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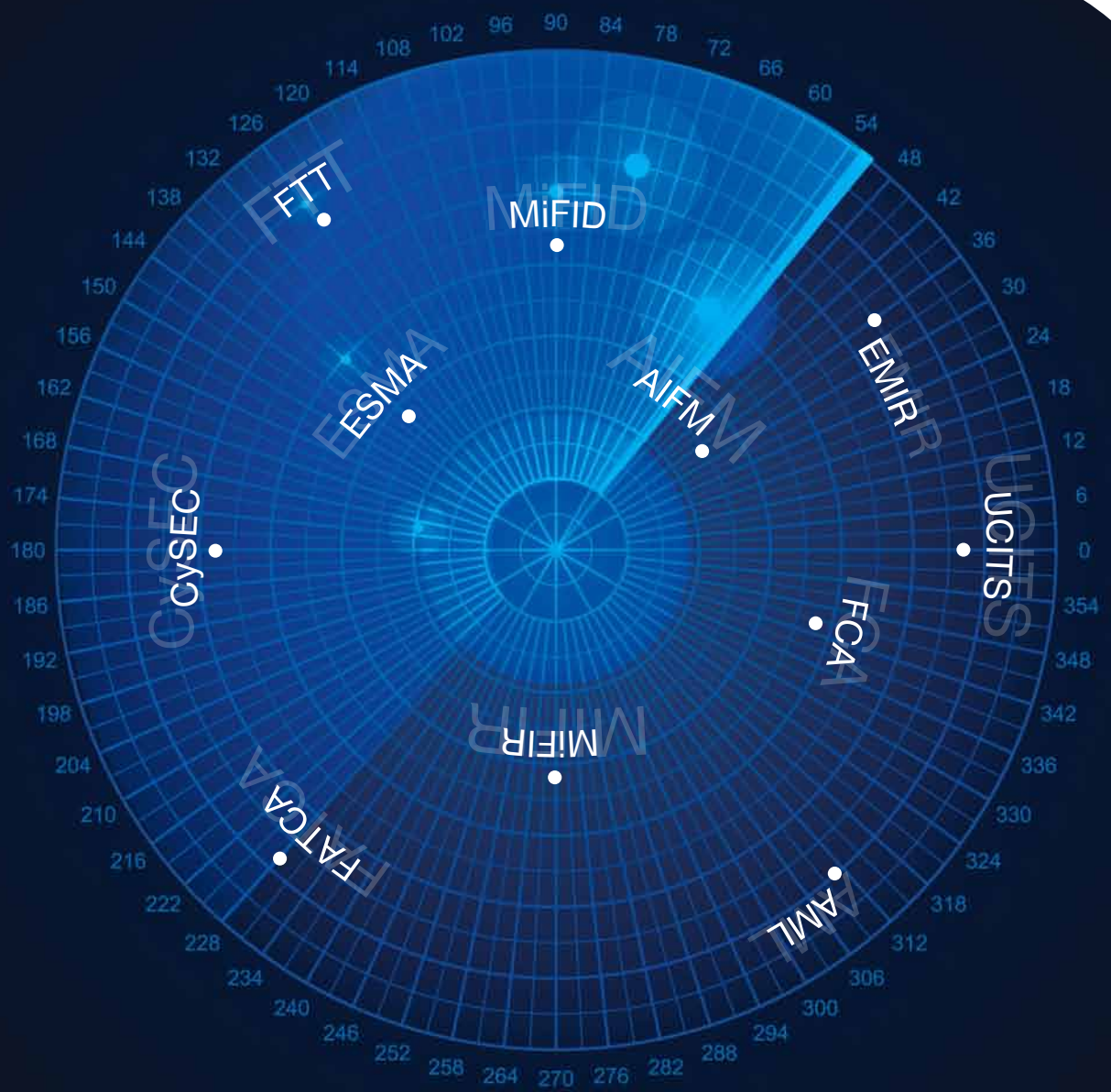
Issue 019 / March 2018

REGULATORY RADAR

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



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

I. MiFID II

The MiFID II legislation consists of an amending Directive (MiFID II) and a new regulation (the Markets in Financial Instruments Regulation = MiFIR) (together MIFID II). 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" texts. The application date of the entire MIFID II and MIFIR legislation was **3 January 2018**.

MIFiD II/MiFIR data available

ESMA, in cooperation with national competent authorities (NCAs) in the European Economic Area, oversaw the launch of MiFID II and MIFIR on 3 January 2018. A key element in ensuring the new regime functions properly is ensuring the availability of data to market participants – firms and trading venues – and NCAs. This data is available on ESMA's website and will be continuously updated.

