications submitted to CySEC must be submitted using the abovementioned forms. CySEC also noted that additional information can be requested during the assessment of an application submitted to CySEC.

In relation to the applications for the granting of CIF authorisation submitted to CySEC as of 2 October 2017, CySEC urged the interested parties to use the Form 87-00-01.

Lastly, CySEC noted that, as per CySEC's [announcement dated 21 February 2017](#), applications must be submitted in paper version.

MiFID II Authorisation of Data Reporting Service Providers

Further to its [announcement](#) issued on 11 April 2017, CySEC issued an [announcement](#) on 11 August 2017, through which it informed all interested parties about the authorisation of Data Reporting Service Providers (DRSP) under MIFID II.

The types of DRSPs are set out in Annex 1, Section D of [MiFID II](#), and consist of Approved publication arrangements, Approved reporting mechanisms and Consolidated tape providers.

The new [Investment Services and Activities and Regulated Markets Law of 2017 \(L.87\(I\)/2017\)](#) requires Data Reporting Services Providers ('DRSPs') to apply for authorisation. According to the said announcement, firms that wish to obtain authorisation as DRSPs should have notified CySEC of their intention by 30 September 2017 by sending an email to mifidii.authorisations@cysec.gov.cy. In addition, CySEC also encourages the said firms to submit an application as of November 2017, using the [Application Form for the authorisation to provide Data Reporting Services \(Form 87-00-09\)](#).

The authorisation for the data reporting services shall be valid for the entire European Union. In this respect, DRSPs may provide such services throughout the European Union.

It is noted that MIFID II authorization requirements will apply from 3 January 2018. A non-exhaustive list of the authorisation requirements for DRSPs is included in the Appendix of the said announcement.



CySEC informs CIFs about the main changes in relation to passporting issues and new notification forms under MiFID II

On 22 August 2017, CySEC issued [Circular C233](#) through which it informs CIFs about their obligations under Investment Services and Activities and Regulated Markets Law [L.87\(I\)/2017](#) (in Greek) (the transposition into local law of MiFID II) that will enter into force on 3 January 2018, in relation to passporting issues and the establishment of a branch.

CySEC provides the relevant framework (delegated and implementing acts) in relation to the passport notifications process and clarifies the importance of the aforesaid Circular especially for CIFs that are captured by the extended scope of MiFID II.

Moreover, CySEC lays down the key provisions of the respective legislative framework, which in summary, are the following:

- CIFs will be required to submit one passport notification for each member state in which they intend to provide cross-border services.
- The issuance of revised forms* for the notifications relating to the freedom to provide services in another member state, the establishment of a branch, as well as the appointment of a tied agent in member states.
- The introduction of new notification forms* in relation to the provision of arrangements to facilitate access to an MTF or OTF and the termination of the operation of a branch or cessation of the use of a tied agent established in another EEA state or in the Republic.

CySEC noted that all CIFs should consider whether their existing passport licenses/authorisations required to be amended under the scope of the abovementioned law. Such CIFs were requested to submit the new passport notifications until 29 September 2017. In addition, CySEC notes that, from **3 November 2017**, CIFs that intent to establish a branch or appoint a tied agent shall submit the updated relevant notifications.

For further details in relation to the above subject, CySEC also draws the attention of the interested parties to the [Announcement](#) on MiFID II Main changes in relation to passporting issues and new notifications forms, issued on August 11, 2017.

*The forms are provided in Circular C233 via the use of hyperlinks.

Identifying reference data relating to financial instruments

On 15 September 2017, CySEC issued [Circular C235](#) through which it informed the Reporting Entities of the new requirements under MiFIR and MAR with respect to identifying reference data relating to financial instruments, which will be applicable as of 3 January 2018.

According to Article 27(1) of MiFIR, trading venues (“TVs”) are required to provide their competent authorities with identifying reference data relating to financial instruments admitted to trading or traded on their systems.

