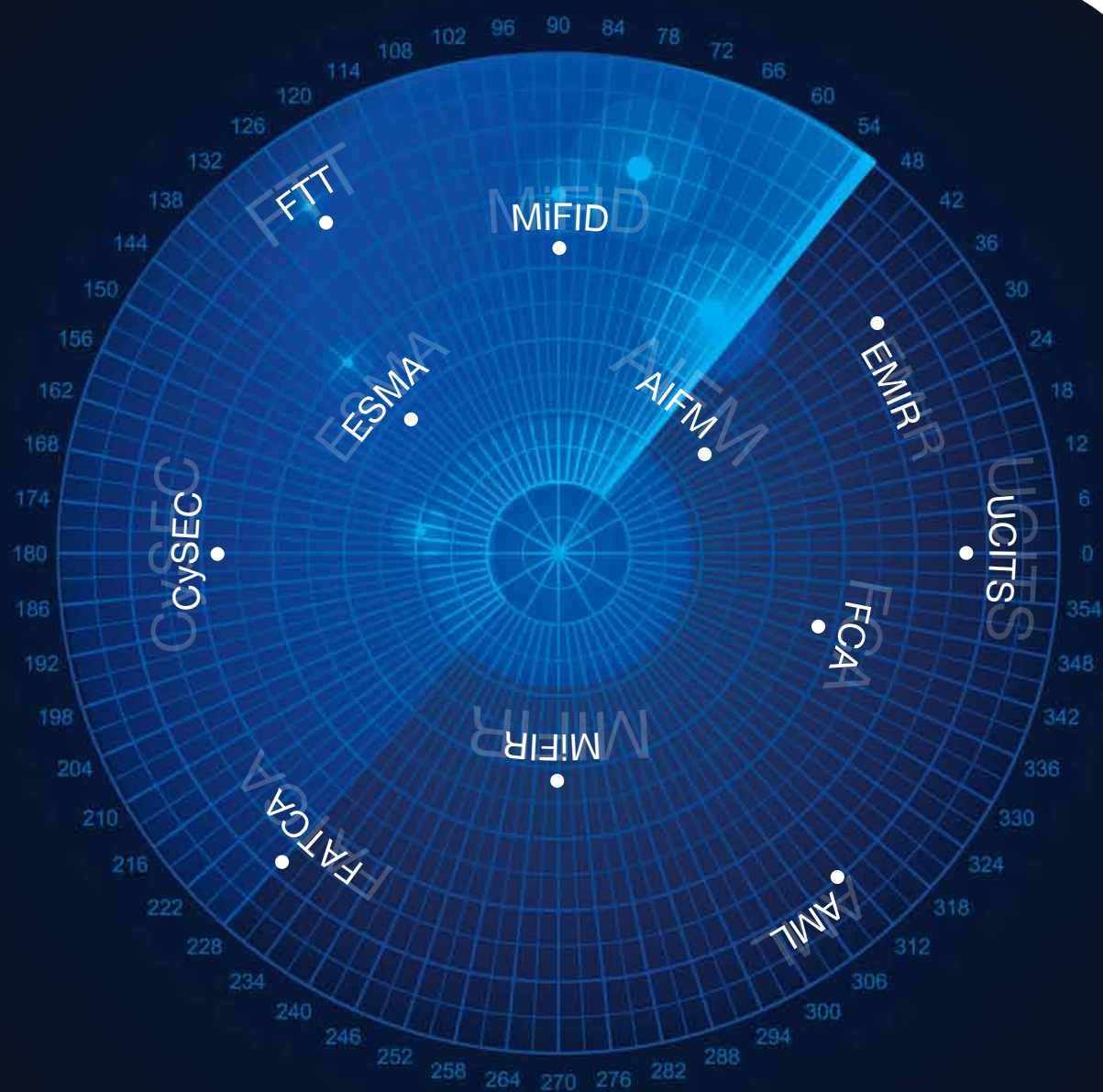


# REGULATORY RADAR

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





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# 60 Second Summary

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

- **MiFID II**
  - MiFID II applied from 3 January 2018
  - ESMA continues to issue level 3 guidance in the form of Questions and Answers, Frequently Asked Questions; opinions, reports and other publications
- **EMIR**
  - Mandatory margin requirements for non-cleared OTC derivatives introduced on a staggered basis: variation margin is required except for physically settled FX forwards; initial margin applies from 4 February 2017 to 1 September 2020
  - Requirement for variation margin exchange for physically-settled FX forwards under EMIR is under review; Member States' national competent authorities can apply regulatory forbearance in the meantime
  - Proposals to revise EMIR are progressing