ESMA list of supplementary deferral regimes for trading in non-equity instruments

On 9 January 2018, ESMA published a list of supplementary deferral regimes applicable in different Member States for trading in non-equity instruments relating to Article 11 of MiFIR. The list provides an overview to market participants of the different regimes for supplementary deferral that national competent authorities have opted for to facilitate compliance and convergent application.

ESMA publishes register of derivatives to be traded on-venue under MIFIR

On 16 January 2018, ESMA published a public register of those derivative contracts that are subject to the trading obligation under MIFIR.

MIFIR applies since 3 January 2018, and the trading obligation is further specified in Commission Delegated Regulation (EU) 2017/2417.

The register provides clarity to market participants on the application of the trading obligation under MIFIR and in particular on:

- the classes of derivatives subject to the trading obligation;
- the trading venues on which those derivatives can be traded; and
- the dates on which the obligation takes effect per category of counterparties

The public register will be updated in case of changes, such as when new trading venues offer trading in the derivatives subject to the trading obligation. Should ESMA envisage to include more derivatives in the scope of MIFIR's trading obligation going forward, it will consult market participants prior to doing so.

ESMA list of trading venues temporarily exempted from open access

On 25 January 2018, ESMA published a list of those trading venues for which a temporary exemption from the open access provisions under 36(5) of MIFIR exists.

While MIFIR allows firms to freely choose where to trade and clear their products, which both central clearing counterparties (CCPs) and trading venues need to facilitate, trading venues and CCPs may notify ESMA and their national competent authority of their intention to temporarily opt-out from the access provisions for exchange-traded derivatives (ETDs) provided that certain conditions are met. Concerning trading venues for which the annual notional amount of ETDs traded on the venue falls below a certain threshold, the exemption must be approved by ESMA. The list published provides the list of trading venues which have notified such intention to ESMA. The list will be updated in case of any changes, including where an exemption is renewed.

ESMA updates one of its Q&As

On 7 February 2018, ESMA updated its questions and answers (Q&As) documents regarding transparency topics under MIFID II.

ESMA publishes double volume cap data

On 7 March 2018, ESMA published trading volumes and calculations regarding the double volume cap (DVC) under MIFID II and MIFIR.

The purpose of the DVC mechanism is to limit the amount of trading under certain equity waivers to ensure the use of such waivers does not harm price formation for equity instruments. More specifically, the DVC limits the amount of dark trading under the reference price waiver and the negotiated transaction waiver.

On 9 January 2018, ESMA had delayed the implementation of the DVC, due to data quality and completeness issues, until March. ESMA since has worked with National Competent Authorities (NCAs) and EU trading venues to solve these issues.

On 7 March 2018, ESMA published the DVC calculations for January 2018 (totaling 18,644 instruments) and February 2018 (totaling 14,158 instruments). Based on this data, two caps will limit dark trading in equity and equity-like instruments, namely for:

- 17 instruments for January 2018 and 10 instruments for February 2018 for which their percentage of trading on a single trading venue under the waivers goes beyond 4% of the total volume of trading in those financial instruments across all EU trading venues over the previous twelve months; and
- 727 instruments for January 2018 and 633 instruments for February 2018 for which their percentage of trading across all trading venues under the waivers goes beyond 8% of the total volume of trading in that financial instrument across all EU trading venues over the previous twelve months.

NCAs should suspend, within two working days, the use of waivers in those financial instruments where the caps were exceeded. Hence, the use of the waivers should be suspended for these instruments for a period of six months starting from Monday, 12 March 2018. ESMA is intending to publish the applicable DVC data for March 2018 on 9 April 2018, including any data received after the cut-off date for data submissions of 1 March 2018.

II. MARKET ABUSE REGULATION

The latest version of the ESMA questions and answers on the Market Abuse Regulation is dated 14 December 2017.

III. EMIR

EMIR review - European Parliament texts

On 28 November 2017, the Council of the EU has published its presidency compromise proposal for the Regulation amending the European Markets Infrastructure Regulation as regards the clearing obligation, the suspension of the clearing obligation, the reporting requirements, the risk-mitigation techniques for over-the-counter derivatives contracts not cleared by a central counterparty, the registration and supervision of trade repositories and the requirements for trade repositories (EMIR review – part 2).

The original European Commission proposal is dated 4 May 2017. The Committee on Economic and Monetary Affairs of the European Parliament (ECON) released its draft report dated 26 January 2018 as regards the clearing obligation, the suspension of the clearing obligation, the reporting requirements, the risk-mitigation techniques for OTC derivatives contracts not cleared by a central counterparty, the registration and supervision of trade repositories and the requirements for trade repositories and a second draft report dated 31 January 2018 as regards the procedures and authorities involved for the authorisation of CCPs and requirements for the recognition of third-country CCPs.