Article 27(1) of MiFIR also requires Systematic Internalisers (“SIs”) to provide their competent authorities with reference data of the following instruments that are traded on their systems:

- Financial instruments where the underlying is financial instrument traded on a TV.
- Financial instruments where the underlying is an index or a basket composed of financial instruments traded on a TV.

Article 4(1) of MAR requires market operators of a Regulated Market and market operators operating a Multilateral Trading Facility or an Organised Trading Facility to notify, without delay, the competent authority of the trading venue of any financial instrument for which a request for admission to trading on their trading venue is made, which is admitted to trading, or which is traded for the first time. The notification shall include, inter alia, the names and identifiers of the financial instruments concerned.

Competent authorities must then submit the information received by the Reporting Entities to ESMA, which will publish that information on its website.

In order to ensure that financial instrument reference data of appropriate quality is effectively received and is efficiently exchanged between the relevant competent authorities, ESMA has developed a Financial Instruments Reference Data System (“FIRDS”), which went live in July 2017.

Further to the delegation of the task of reference data collection by CySEC to ESMA, Reporting Entities which fall under CySEC's supervision must provide the reference data directly to ESMA, instead of providing the data through CySEC.

Reporting Entities must ensure that all issuers of financial instruments admitted to trading or traded on their systems have a legal entity identifier (LEI) and that all financial instruments admitted to trading or traded on their systems have an ISO 6166 International Securities Identifying Number (ISIN).

Further requirements/guidance and reporting instructions regarding reference data relating to financial instruments can be found in the following documents:

- i. [Commission Delegated Regulation \(EU\) 2017/585](#)
- ii. [Commission Delegated Regulation \(EU\) 2016/909](#)
- iii. [Technical Reporting Instructions – MiFIR Transaction Reporting -ESMA/2016/1521](#)
- iv. [Reporting Instructions – FIRDS Reference Data System \(ESMA/2016/1522\)](#)
- v. [Reporting Instructions- FIRDS Transparency System \(ESMA/2016/1523\)](#)
- vi. [Questions and Answers on MiFIR Data Reporting \(ESMA 70-1861941480-56\)](#)

Lastly, CySEC advised the Reporting Entities to ensure that they are familiarised with the relevant provisions on identifying reference data relating to financial instruments and their submission to ESMA and that they have implemented and started uploading the data to the FIRDS.



Product Governance requirements under MiFID II

On 15 September 2017, CySEC issued [Circular C236](#), through which it informs CIFs, UCITS Management Companies ("UCITS MC") and Alternative Investment Funds Managers ("AIFMs") on their obligations regarding product governance requirements that are provided in the Investment Services and Activities and Regulated Markets Law [L.87\(I\)/2017](#).

The product governance regime sets rules for investment firms manufacturing and/or distributing financial instruments. A manufacturer is considered to be an investment firm that creates, develops, issues and/or designs financial instruments, while a distributor is considered to be any investment firm that offers or sells financial instruments and services to clients.

CySEC provides the legal documents that encompass the product governance regime and which are the following:

- Articles 17(3) and 25(2) of the abovementioned Law
- [Commission Delegated Directive \(EU\) 2017/593](#)
- ESMA Guidelines on MiFID II product governance requirements – [ESMA35-43/620](#).

Summary of product governance requirements for manufactures

- maintain and operate a product approval process that shall specify an identified target market of end clients;
- establish, implement and maintain governance arrangements which address conflicts of interest, market

integrity, threats to the underlying functioning and stability of financial markets;

- identify at a sufficiently granular level, the potential target market for the product and to specify the type(s) of client for whose needs, characteristics and objectives the product is compatible; and
- make available to distributors all appropriate information on the investment product and the product approval process, including the identified target market.