## 2. Anti-Money Laundering Legislation

- The 5th Anti-Money Laundering Directive has been adopted by the European Parliament and the Council of the EU

## 3. EU Financial Transaction Tax (FTT)

- Political decisions on FTT postponed until Brexit outcome is known

## 4. Taxation

- No update

## 5. Fund Regulation

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

- UK FCA sets out in detail how it intends to approach supervision and enforcement

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

- ESMA adopts temporary product intervention measures on CFDs and binary options and issues some accompanying Q&As. The new measures will apply from 2 July 2018 for binary options and from 1 August 2018 for CFDs.

## 8. CySEC Developments

- Announcement regarding the Re-registration in the public registry for 2018
- Announcement: The European Supervisory Authorities weigh the benefits and risks of Big Data
- Announcement for accepting applications for the exams of certified persons for registration in the Public Registry
- ESMA Guidelines on MiFID II product governance requirements adopted by CySEC
- Specially Designated Nationals List Update
- Introduction of new rules governing derivatives on virtual currencies
- Requirements of the Central Bank of the Russian Federation (the 'CBR') regarding the provision of investment services and/or the performance of investment activities in the territory of Russia
- ESMA Guidelines on stress tests scenarios under Article 28 of the MMF Regulation
- ESMA Product intervention Decision on CFDs and Binary Options

# 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/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 is continuously updated.

### **ESMA updates to its Questions and Answers (Q&As)**

#### Q&A on MiFID II and MiFIR transparency topics and market structures topics

On 29 May 2018, ESMA updated its questions and answers (Q&As) documents regarding [transparency topics](#) and [market structures topics](#) under MiFID II. The Q&A provides clarification on the following topics:

- the requirements to publish information on post-trade data 15 minutes after publication free of charge;
- the publication of transactions and how to populate the field ‘publication date and time’;
- pre-trade transparency requirements for voice trading systems;
- pre-trade transparency requirements for RFQ systems;
- OTFs arranging trading in strategies which include an equity leg.

On 28 March 2018, ESMA updated its questions and answers (Q&As) documents regarding transparency topics and market structures topics under MiFID II. This Q&A of 28 March 2018 provides clarification on the following topics:

- the scope of the trading obligation for derivatives (transparency topics);
- the default tick size regime (market structure topics);
- fee structures (market structure topics);
- SI and matched principal trading (market structure topics);
- Direct Electronic Access (DEA) provider’s controls and suitability checks (market structure topics).

The Q&A dated 29 May 2018 is a consolidated version containing all the Q&As including the questions and answers of 28 March 2018.

### Q&A on MiFID Investor Protection and Intermediaries

On 25 May 2018, ESMA updated its questions and answers (Q&As) documents regarding [investor protection and intermediaries topics](#). The new or updated Q&As cover the topics of best execution, client categorisation, provision of investment services and activities by third country firms, and other issues.

On 23 March 2018, ESMA included 7 new or updated items in its Q&A on MiFID Investor Protection and intermediaries. The updated Q&As were on the topics of inducements (research) and information on costs and charges. The other four Q&As were new and relate to the topics of inducements, post-sale reporting and other issues.

The Q&A dated 25 May 2018 is a consolidated version containing all the Q&As including the questions and answers of 23 March 2018.

### Q&A on MiFIR data reporting

On 25 May 2018, ESMA updated its [questions and answers \(Q&As\) documents on MiFIR data reporting](#), with one question on complex trades.

### **ESMA FAQs on Transitional Transparency Calculations**

On 15 May 2018, ESMA published [FAQs on MiFID II -Transitional Transparency Calculations](#) for equity and bond instruments. These calculations have to be performed both for the transition from MiFID to MiFID II/ MiFIR as well as on an ongoing basis. National competent authorities are responsible for performing these transparency calculations.

### **ESMA Final Report on guidelines regarding suitability requirements**

On 28 May 2018, ESMA published its [Final Report on Guidelines on certain aspects of the MiFID II suitability requirements](#).