European Supervisory Authorities issue final draft RTS amending margin requirements for non-centrally cleared OTC derivatives

On 18 December 2017, the European Supervisory Authorities (ESAs) published their jointly developed draft Regulatory Technical Standards (RTS) amending the framework of the European Market Infrastructure Regulation (EMIR) with regard to physically settled foreign exchange (FX) forwards. These amendments aim at aligning the treatment of variation margin for physically-settled FX forwards with the supervisory guidance applicable in other key jurisdictions.

The draft RTS amend the risk mitigation techniques related to the exchange of collateral to cover exposures arising from non-centrally cleared over-the-counter (OTC) derivatives with respect to physically settled FX forwards.

The current framework is based on the ESAs' RTS published on 8 March 2016, adopted by the Commission as a Delegated Regulation on 4 October 2016, which entered into force on 4 January 2017. The Delegated Regulation would require, from 3 January 2018 onwards, the mandatory exchange of variation margin for physically-settled FX forwards for all the counterparties within the scope of EMIR.

However, the ESAs have been made aware of the challenges certain end-user counterparties are facing to exchange variation margin for physically settled FX forwards. In particular, the adoption of the international standards (i.e. the framework developed by the Basel Committee on Banking Supervision (BCBS) and the

International Organisation of Securities Commissions (IOSCO)) in other jurisdictions through supervisory guidance has led to a more limited scope of application than the one proposed by the ESAs.

In the light of this, the ESAs undertook a review of the RTS and amended them to align the treatment of variation margin for physically-settled FX forwards with the supervisory guidance applicable in other key jurisdictions.

Specifically, the amendment of the RTS and their subsequent implementation would reiterate the commitment to apply the international standards with a more comparable scope to that of other key jurisdictions. In particular, this would imply that the requirement to exchange variation margin for physically settled FX forwards should target only transactions between institutions (credit institutions and investment firms).

For UK FCA position on regulatory forbearance, please refer to section 6 below.

ESMA EMIR Q&As

On 5 February 2018, ESMA updated its EMIR Q&A on practical questions regarding EMIR. The updated Q&A includes new answer in relation to the operational aspects of access to the trade repository data.

2. Anti-Money Laundering

The Fifth Anti-Money Laundering Directive

On 15 December 2017, the European Parliament and the Council reached a political agreement on the Commission's proposal to further strengthen EU rules on anti-money laundering and counter terrorist financing.

This revision of the Fourth Anti-Money Laundering Directive, aims at:

- increasing transparency on who really owns companies and trusts by establishing beneficial ownership registers;
- preventing risks associated with the use of virtual currencies for terrorist financing and limiting the use of pre-paid cards;
- improving the safeguards for financial transactions to and from high-risk third countries;
- enhancing the access of Financial Intelligence Units to information, including centralised bank account registers.

The proposal was presented by the Commission in July 2016 in the wake of terrorist attacks and the revelations of the Panama Papers scandal, and is part of the Commission's Action Plan of February 2016 to strengthen the fight against terrorist financing. It sets out a series of measures to better counter the financing of terrorism and to ensure increased transparency of financial transactions.

The next step is for the European Parliament and the Council to formally adopt the Fifth Anti-Money Laundering Directive. An updated indicative date for the European Parliament sitting to vote on the proposed Fifth Money Laundering Directive has been set for 16 April 2018.

(The Fourth Anti-Money Laundering Directive came into entered into force on 25 June 2015. Member States

were required to bring into force the laws, regulations and administrative provisions necessary to comply with MLD4 by 26 June 2017.)

ESAs Opinion on the use of innovative solutions in the customer due diligence process

On 23 January 2018, the Joint Committee of the three European Supervisory Authorities (EBA, EIOPA and ESMA - ESAs) published an Opinion on the use of innovative solutions by credit and financial institutions when complying with their customer due diligence (CDD) obligations. This Opinion is part of the ESAs' wider work on creating a common understanding on the responsible and effective use of innovation by credit and financial institutions, which can enhance their Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT) controls.

Under EU law, credit and financial institutions are required to assess money laundering and terrorist financing (ML/TF) risks associated with their business and put in place effective policies and procedures to mitigate these risks. CDD measures are central to these policies and procedures. However, EU law is technology-neutral and does not set out in detail how these CDD measures should be applied, giving an opportunity to financial and non-financial innovators to explore new ways of meeting institutions' CDD obligations. While these innovations can improve the effectiveness and efficiency of AML/CFT controls, there is a risk that they could weaken ML/TF safeguards, if applied unthinkingly.

In this Opinion, the ESAs explore how innovative solutions currently used by credit and financial institutions can help them meet their AML/CFT obligations more effectively.