Summary of product governance requirements for distributors

- determine the actual target market for the product even if it was not defined by the manufacturer;
- have product governance controls in place to ensure that products and services it offers or recommends are compatible with the needs, characteristics and objectives of an identified target market and that its distribution strategy is consistent with the identified target market;
- obtain information from manufactures (even if the manufacturer is not subject to MiFID II) in order to gain the necessary understanding and knowledge of the products they intend to recommend or sell;
- comply with their obligation under the L.87(I)/2017 in relation to disclosure, suitability/appropriateness assessment, inducements and conflicts of interest rules.

Identical product governance requirements for both manufactures and distributors

- the board of directors has effective control over the product governance process;
- the compliance function oversees and reviews the product governance arrangements;
- the relevant staff have the necessary expertise to understand the characteristics and the risks of the products. CySEC encourages investment firms to certify their staff in accordance with the Directive of the CySEC regarding the Certification of Persons and the Certified Registers ([R.A.D.174/2015](#)) (at least to pass the basic exams and register in the Public Register);
- periodic reviews on the products governance arrangements are carried out.

The product governance requirements apply to all products sold on primary and secondary markets and in a proportionate manner, depending on the complexity of the product and the degree to which publicly available information can be obtained, taking into account the nature of the instrument, the investment service and the target market.

Products manufactured and distributed before 3 January 2018 do not fall within the scope of the products governance requirements while products manufactured before this date and distributed after this date fall within the scope.

CySEC requests from the mentioned regulated entities to provide a declaration from their board of directors that they have taken all appropriate actions to comply with the product governance requirements by 31 December 2017.

CySEC informs Issuers to acquire a LEI for their transaction reporting obligations

On 20 September 2017, CySEC issued [Circular C237](#) in order to inform Issuers on the requirement to acquire a LEI which is necessary for the implementation of transaction reporting under the Regulation ([EU](#)) No 600/2014

on markets in financial instruments ('MiFIR') and market abuse surveillance activities under the [Regulation \(EU\) No 596/2014](#) on market abuse ('MAR').

CySEC explains further what LEI is and lays down the regulatory framework governing the abovementioned requirements (please also refer to Circular C235 above).

CySEC notes that the Cyprus Stock Exchange ('CSE') has entered into an agreement/cooperation with the London Stock Exchange (LSE)/Unavista, for issuing of LEI to interested legal entities, including Issuers. The CSE provides to interested legal entities the ability to acquire a LEI code with the Assisted Registration process.

CySEC urges all issuers to acquire a LEI as soon as possible in order the transaction reporting requirements to enter into force as of 3 January 2018.

Negative Balance Protection

CySEC, through an [announcement](#) issued on 18 September 2017, clarifies that the negative balance protection referred to in Paragraph 3(iii)(c) of [Circular C168](#) applies on an account basis. In this respect, the maximum loss for a client must never exceed the client's available funds in the specific account.

For more information on Circular C168 and the negative balance protection requirement, please refer to [Issue 13 of MAP S.Platis Regulatory Radar](#).

New email address regarding MIFID II enquiries

Further to its [announcement](#) issued on 11 April 2017, CySEC issued an [announcement](#) on 19 September 2017 through which it announced that any queries related to MiFID II/MiFIR regulatory requirements must be addressed to the new email address MiFIDII.MiFIR@cysec.gov.cy.

The email address mifidii.authorisations@cysec.gov.cy will only address queries in relation to the new Application Forms for applications and notifications that entities intend to make before the implementation of [Law 87\(I\)/2017](#), which will enter into force on 3 January 2018.

CySEC informs about Transaction Reporting Requirements

On 20 September 2017, CySEC, through the issuance of [Circular C238](#), informs CIFs, Credit Institutions, Market Operators of trading of trading venues and Approved Reporting Mechanisms about the new requirements regarding transaction reporting regime emanating under article 26 of MiFIR and which will enter into force on 3 January 2018.

According to aforesaid article of MiFIR, Investment Firms which execute transactions in financial instruments shall report complete and accurate details of such transactions to the competent authority as quickly as possible, and no later than the close of the following working day. The reports are then exchanged between the competent authorities through an IT system established by ESMA called "TREM".