The Guidelines in the Final Report build on the text of ESMA's 2012 [MiFID I guidelines on suitability](#), which have been largely confirmed and broadened in order to:

- consider technological developments of the advisory market notably the increasing use of automated or semi-automated systems for the provision of investment advice or portfolio management (robo-advice);
- build on national competent authorities' (NCA) supervisory experience on the application of suitability requirements (including the 2012 guidelines);
- take into account the outcome of studies in the area of behavioural finance; and
- provide additional details on some aspects that were already covered under the 2012 guidelines.

NCAs must notify ESMA whether they comply, or intend to comply, with the guidelines within two months of the date of publication. The guidelines will apply 60 calendar days after this date. The 2012 guidelines will cease to apply on the same date.

### **ESMA bond liquidity assessment**

On 7 May 2018, ESMA published its first liquidity assessment for bonds subject to the pre- and post-trade

requirements of MiFID II and MiFIR. ESMA's assessment of the European bond market for the first quarter of 2018 found 220 bonds (out of 71,000 for which the assessment was executed) to be sufficiently liquid to be subject to MiFID II's real-time transparency requirements. The full list of liquid bonds is available through [ESMA's Financial Instruments Transparency System \(FITRS\)](#).

The ESMA liquidity assessment for bonds is based on a quarterly assessment of quantitative liquidity criteria, such as the daily average trading activity (trades and notional amounts) and number of days traded per quarter. The quality of ESMA's assessment depends on the data submitted to ESMA: the data received so far, for Q1 2018, is not fully complete for most instruments. These data completeness and quality issues result in a lower number of liquid instruments identified compared to ESMA's earlier transitional transparency calculations.

ESMA will update its bond market liquidity assessments quarterly. However, additional data and corrections submitted to ESMA may result in further updates within each quarter, published in FITRS (which shall be applicable the day following publication). The transparency requirements for bonds deemed liquid as at 7 May 2018, will apply from 16 May 2018 to 15 August 2018, the date from which the next quarterly assessment, to be published on 1 August 2018, will become applicable.

### **ESMA Opinion on the treatment of packages under the trading obligation for derivatives**

On 21 March 2018, ESMA issued an [Opinion on the treatment of packages under the trading obligation for derivatives](#), under MiFIR.

MiFID II's trading obligation for derivatives does not provide for a tailored regime for packages, which is likely to result in the divergent application of the trading obligation for derivatives in the EU. In order to ensure the consistent application of the trading obligation across the Union, ESMA decided to issue an Opinion clarifying, through a positive list, the categories of packages for which the derivative components subject to the trading obligation are always required to be traded on a trading venue.

(Package orders/transactions are composed of two or more financial instruments that are priced as a single unit, simultaneously executed, and where the execution of each component is contingent on the execution of all other components.)

### **ESMA provides one-stop company portal**

On 7 May 2018, ESMA inaugurated a [new companies' portal](#) to enable investors to seek information on whether a financial service provider is authorised within in the European Union. The portal provides investors with a one-stop-shop register, including for:

- MIFID Investment firms including Systematic Internalisers;
- MIFID Trading venues;
- MIFID data reporting service providers;
- UCITS management companies;
- AIFMD fund managers including funds managed/marketed in the Union.



## **Joint ESMA and EBA guidelines on the assessment of the suitability of members of the management body**

On 26 September 2017, ESMA and EBA published a [Final report Joint ESMA and EBA Guidelines on the assessment of the suitability of members of the management body and key function holders under the Capital Requirements Directive and MiFID II](#).

These Guidelines enter into force on **30 June 2018**.

These Guidelines aim to harmonise and improve suitability assessments within EU financial sectors, and to ensure sound governance arrangements in financial institutions in line with the Capital Requirements Directive (Directive 2013/36/EU) and MiFID II. The Guidelines highlight the importance for institutions to consider whether candidates have the knowledge, qualification and skills necessary to safeguard proper and prudent management of the institution. The Guidelines also foster more diverse management bodies and, therefore, contribute to improved risk oversight and resilience of institutions.

## **II. MARKET ABUSE REGULATION**

The current version of the ESMA [Questions and Answers on the Market Abuse Regulation](#) is dated 23 March 2018 (with a new question on emission allowances on 23 March 2018).

The current version of the ESMA [Questions and Answers on the common operation of the Market Abuse Directive](#) is dated 1 April 2016.

## **III. EMIR**

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

On 30 May 2018, ESMA updated its [EMIR Q&A](#) on practical questions regarding EMIR. The updated Q&A provides clarification on reporting to trade repositories.

## **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.

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

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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).