With this Opinion, the ESAs aim to foster the development of a common understanding between national competent authorities across the EU of the appropriate use of innovative solutions and encourage national competent authorities to support those solutions where these improve the effectiveness and efficiency of AML/CFT compliance. Yet, they also highlight specific ML/TF risk factors associated with these solutions as well as wider internal control aspects that they should consider when supervising credit and financial institutions that make use of these solutions. In particular, national competent authorities should consider (i) oversight and control mechanisms; (ii) the quality and adequacy of CDD measures; (iii) the reliability of CDD measures; (iv) delivery channel risks; and (v) geographical risks.

Outcomes of the Financial Action Task Force (FATF) February 2018 plenary meeting

The FATF Plenary meeting took place in Paris 21-23 February 2018. The main issues dealt with by this Plenary were:

- Combatting terrorist financing, including the adoption of a new counter-terrorist financing operational plan and a statement on the actions taken under the 2016 counter-terrorist financing strategy.
- Adoption of a report to the G20 Finance Ministers and Central Bank Governors.
- Updated FATF Guidance on Counter Proliferation Financing.
- Amendments to Recommendation 2 on national cooperation and coordination.

- Discussion of the mutual evaluation report of Iceland.
- Follow-up reports for the mutual evaluations of Spain and Norway where both countries sought technical compliance re-ratings.
- Brazil's progress in addressing the deficiencies identified in its mutual evaluation report since it agreed an action plan in November 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.
    - Jurisdictions with strategic AML/CFT deficiencies for which they have developed an action plan with the FATF.
- Monitoring Iran's actions to address deficiencies in its AML/CFT system.
- AML/CFT improvements in Bosnia and Herzegovina.
- Revisions on information sharing to the FATF Methodology.
- Update on recent developments on de-risking
- Improving the understanding of virtual currencies risks.
- Update on FinTech & RegTech Initiatives.
- Improving the effectiveness of the Criminal Justice System: FATF global engagement with judges and prosecutors.
- Outcomes of the meeting of the FATF Forum of Heads of Financial Intelligence Units (FIUs), which was held in the margins of the Plenary.
- Strengthening FATF's institutional basis.
- Activities of the FATF Training and Research Institute in Busan, Korea.

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.

5. Fund Regulation

UCITS and AIFMD

ESMA updated Q&As

The most recent ESMA questions and answers document (Q&A) for UCITS are dated 5 October 2017.

AIFMD - ESMA updated Q&As

The most recent ESMA questions and answers document (Q&A) for AIFMD are dated 5 October 2017.

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.

On 30 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**.

Money market funds

On 13 November 2017, following an earlier consultation, ESMA published a final report on its technical advice, implementing technical standards (ITS) and guidelines under the Regulation on money market funds (MMF Regulation).

The key requirements relate to asset liquidity and credit quality, the establishment of a reporting template and stress test scenarios carried out by MMF managers. The final report includes:

- technical advice relating to liquidity and credit quality requirements applicable to assets received as part of a reverse repurchase agreement;
- ITS relating to the development of a reporting template containing all the information that managers of MMFs are required to send to the national competent authority of the MMF; and
- guidelines on common reference parameters of the scenarios that need to be included in the stress tests that managers of MMFs are required to conduct.

The MMF Regulation enters into force on 21 July 2018.

6. UK – Developments of Interest to Investment Firms

UK Finance initial assessment on MiFID II implementation

In February 2018, UK Finance published a paper summarising its members' implementation MiFID II confirming that the general consensus of its members is that the implementation of MiFID II has been significantly smoother than expected. It notes that there are still issues that need to be resolved, particularly with regards to data quality; for example in relation to the incompleteness of the Financial Instruments Reference Data System, which complicates how a firm might report a transaction in an instrument which is absent from the System, but which would be expected to be included.

FCA global regulatory sandbox

The UK FCA is considering extending its existing regulatory sandbox to a global sandbox, which could help firms to conduct regulatory tests in different jurisdictions at the same time. The FCA believes that a global sandbox could allow firms to conduct tests in different jurisdictions at the same time and allow regulators to work together and identify and solve common cross-border regulatory problems, through tests. Under such a model, testing could span two or more jurisdictions

The global sandbox could focus on the following activities:

1. **Invite applicants to address pre-identified challenges:**
   Firms face certain regulatory problems that cross jurisdictional boundaries, for example developing innovative solutions to Anti-Money Laundering (AML) compliance and Know Your Customer (KYC) on-boarding, and payments services that seek to transfer money cross-border. The global sandbox could help regulators and firms work together to define where these common problems exist, and collaborate to find solutions. Under this approach, participating regulators could set out areas where cross-border testing would be most beneficial, and invite firms to participate in the global sandbox to propose tests to explore these. Firms would benefit from having access to support from multiple regulators in the design and supervision of their test.