The obligation to report transactions under MiFIDII/MiFIR applies to the following financial instruments:

- a. financial instruments which are admitted to trading or traded on a trading venue or for which a request for admission to trading has been made;

- b. financial instruments where the underlying is a financial instrument traded on a trading venue; and
- c. financial instruments where the underlying is an index or a basket composed of financial instruments traded on a trading venue.

The activity that is reportable is the execution of a transaction where transaction is defined as the conclusion of an acquisition or disposal of a financial instrument. Acquisition is further defined to include i) a purchase of a financial instrument ii) the entering into a derivative contract and iii) an increase in the notional amount of a derivative contract while disposal include the i) sale of a financial instrument ii) closing out of a derivative contract and iii) a decrease in the notional amount of a derivative.

The term transaction also includes the simultaneous acquisition and disposal of a financial instrument where there is no change in the ownership of that financial instrument but post-trade publication is required.

CIFs are required to implement a reporting system or ensure that their existing reporting system, is in line with the technical reporting system and the applicable schemas. CySEC provides links to various ESMA documents inclusive of instructions on the construction of the appropriate reports as well as the validation files.

CySEC launched a trial period from 9 October to 10 November 2017 regarding transaction reporting. CIFs should submit on a test basis their new XML files. CIFs should perform validation tests before submitting any testing XML files to CySEC via the TRS system. Firms are encouraged to start testing in the early stages of the trial period so as to have enough time to correct possible errors and be ready for full implementation of the relevant requirements as of 3 January 2018.

Legal Entity Identification Number for all clients that are legal persons

Clients of CIFs that are legal entities and who engage in transactions with the CIF that will be reported under MiFIDII/MiFIR, must obtain a LEI number from an appropriate LEI assigning authority. **CySEC notes that as of 3 January 2018, investment firms will not be able to execute a trade on behalf of a client who is eligible for a LEI and does not have one.** At the same time, CIFs themselves have to obtain a LEI.

Further information with regards to the technical transaction reporting instructions and the content of transactions reports can be found in the abovementioned Circular.



CySEC informs about Latvian framework regarding the natural and legal persons that are allowed to provide/ perform investment services/ activities in the Republic of Latvia

On 4 October 2017, CySEC, through the issuance of [Circular C239](#), informs CIFs that provide services in the territory of Latvia, about the regulatory requirements of the Financial and Capital Market Commission of Latvia (the “FCMC”) (the Latvian regulator) in relation to natural and legal persons that are allowed to provide/perform investment services/activities in Latvia.

CySEC notes that according to the Latvian regulatory framework, CIFs may provide and/or perform any investment services/activities in the territory of Latvia only through the establishment of a branch or by the CIF’s registered tied agents (which requires the prior notification of the FCMC).

Through the use of footnotes, CySEC states/clarifies the following:

- 1) Any third parties performing direct promotion/marketing activities are required to be registered or notified with FCMC for the purpose of offering the services on behalf of a CIF to the Latvian public. In line with the FCMC's supervisory and regulatory approach, direct promotion/marketing includes person-to-person selling, direct telephone calling, general advice or introduction provided to clients or prospective clients of the CIF in relation to the CIF's investment and/or ancillary services and/or activities.
- 2) CIFs must approve any marketing material prior to their publication/dissemination and shall further monitor/review them on an ongoing basis. The CIF should also regularly verify that the tied agent does not encourage visitors on its website and/or prospective clients of the CIF to entrust the tied agent with funds for management, or does not in any way offer investment advisory services to prospective clients on behalf of the CIF.

In case of any third parties employed by the CIF and which act only as a media platform or disseminator of indirect promotion (newspaper, TV channel, magazine, website or advertising agency through which the CIF's own advertising or promotional/marketing materials are distributed to the public), CySEC notes they that are exempted from the above rule. In this respect, such third parties are not considered to be tied agents or promoters of investment services/activities for the purposes of the abovementioned legislation and thus there is no need to notify their engagement with the CIF to the FCMC.