The review of the treatment of variation margin for physically-settled FX forwards is ongoing and is part of the overall EMIR review - see EMIR review below. For UK FCA position on regulatory forbearance, please refer to section 6 below.

## **EMIR review - revised rules**

The proposed Regulation to amend EMIR 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 (EMIR review (part 1)), will be discussed in a plenary session of the European Parliament on 11 June 2018 (indicative date). The relevant committee of the European Parliament voted to amend EMIR on 16 May 2018. The proposed new rules will introduce simpler clearing rules, distinct clearing thresholds for small and non-financial firms and temporarily exempt pension funds from the clearing obligation.

The EMIR review also proposes a Regulation amending EMIR as regards the procedures and authorities involved for the authorisation of CCPs and requirements for the recognition of third-country CCPs.



## 2. Anti-Money Laundering

### MLD 5 - The Council of the European Union adopts MLD 5

On 14 May 2018, the Council adopted the [proposed 5<sup>th</sup> Money Laundering Directive](#) (MLD 5). MLD 5 amends the 4th Money Laundering Directive (MLD 4). The main changes from MLD 4 are:

- broadening access to information on beneficial ownership, improving transparency in the ownership of companies and trusts;
- addressing risks linked to prepaid cards and virtual currencies;
- cooperation between financial intelligence units;
- improved checks on transactions involving high-risk third countries.

The European Parliament formally adopted the proposed 5th Anti-Money Laundering Directive in April 2018.

### MLD 5 - criminal law sanctions

On 7 June 2018, the Council confirmed the political agreement reached in relation to new rules on using criminal law to counter money laundering.

The final compromise agreed establishes that:

- Money laundering activities will be punishable by a maximum term of imprisonment of 4 years;
- Additional sanctions and measures may be imposed by judges together with imprisonment;
- Aggravating circumstances will apply to cases linked to criminal organisation or for offences conducted in the exercise of certain professional activities;
- Legal entities will also be held liable for certain money laundering activities and can face a range of sanctions.

The next step is for the texts to be adopted by the Council and the European Parliament.

## 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 September 2016 on FATCA or CRS. Please refer to Issues [12](#) and [10](#) of MAP S.Platis Regulatory Radar for the latest information on FATCA and CRS, respectively.

## 5. Fund Regulation

### UCITS and AIFMD

#### ESMA updated Q&As

The most recent ESMA [questions and answers document \(Q&A\) for UCITS](#) are dated 25 May 2018. The Q&A document includes one new question and answer on the application of remuneration disclosure requirements to staff of the delegate of an UCITS management company to whom investment management functions have been delegated.

#### 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.

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. UK – Developments of Interest to Investment Firms

### FCA letter to the UK Treasury Committee - information on contracts for difference

On 21 March 2018, the FCA published [a letter dated 20 February 2018](#) from the chief executive of the FCA to the UK Treasury Committee. The letter sets out the FCA's response to the Treasury Committee hearing on 7 February 2018 and includes information, among other issues, on contracts for difference.

### FCA sets out its approach to supervision and enforcement

On 23 March 2018, the FCA published documents that explain their approach to regulation: [“Approach to Supervision”](#) explains the FCA's principles of supervision, highlighting the proactive, intelligence-led and data driven approach taken in engagement with regulated firms. The FCA intends to look at business models, culture and the things that drive behaviour within firms in order to prioritise their activities and take prompt and incisive action once harm is identified, and; [“Approach to Enforcement”](#) clarifies the FCA's aim to achieve fair and just outcomes in response to misconduct and to ensure the essay rules and requirements are obeyed.

## FCA publishes a discussion paper on transforming culture in financial services

On 12 March 2018, the FCA published a [discussion paper on transforming culture in financial services](#) which presents views from academics and industry thought leaders. The paper is intended to provide a basis for stimulating further debate on transforming culture in the sector. The paper is a set of essays that discuss what a good culture might look like, the role of regulation and regulators, how firms might go beyond incentives, and how to change behaviour for the better. The FCA would like all those with an interest in financial services to consider the issues in the paper and to engage in the debate about what constitutes a healthy culture, and how to promote it.

## 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.”*

This FCA statement remains in force.