2. **Support specific firms with cross border ambitions across any sector:**
   Innovation is a powerful way of encouraging greater competition in the market. The global sandbox could allow firms who have ambitions to grow at scale in different markets to bring their idea to market more quickly and easily, creating more effective competition. The FCA's experience with the regulatory sandbox in the UK has identified some firms who may benefit from this, and the FCA is keen to hear from firms who could see value in testing their ideas in multiple markets.

3. **Seek to address policy and regulatory challenges:**
   The global sandbox could convene joint events and/or papers on emerging trends and challenges to leverage the diverse experience of participating regulators and firms, and work toward consistent approaches.

The overall approach would be to better understand and solve common regulatory problems, as well as being more helpful to firms who have aspirations to grow at scale in multiple markets. The degree to which different regulators are involved in each part of the sandbox could vary.

On 14 February 2018, the FCA sought input from firms doing business, or looking to do business, in the UK or overseas, from other regulators, from consumers, and other interested parties on their views on all aspects of moving towards a global sandbox (including a number of questions for consideration). The closing date was 2 March 2018.

Brexit - European Commission notices to financial services stakeholders

The United Kingdom submitted on 29 March 2017 the notification of its intention to withdraw from the Union pursuant to Article 50 of the Treaty on European Union. When the United Kingdom becomes a third country, all EU primary and secondary law will cease to apply. On 8 February 2018, the European Commission published notices to financial services stakeholders. These notices aim to prepare stakeholders for this event, setting out the consequences that the UK withdrawal will have on banking and finance rules. The notices cover the following areas:

- markets in financial instruments;
- banking and payment services;
- post-trade financial services;
- asset management;
- credit rating agencies;
- insurance / reinsurance; and
- statutory audit.

FCA Statement on communications in relation to Packaged Retail and Insurance-based Investment Products (PRIIPS)

On 24 January 2018, the FCA published a statement relating to the concerns raised about the performance scenarios in the PRIIPS Key Information Document as follows:

"The Packaged Retail and Insurance-based Investment Products (PRIIPs) Regulation has applied from 1 January 2018. Since then, PRIIP manufacturers have been required to prepare and publish a stand-alone, standardised document, a KID, for each of their PRIIPs. Further, firms that advise a retail investor on a PRIIP, or sell a PRIIP to a retail investor, must provide the retail investor with a KID in good time before the transaction is concluded.

The KID details risks, performance scenarios, costs and other pre-contractual information in a standardised way. The KID is required to be accurate, fair, clear and not misleading. How information in the KID should be calculated is set out in the PRIIPs Regulatory Technical Standards (RTSs). Both the PRIIPs Regulation and related RTSs are directly applicable European legislation.

(…)

We understand some firms are concerned that, for a minority of PRIIPs, the 'performance scenario' information required in the KID may appear too optimistic and so has the potential to mislead consumers. There may a number of reasons for this: the strong past performance of certain markets, the way the calculations in the RTSs must be carried out, or calculation errors.

Where a PRIIP manufacturer is concerned that performance scenarios in their KID are too optimistic, such that they may mislead investors, we are comfortable with them providing explanatory materials to put the calculation in context and to set out their concerns for investors to consider.

Where firms selling or advising on PRIIPs have concerns that the performance scenarios in a particular KID may mislead their clients, they should consider how to address this, for example by providing additional explanation as part of their communications with clients."

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

Variation margin requirements under EMIR for physically settled FX forwards

On 7 December 2017, the FCA published on their website the following statement granting regulatory forbearance in relation to variation requirements under EMIR for physically settled FX forwards:

"On 24 November 2017, the European Supervisory Authorities (ESAs) issued a statement on the variation margin requirements under EMIR for physically settled FX forwards. They confirmed they are in the process of reviewing, and proposing amendments to, the Regulatory Technical Standards (RTS) on risk mitigation techniques for OTC derivatives not cleared by a central counterparty. The ESAs indicated that the changes will look to align the treatment of physically settled FX forwards with the supervisory guidance applicable in other jurisdictions.

We support the ESAs' statement. They recommend competent authorities "generally apply their risk-based supervisory powers in their day-to-day enforcement of applicable legislation in a proportionate manner".

The amendments to the RTS should become increasingly clear over time and we would expect firms to make their plans as a result. Although how they will be amended is not completely clear at this time, the proposals as outlined in the ESAs' statement can be used by firms as an indication of what the amended requirements may look like.

Accordingly, we will not require firms whose physically settled FX forwards are likely to be outside the scope of the amended requirements to continue putting processes in place to exchange variation margin. This approach is subject to any further statements that may be issued by the ESAs or the FCA.