Finally, CIFs are advised to examine with their legal associates the above requirements and to take appropriate actions, if any, in order to ensure compliance with the respective framework.

EBA's Guidelines on sound remuneration policies

On 4 October 2017, CySEC issued [Circular C240](#), through which it reminded CIFs of EBA's [Guidelines on sound remuneration policies](#), which were issued on 27 June 2016 in accordance with Articles 74(3) and 75(2) of the [Directive 2013/36/EU](#) and have been in place since January 2017.

The Guidelines set out requirements on remuneration policies that apply to all staff, as well as specific requirements on remuneration policies and variable elements of remuneration of identified staff.

These Guidelines should be applied by CIFs that are subject to the requirements imposed by [Directive 2013/36/EU](#), when complying with the requirements of paragraphs 20, 21, 22, 23 of CySEC's [Directive DI144-2014-14 for the prudential supervision of investment firms](#) and Article 450 of [Regulation \(EU\) No 575/2013](#) on prudential requirements for credit institutions and investment firms.

Lastly, CySEC noted that these Guidelines are used by CySEC when assessing the remuneration policies and variable elements of remuneration followed by CIFs.



CySEC informs about the trading in virtual currencies and/or trading on contracts for differences relating to virtual currencies

On 13 October 2017 CySEC issued [Circular C244](#) through which it informed all CIFs about their obligations to provide services in virtual currencies and/or in CFDs relating to virtual currencies.

Moreover, CySEC lays down the key requirements which CIFs that are permitted under section 6(9)(b) of the [Law 144\(I\)/2007](#) should apply:

1. CIFs must apply similar requirements to those provided in the abovementioned Law, CySEC Circulars and [ESMA's Q&A on CFD providers](#) regarding organisational requirements, conduct of business rules, record keeping and capital adequacy.
2. Before providing any of the abovementioned services to clients, CIFs must to warn their clients that:
 - Trading in virtual currencies is not governed by a specific EU regulatory framework and falls outside the scope of the CIF's MiFID regulated activities;
 - A number of risks is associated with these products and these should stipulated in a risk warning;
 - Such products are complex and high risk and hence there is a high risk of losing all the invested capital;
 - Such products are high volatile and may result in significant losses over a short period of time;
 - Virtual currencies trading is not appropriate for all investors and therefore investors should not trade in such products if:
 - they don't have the relevant knowledge and expertise;
 - they are not fully aware and understand the specific characteristics and risks related to these products.
 - Trading in such products does not entitle protection under the Investors Compensation Fund;
 - They have no rights to report to the Cyprus Financial Ombudsman in case of a dispute.
3. CIFs must ensure that all risk associated with this activity are identified, measured and properly recorded and that such risks are managed, monitored and eliminated.
4. CIFs must only use feed providers/counterparties that:
 - a. are licensed/regulated in the jurisdiction that they are established;
 - b. undergo a relevant due diligence by the CIF;
 - c. agree to periodic and regular due diligence checks by the CIF.
5. CIFs shall ensure compliance with their best execution obligations.
6. CIFs must clearly disclose to the public the methodology used to calculate the bid and ask prices.
7. For all retail clients the leverage limit should be set 5:1 for the aforementioned.
8. The turnover from the provision of this service must not exceed 15% of the total turnover of the CIF per quarter.
9. CIFs are not permitted to exercise passporting rights afforded by the Law when offering such services in European Union or third countries. CIFs must assess the individual country status, their obligations and responsibilities in relation to such service and consult their legal consultants, with regard to the applicable legal status of virtual currency activities applicable in the country concerned and whether specific authorisation is required.

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 Marchés 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
DRSP	Data Reporting Service Providers
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
FCMC	Financial and Capital Market Commission of Latvia
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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