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

## ESMA adopts temporary product intervention measures on CFDs and binary options

On 22 May 2018, ESMA formally adopted new measures on [the provision of contracts for differences \(CFDs\)](#) and [binary options](#) to retail investors. The new measures were published in the Official Journal on 1 June 2018 and will start to apply from 2 July 2018 for binary options and from 1 August 2018 for CFDs as follows:

1. Binary Options (from 2 July 2018) - a prohibition on the marketing, distribution or sale of binary options to retail investors; and
2. Contracts for Differences (from 1 August 2018) - a restriction on the marketing, distribution or sale of CFDs to retail investors. This restriction consists of:
  - a) leverage limits on opening positions by retail clients from 30:1 to 2:1, which vary according to the volatility of the underlying:
    - 30:1 for major currency pairs;
    - 20:1 for non-major currency pairs, gold and major indices;
    - 10:1 for commodities other than gold and non-major equity indices;
    - 5:1 for individual equities and other reference values;
    - 2:1 for cryptocurrencies;
  - b) a margin-close out rule on a per account basis i.e. when the sum of funds in the CFD trading account and the unrealised net profits of all open CFDs connected to that account falls to less than half of the total initial margin protection for all those open CFDs;
  - c) a negative balance protection on a per account basis This means the limit of a retail client's aggregate liability for all CFDs connected to a CFD trading account with a CFD provider to the funds in that CFD trading account;
  - d) preventing the use of incentives by a CFD provider. CFD providers will be required not to provide, directly or indirectly, retail investors with any form of monetary and non-monetary benefits that aim at incentivising retail investors to trade CFDs or to trade larger volumes of CFDs. The scope of the prohibition includes monetary benefits such as, but not limited to, the offering of bonuses in relation to the opening a new account or the offering of rebates on fees, including volume-based rebates, charged by an investment firm to its retail clients. Monetary benefits that do not constitute an incentive for retail investors to trade CFDs or to trade larger volumes of CFD, such as lower fees, not linked to volumes, for all retail clients, are allowed;
  - e) a firm specific risk warning delivered in a standardised way including the percentage of losses on a CFD provider's retail investor accounts.

The measures are intended to apply to retail investors residing in the European Economic Area and to third countries residents.

CIFs are not required to apply the product intervention measures to CFDs sold to retail clients prior to 1st of August. The restrictions apply to CFD positions entered into from the date the product intervention measures will apply (i.e. 1st of August 2018). As to the margin close-out protection and the negative balance protection, CIFs may choose to create separate sub-accounts for CFD positions opened prior to the implementation date or they may choose to extend the margin close-out protection and the negative balance protection to existing CFD positions.

For binary options, CIFs are required to cease the marketing, distribution or sale of binary options from the date the product intervention measures in relation to binary options will apply (i.e. 2 July 2018).

These measures will remain in force for a period of three months from the date of application. Before the end of the three months, ESMA will review the product intervention measures and consider whether to extend them for a further three months.

## **ESMA publishes an accompanying Q&As on its temporary product intervention measures on CFDs and binary options**

On 1 June 2018, ESMA published an accompanying [Q&As On ESMA's temporary product intervention measures on the marketing, distribution or sale of CFDs and Binary options to retail clients](#). The Q&As answers to practical questions in relation to:

- Existing contracts;
- Payments;
- Margin close-out protection;
- Aggregate liability;
- Monetary benefits;
- Binary options;
- CFDs referencing futures;
- Guaranteed stop loss orders.

## **8. CySEC Developments**

### **Announcement regarding the Re-registration in the public registry for 2018**

On 14 March 2018, CySEC issued an [Announcement](#) regarding the deletion from and re-registration in the Public Register of Certified Persons (the “public register”):

#### **Deletion from the public register**

Persons who have failed to renew their registration in the public register have been deleted from it.

## Re-registration - Renewal Process

Persons who have been deleted from the public register, due to failure to renew their registration, can submit a request for re-registration within 12 (twelve) months from the renewal deadline (the renewal deadline was 28 February 2018).

After the expiry of these 12 months, Re-registration will not be possible.

Before the expiry of these 12 months each deleted person may request re-registration up to 2 (two) times in total, regardless of the calendar year.

In order to re-register in the public register, Certified Persons must:

- a) cover the hours of continued professional training they might have missed;
- b) If it is the first request for re-registration, pay a re-registration fee of two hundred euro (€ 200) in addition to the amount of eighty euro (€ 80); OR  
If it is the second request for re-registration, pay a re-registration fee of five hundred euro (€ 500) in addition to the amount of eighty euro (€ 80).

Re-registrations can only be made through the following [link](#) and payments only through the JCC gateway.