We, in any event, continue to recognise that the exchange of variation margin is a prudent risk management tool."

IOSCO consults on proposed policy measures to protect investors of OTC leveraged products

On 13 February 2018, International Organization of Securities Commissions (IOSCO) issued a consultation report proposing policy measures for its members to consider when addressing the risks arising from the offer and sale of OTC leveraged products to retail clients.

The Report on Retail OTC Leveraged Products identifies various regulatory approaches aimed at enhancing the protection of retail investors who are offered OTC leveraged products, often on a cross-border basis. The report covers the offer and sale by intermediaries of rolling-spot forex contracts, contracts for differences (CFDs), and binary options. Intermediaries market and sell these products to retail investors in most IOSCO member jurisdictions.

IOSCO states that *"retail investors use OTC leveraged products to speculate on the short-term price movements in a given financial underlying. The products are traded over the counter, and their pricing, settlement and trading terms are not standardized. Typically, the products are offered through online trading platforms, and often though aggressive or misleading marketing campaigns. Several studies show that a large majority of retail investors in these complex products lose money."*

In its report, IOSCO encourages its members to improve the practices of licensed firms that offer OTC leveraged products, in an effort to better inform investors about the features and risks of these products and to more effectively combat illegal cross-border activity in this area.

IOSCO proposes the following policy measures in the report and offers guidance to regulators on how to apply each one:

- A licensing requirement for all firms that sell the relevant products to retail investors either domestically or on a cross-border basis;
- Leverage limits or minimum margin requirements;
- Measures to address the risk of investors losing more than their initial investment;
- Measures to enhance the disclosure of costs and charges of the products;
- Measures to improve the disclosure of risks of the products, including profit and loss ratios;
- Other focused requirements to enhance the quality of pricing and order execution; and,
- Measures to restrict the sale, distribution and marketing of the products with a view to addressing mis-selling risk.

This consultation report is part of IOSCO´s ongoing work on retail investor protection. The current consultation is part of a wider IOSCO mandate, which will also include policy proposals and guidance regarding investor education material on relevant products and firms, and enforcement approaches and practices to address the risks posed by unlicensed firms operating in this area.

IOSCO is seeking feedback on the tools and measures proposed in this report. After reviewing comments received from the public, IOSCO will prepare a final report. The consultation closes on 27 March 2018.

ESMA call for evidence on potential product intervention measures on contracts for differences and binary options to retail clients

On 18 January 2018, ESMA published a call for evidence on potential product intervention measures relating to the provision of contracts for differences. This includes rolling spot forex and binary options to retail investors. ESMA published a statement on 15 December 2017 explaining that it was considering the possible use of its product intervention powers under Article 40 of MiFIR to address investor protection concerns posed by the marketing, distribution and sale of CFDs and binary options to retail investors.

It is now seeking evidence from stakeholders on the impact of the following proposed measures:

Contracts for Difference

The specific potential measures under consideration are:

- Leverage limits on the opening of a position by a retail client. These would range from 30:1 to 5:1 to reflect the historical price behaviour of different classes of underlying assets;
- A margin close out rule on a position by position basis. This would standardise the percentage of margin at which providers are required to close out a retail client's open CFD;
- Negative balance protection on a per account basis. This would provide an overall guaranteed limit on retail client losses;
- A restriction on the incentivisation of trading provided by a CFD provider; and
- A standardised risk warning by CFD providers. This would include an indication of the range of losses on retail investor accounts.

ESMA is also considering whether CFDs in cryptocurrencies should be addressed in the measures.

Binary Options

The potential measure under consideration is a prohibition on the marketing, distribution or sale of binary options to retail investors.

The deadline for submission of evidence was 5 February 2018. Any product intervention measure adopted by ESMA under Article 40 of MiFIR can have an initial duration of up to three months and is renewable.

8. CySEC Developments

CySEC announced the temporary pause of the certification examinations

On 18 January 2018, through the issuance of an announcement, CySEC informed all interested parties that in the light of the new Investment Services and Activities and Regulated Markets Law of 2017 (MiFID II), certification examinations (advanced or basic) will not be carried out during February and March 2018. Thus, CySEC will temporarily stop accepting any new applications.

Candidates that have already registered to sit an examination will be given a new examination date by the Chartered Institute for Securities & Investment ("CISI").

It should be noted, that the period during which there will be no exams will not count towards the deadline to be registered in the certification registry for persons that were granted an exemption under article 5(8) of R.A.D. 174 as amended. For the persons granted an exemption to be registered in the certification registry during February and March 2018, the exemption period will start counting from the first day of recommencing of the exams.