## Announcement: The European Supervisory Authorities weigh the benefits and risks of Big Data

On 28 March 2018, CySEC informed investors and other interested parties, through the issuance of an [Announcement](#), that the Joint Committee of the European Supervisory Authorities ('ESAs'), namely the European Securities and Markets Authority, the European Banking Authority (EBA) and the European Insurance and Occupational Pensions Authority, published a report on Big Data analysing its impact on consumers and financial firms.

The ESAs have found that while the development of Big Data poses some potential risks to financial services consumers, the benefits of this innovation currently outweigh these. Many of the risks identified by the ESAs are mitigated by existing legislation. The report concludes that Big Data brings many benefits for the financial industry and consumers, such as more tailored products and services, improved fraud analytics, or enhanced efficiency of organisational internal procedures. On the other hand, financial services consumers should be made particularly aware of some of the risks posed by Big Data.

The ESAs have also created a [factsheet](#) on Big Data, aiming at informing consumers of financial services about the impact of Big Data. The factsheet provides consumers with the information about the potential benefits and risks of the use of Big Data techniques and aims to raise awareness of the measures consumers can take if they experience issues related to the use of Big Data.

The ESAs will continue to monitor any developments in this area in the coming years and invite financial firms to develop and implement good practices on the use of Big Data. For more details, the full text of the report is available [here](#).



## Announcement for accepting applications for the exams of certified persons for registration in the Public Registry

CySEC issued an [Announcement](#) informing all interested parties, that as of 30th of April 2018, will be accepting the submission of applications for the exams of certified persons for registration in the Public Registry.

The application procedure can only be performed online, through the following links on CySEC website.

[Greek examinations](#)

[English examinations](#)

Successful candidates are obligated to register in the Public Registry within two (2) weeks from the date of the Successful Candidates Announcement, through the link [here](#).

## ESMA Guidelines on MiFID II product governance requirements adopted by CySEC

On 30 March 2018, through the issuance of [Circular C261](#), CySEC informs the Regulated Entities that the [ESMA Guidelines](#) on MiFID II product governance requirements have been adopted by CySEC and therefore they should make every effort to comply with these Guidelines. These guidelines apply from 3 January 2018.

The aforesaid guidelines apply to:

- i. The Regulated Entities subject to any of the following requirements:
  - a. Article 9(3) of Directive 2014/65/EU1 (MiFID II);
  - b. Article 16(3) of MiFID II;
  - c. Article 24(1) and 24(2) of MiFID II;
  - d. Articles 9 and 10 of the Commission Delegated Directive (EU) 2017/5932 (MiFID II Delegated Directive);
- ii. National Competent Authorities with supervisory oversight of the Regulated Entities.

The purpose of the aforesaid guidelines is to provide more clarity on the product governance obligations for Regulated Entities. ESMA expects these guidelines to promote greater convergence in the implementation and application of the MiFID II requirements on product governance. In complying with these guidelines, ESMA anticipates a corresponding strengthening of investor protection. Annex V of these guidelines includes a number of illustrative examples. These examples do not form part of the guidelines but instead aim to assist firms and competent authorities in understanding how the guidelines apply.

## Specially Designated Nationals List Update

On 9 May 2018, CySEC, through the issuance of [Circular C266](#), informs its Regulated Entities for the update of the [Specially Designated Nationals List](#) ('the SDN List'), issued by the Department of the US Treasury's Office of Foreign Assets Control (OFAC) on 6 April 2018.

According to the Countering America's Adversaries through Sanctions Act ("CAATSA"), sanctions may be enforced against any natural/legal person and/or entity which is involved in a significant transaction or which facilitates the carrying out of such a transaction, with any person subject to such sanctions.

In this respect, CySEC argues its regulated entities to:

- Examine the provision of the sanctions implemented under CAATSA, (including the Specially Designed National List) and assess the extent to which the measures mentioned therein affect the regulated entities themselves, as well as their clients.
- Assess the risks they may undertake in case they are involved in a significant transaction or in facilitation of such transactions, with any person subject to sanctions.

In the case of a new/prospective client who is subject to the sanctions, regulated entities are urged to avoid the commencement of any business relationship with such person.

In the case of an existing client who is subject to the sanctions, regulated entities are urged to carefully examine the actions/measures which they may have to take (e.g. freezing of funds/accounts may be appropriate).

## Introduction of new rules governing derivatives on virtual currencies

On 15 May 2018, CySEC through the issuance of [Circular C268](#), informs Cyprus Investment Firms that, further to the European Securities and Markets Authority's ("ESMA") [decision](#) on 27 March 2018 to include Contracts For Differences ("CFDs") on virtual currencies into the scope of its product intervention measures, CFDs on virtual currencies are considered as financial instruments under the Investment Services and Activities and Regulated Markets Law of 2017 (the "Law").

The said Circular (C268) replaces [Circular C244](#) (as issued on 13 October 2017) regarding the trading in virtual currencies and/or trading in CFDs relating to virtual currencies.

In effect, virtual currencies may constitute an underlying variable in other derivative contracts including CFDs, options and futures (the "Derivative on Virtual Currencies"). To this end, CySEC clarified the following:

1. Any activity relating to virtual currencies is not currently regulated by CySEC, unless a virtual currency meets the criteria and falls under the existing regulatory framework as per CySEC's [announcement](#) dated 15 November 2017.
2. However, Derivatives on Virtual Currencies are now capable of qualifying as financial instruments under the Law. A "financial instrument" means those instruments specified in Part III of the First Appendix of the Law. Among the financial instruments listed in Part III of the First Appendix of the Law, Derivatives on Virtual Currencies may fall under the following:

- i. (4): “[...] any other derivative contracts relating to securities [...] which may be settled physically or in cash”;
- ii. (9): “financial contracts for differences”;
- iii. (10): “[...] any other derivative contracts relating to assets [...] not otherwise mentioned in this Section, which have the characteristics of other derivative financial instruments”.

3. Therefore, depending on their specific characteristics and use, providing investment services in relation to derivatives on virtual currencies will require specific authorisation by CySEC.

Further to the above CySEC underlined that CIFs conducting regulated activities in Derivatives on Virtual Currencies, including in CFDs on Virtual Currencies (hereinafter collectively referred to as “Derivatives on Virtual Currencies”) must be authorised and must comply with the applicable regulatory framework.

In addition, it is the view of CySEC and its peers that the risks associated with the underlying instrument in derivatives on virtual currencies are high. Hence, CIFs should consequently approach the provision of such services with caution, in the knowledge that close attention will be paid to all of their legal obligations. To this end, CySEC would like to particularly remind CIFs of their obligations to:

- i. act honestly, fairly and professionally, in accordance with the best interests of their clients;
- ii. provide fair clear and not misleading information to their clients;
- iii. provide appropriate guidance on and warnings of the risks associated with investments in those instruments;
- iv. have adequate product governance arrangements;
- v. execute orders on terms most favorable to the client;
- vi. maintain adequate capital.

Given the above:

- i. CIFs should thoroughly consider their obligations under the Law when designing/ manufacturing and/or distributing Derivatives on Virtual Currencies.
- ii. CIFs should inform their clients before investing into Derivatives on Virtual Currencies:
  - a) of the risks associated with these products. These risks should be stipulated in a specific risk warning;
  - b) that such products are complex, extremely risky, and usually highly speculative;
  - c) that they entail a high risk of losing all the invested capital;
  - d) that the values of virtual currencies values are subject to extreme price volatility and hence may result in significant loss over a short period of time;
  - e) they are not appropriate for all investors. As such, customers should not engage in trading in relation to such products if they a) do not have the necessary knowledge in this specific product; or b) if they cannot bear the loss of the entire invested amount. Customers must be fully aware of, and understand, the specific characteristics and risks in relation to these products;
  - f) of the fees and costs entailed. In particular, CIFs must disclose and explain any roll over fees.

- iii. In the event of a CIF providing investment services in relation to OTC Derivatives on Virtual Currencies, the CIF should ensure that the reference prices used in relation to the underlying asset are gathered from publicly available sources of good repute. CIFs should perform a thorough evaluation before selecting its pricing sources. Moreover, CIFs must undertake an ongoing evaluation and review of its pricing sources, in order to ensure that it complies with the best execution requirements.
- iv. CIFs must also include the risks associated with their activities relating to Derivatives on Virtual Currencies when calculating their capital adequacy ratios. Where relevant, they should adjust their risk mitigation strategies. CIFs should consider the potential impact of their activity in Derivatives on Virtual Currencies on their wider operations, and adequately address the risks associated with these activities in the context of their Internal Capital Adequacy Assessment Process (ICAAP). Taking into account the extremely volatile nature of virtual currencies, CIFs that engage in investment activities in relation to OTC derivatives on virtual currencies will be expected to maintain an adequate additional capital buffer of the highest quality of their capital (common equity tier 1 capital) in the context of their ICAAP, in order to enhance their resilience.
- v. In addition to the above, when providing services to clients in CFDs on virtual currencies, [ESMA's product intervention measures relating to Contracts for Differences and binary options](#) also apply. CIFs must therefore ensure that they also abide to the leverage limits (1:2), the margin close out rule, negative balance protection, the restriction on incentives and providing a firm-specific risk warning. It is also stressed that CIFs providing services to clients in CFDs on virtual currencies should also abide by the [ESMA Questions and Answers Relating to the provision of CFDs and other speculative products to retail investors under MiFID](#).