CySEC will keep all interested parties informed with further announcements for the new study manual and the recommencement of the exams.

Announcement regarding the proposed amendment of the EU prudential rules for Investment Firms

On 02 February 2018, CySEC issued an announcement to inform its supervised entities and other participants that the European Commission has adopted proposals for a Regulation and a Directive to amend the current prudential supervision framework for Investment Firms.

The purpose of the aforesaid proposals is the introduction of a more balanced and risk-sensitive requirements for Investment Firms whereas the vast majority of EU Investment Firms will no longer be subject to requirements originally designed for banks unless such Investment Firms are considered large and systemic.

Findings of the assessment of Compliance Officers' Annual Reports and the Internal Audit Reports on the prevention of money laundering and terrorist financing

On 05 February 2018, CySEC issued Circular C255 by which it has published its findings following an assessment conducted on the Annual Reports of the Anti-Money Laundering Compliance Officer ("AMLCO") and the Internal Auditor in relation to the prevention of money laundering and terrorist financing) (hereinafter, the "Reports") for the year 2016 and the relevant minutes of the Board of Directors (the "Board Minutes") that were submitted to CySEC in 2017.

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

A. With respect to the content of the Reports, CySEC identified the following:

- Insufficient application of Circular C186 as regards the content of the executive summary of the AMLCO Report.
- Insufficient analytical reference to the content and the method of conduct of inspections and reviews performed by the AMLCO to determine the degree of compliance of the regulated entity with respect to the policy, practices, measures, procedures and controls applied for the prevention of money laundering and terrorist financing and the recommendations made with a relevant timeframe imposed or the actions taken to any deficiencies/weakness identified.
- Insufficient reference to the specific enhanced due diligence measures applied in relation to high-risk customers.
- Insufficient reference to information in relation to the systems and procedures applied by regulated entities for the ongoing monitoring of customers' accounts and transactions compared with their economic profile.
- Insufficient information on the specific method with which the adequacy and effectiveness of staff training has been assessed and reference to the results.
- Insufficient reference to the specific method with which the adequacy and effectiveness of staff training has been assessed and reference to the results.
- The scope of the Internal Audit did not sufficiently cover all the key areas regarding the policy, practices, measures, procedures and control mechanisms applied for the prevention of money laundering and

terrorist financing.

- No reference was made to prior years' findings/recommendations and whether these have been rectified or not, within the reference year, and the key issues from previous years that are still pending.

B. With respect to the content of the Board minutes for the Reports

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

CySEC expects that all regulated entities took into account the above-mentioned findings when preparing the Reports for the year 2017 and from now onwards in order to ensure full compliance with their obligations emanated by the Law and Directive.

Finally, CySEC emphasises that strict administrative sanctions can be applied in case of non-compliance with the requirements of the Law and the Directive.

Provision of investment and ancillary services and/or performance of investment activities in a third country

On 08 February 2018, through the issuance of Circular C256, CySEC informs Cyprus Investment Firms ('CIFs') about the following:

1. CIFs that wish to provide and/or perform their services/activities in third countries must send a prior notification to CySEC via a letter (the 'Letter') of their intention to do so. The Letter must be accompanied by a list stating for each country whether the CIF has obtained the relevant authorisation by the competent authority or a legal opinion that no authorisation is required.

   The abovementioned CIFs need to acquire the necessary authorisation by the respective competent authorities of the third countries, in accordance with their legislative framework, prior to the provision of any service/activity in their territory. CySEC notes that the acquisition of such authorization is an exclusive responsibility of the subject CIFs.

   A certified copy of the authorisation obtained by the respective competent authority for the provision of services or, in case that the third country does not require such authorisation, a legal opinion or a certified copy of the legal opinion issued by a qualified lawyer or a legal firm of the relevant jurisdiction, indicating that no such authorization is required, must be provided to CySEC.

2. CIFs must also file this information in the Portal and notify CySEC in writing of any subsequent changes to the third countries in which they operate.

Furthermore, all existing and newly established CIFs **must post on their websites** the information on third countries in which they provide/perform services/activities.

Common and recurring weaknesses and/or deficiencies and best practice standards identified during the onsite inspections performed in relation to the prevention of money laundering and terrorist financing

On 23 February 2018, CySEC issued Circular C260 by which it has published its findings following an assessment conducted on the Prevention and Suppression of Money Laundering and Terrorist Financing Law ("the Law") and the Directive DI144-2007-08 on the Prevention of Money Laundering and Terrorist Financing ("the Directive").

While CySEC has identified some best practice standards applied by regulated entities, it has also identified common and recurring weaknesses and/or deficiencies (in summary form):

A. When carrying out its onsite inspections, CySEC has identified the following best practice standards.

- Introduce and adopt policies for not accepting cash as a form of payment.
- Return deposited funds to customers in the same bank account from which they originated, always in the same name of the customer.
- Apply automated electronic systems for client identification and monitoring.
- Employ specified staff members charged exclusively with the duty and responsibility of implementing practices, measures, procedures and controls related to the prevention of money laundering and terrorist financing.
- Increase the AML education and training provided to all personnel.
- Take immediate corrective action to address any weaknesses and/or deficiencies identified by CySEC during onsite inspections (summarised below).

B. With respect to the common and recurring shortfalls, CySEC urges CIFs where applicable to take correction measures in regards to the following:

i. Customer Due Diligence

- An insufficient risk-based approach to verify the collected customer or beneficial owners' data and information.
- Deficiencies in the processes of obtaining and assessing information when conducting client identification, recording and evaluation of the risk posed by customers.
- Policies establishing and delivering to timeframes set to ensure information and data collected on customers is kept up to date must be followed.
- Deficiencies in the application of enhanced due diligence measures. This included high-risk customers, especially true of dealings with non-face-to-face customers.

ii. Timing of verification of the customers' identification

- Failure to apply the requirements set out in Circular C157 when applying the derogation rule, for verifying the identity of the client during the establishment of the business relationship.

iii. Termination of the business relationship with customers

- Failure to record in their risk management and procedures manual, the circumstances of terminating a business relationship with their customers.
- Failure to terminate the business relationship with the customer as required in the instance where customers failed or refused to submit the required data and information for the verification of their identity and the creation or update of their economic profile.

iv. Ongoing monitoring of customers' accounts and transactions

- Inaccurate information on the methods used to monitor account transactions for unusual behaviour.
- Deficiencies in the ability to monitor a large volume of customers sufficiently, continuously and in a timely manner.
- Weaknesses in the procedures implemented by some regulated entities as regards to screening customers on the International Sanctions adopted by the UN Security Council and the Restrictive Measures adopted by the Council of the EU.

v. Internal suspicious reporting and reporting to MOKAS

- Inadequate measures and procedures in place in order to implement and examine an internal suspicious report to the regulated entity's Compliance Officer and their reporting to MOKAS.
- The number of internal suspicious reports to the Compliance Officer, and in turn reports from the Compliance Officer to MOKAS is relatively low for some regulated entities.

In light of the above, regulated entities must fully comply with the Law and the Directive in place to prevent money laundering and terrorist financing and in the event of non-compliance will be subject to the administrative sanctions available to and enforced by CySEC under the Law.

CySEC consults regarding the sub-threshold AIFM Law

On 05 March 2018, CySEC issued Consultation Paper (CP 2018-01) (in Greek) regarding the proposed law for the establishment and operation of mini AIF managers (the 'Proposed Law'). The Proposed Law will apply to legal entities that will act as the external manager of AIFs established in the Republic, or in a Member State, or in a third country, whose assets under management do not exceed the thresholds of the Directive 2011/61/EU, inclusive of AIFs with Limited Number of Persons (as defined in L.131(I)/2014 as amended) and Registered AIFs*. The Proposed Law sets a number of obligations on said mini managers, inclusive of capital requirements, organisational requirements, requirements for outsourcing etc. The Proposed Law also captures CIFs that given permission by CySEC under the exemption of Section 5(5)(b) of L.87(I)/2017 to act the External Managers of AIFs.

The consultation closes on 19 March 2018.

*registered AIFs are a new form of AIF, that CySEC will include the amendments of L.131(I)/2014.

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
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 Inter bank Offered Rate
MAD	Directive no.2014/57/EU of the European Parliament and of the Council on criminal sanctions for market abuse
MAR	Regulation no. 596/2014 of the European Parliament and of the Council on insider dealing and market manipulation (market abuse)
MiFID	Markets in Financial Instruments Directive – Directive 2004/39/EC of the European Parliament and the Council
MiFID II	Directive no. 2014/65/EU of the European Parliament and of the Council on markets in financial instruments repealing Directive 2004/39/EC of the European Parliament and of the Council (compromise reached, number to be assigned)

MiFIR	Regulation no. 600/2014 of the European Parliament and of the Council on markets in financial instruments and amending Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories [EMIR]
MMF	Money Market Fund
NDF	Non-deliverable forwards
Official Journal	The Official Journal of the European Union
OTC	Over-the-Counter
Q&As	Questions and Answers
PRIIPS	Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products
RTS	Regulatory Technical Standards
SFT	Securities Financing Transaction
TA	Technical Advice
UCITS	Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009, on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)
UCITS MCs	UCITS Management Companies
UCITS V	Directive of the European Parliament and of the Council amending Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards depositary functions, remuneration policies and sanctions

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