Finally, it is noted that CIFs should seek for the appropriate permission for the provision of services in relation to the category of financial instruments that the respective Derivative on Virtual Currency falls. If a CIF is not sure as to which category the specific Derivative on Virtual Currency may fall, it is encouraged to seek advice before submitting an application to CySEC.

CIFs offering such products without the appropriate permission will encounter enforcement actions.

## **Requirements of the Central Bank of the Russian Federation (the 'CBR') regarding the provision of investment services and/or the performance of investment activities in the territory of Russia**

On 1 June 2018, through the issuance of [Circular C269](#), CySEC informs Cyprus Investment Firms (the 'CIFs'), which intend to provide investment and ancillary services and/or perform investment activities in the territory of Russia, that they should comply with CBR's regulatory rules regarding the persons that are allowed to provide such services.

More specifically, foreign entities, their representatives and branches are not authorised to:

1. provide and/or perform activities of non-credit financial organisations, inter alia activity of professional securities market participants,
2. provide services of foreign entities in financial markets to unlimited number of persons on the territory of the Russian Federation or disseminate information regarding the said entities and/or their activity among unlimited number of persons on the territory of the Russian Federation.

Therefore, CIFs must prevent and refrain from actions related to misconduct, inter alia from actions aimed at concluding, in the territory of the Russian Federation, agreements/contracts for the provision of investment services and/or the performance of investment activities.

## ESMA Guidelines on stress tests scenarios under Article 28 of the MMF Regulation

On 1 June 2018 CySEC informed the Regulated Entities, through the issuance of [Circular C270](#), that the European Securities and Markets Authority (the “ESMA”) published on March 21, 2018, [Guidelines](#) (“the Guidelines”), with ref. no. ESMA34-49-115, on stress tests scenarios under Article 28 of the [MMF Regulation](#) (“the MMF Regulation”).

The Guidelines apply to:

- i) national competent authorities; and
- ii) money market funds and managers of money market funds as defined in the MMF Regulation.

The purpose of the Guidelines is to ensure common, uniform and consistent application of the provisions in Article 28(1) of the MMF Regulation. In particular, and as specified in Article 28(7) of the MMF Regulation, they establish common reference parameters of the stress test scenarios to be included in the stress tests taking into account the following factors specified in Articles 28(1) of the MMF Regulation:

- (i) hypothetical changes in the level of liquidity of the assets held in the portfolio of the MMF;
- (ii) hypothetical changes in the level of credit risk of the assets held in the portfolio of the MMF, including credit events and rating events;
- (iii) hypothetical movements of the interest rates and exchange rates;
- (iv) hypothetical levels of redemption;
- (v) hypothetical widening or narrowing of spreads among indexes to which interest rates of portfolio securities are tied;
- (vi) hypothetical macro systemic shocks affecting the economy as a whole.

The Guidelines apply from the dates specified in Articles 44 and 47 of the MMF Regulation and CySEC will incorporate them into its supervisory practices as appropriate, including where, particular guidelines within the document are directed primarily at the industry.

# ESMA Product intervention Decision on CFDs and Binary Options

On 4 June 2018, through the issuance of [Circular C271](#), CySEC informs Cyprus Investment Firms (the 'CIFs') for the formal adoption of ESMA's [product intervention measures on CFDs and binary options](#). The measures have been published [in the Official Journal of the European Union \(OJ\) on 1 June 2018](#).

ESMA's product intervention measures will start to apply from 2 July 2018 for binary options and from 1 August 2018 for CFDs.

For further details on the matter, refer to Section 7 above regarding EU Developments in the interest of CFDs and Binary Options providers.



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

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

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