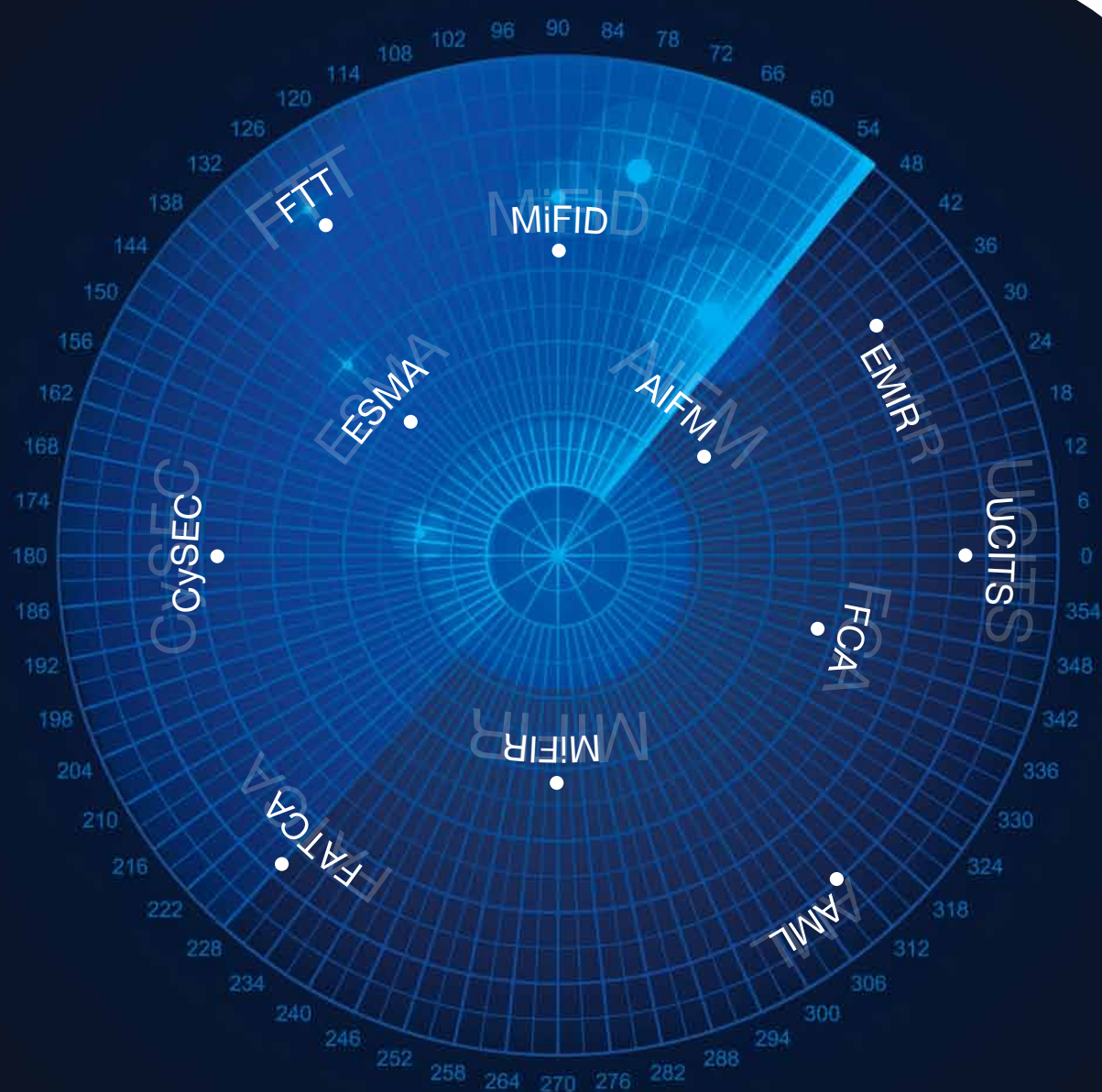


REGULATORY RADAR

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





Index

Developments in the EU Financial Services Legislation Affecting Investment Firms > **04**

Anti-Money Laundering > **10**

EU Financial Transaction Tax (FTT) > **11**

Taxation > **11**

Fund Regulation > **11**

UK – Developments of Interest to Investment Firms > **12**

EU - Developments of interest to CFDs and Binary Options providers > **13**

CySEC Developments > **14**

Acronyms & Definitions used > **20**

Remarks/Disclaimer > **21**

60 Second Summary

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

- **MiFID II**
 - ESMA continues to issue guidance in the form of questions and answers, frequently asked questions; opinions, reports and other publications as well as issuing market data
 - ESMA issued a reminder to firms on their MiFID obligations on disclosure of information to clients in the context of the United Kingdom withdrawing from the European Union
 - ESMA issued Advice on Initial Coin Offerings and Crypto-Assets assessing including its assessment of whether these are financial instruments under MiFID
- **EMIR**
 - Mandatory margin requirements for non-cleared OTC derivatives was introduced on a staggered basis: variation margin is required except for physically-settled FX forwards; initial margin applies on dates commencing from 4 February 2017 to 1 September 2020
 - Proposals to revise EMIR are close to being finalised as part of the “trilogue” process
 - ESMA has invited Member States’ national competent authorities to apply regulatory forbearance in relation to the requirement for variation margin for physically-settled FX forwards, the clearing and trading obligations for small financial and certain non-financial counterparties and pension scheme arrangements on the basis that all these obligations are being reviewed and modified

2. Anti-Money Laundering Legislation

- The 5th Anti-Money Laundering Directive must be transposed into national law by Member States by 10 January 2020, with early transposition being urged as part of a new action plan on anti-money laundering. The Directive on combatting money laundering by criminal law came into force on 2 December 2018
- The European Commission adopted new list of third countries with deficiencies in anti-money laundering and countering the financing of terrorism

3. EU Financial Transaction Tax (FTT)

- Political decisions on FTT postponed until Brexit outcome is known

4. Taxation

- No update

5. Fund Regulation

- **PRIIPS Regulation**
 - The European Supervisory Authorities have decided to not propose amendments to the Key Investor Document (KID) prior to a more comprehensive review; in the interim, a statement in relation to performance scenarios was issued

6. UK - Developments of Interest to Investment Firms

- Brexit webpage gives guidance to regulated firms; a temporary permissions regime is available

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

- ESMA renewed its temporary product intervention measures for CFDs and binary options. The prohibition relating to binary options will run for a further three months, from 2 April 2019. The prohibition relating to CFDs runs for a further three months, from 1 February 2019.

8. CySEC Developments

- Amendments to the Directive regarding fees and charges paid by regulated entities
- Policy Statement regarding the risk management arrangements of CIFs offering investment services in CFDs
- Publication of Cyprus National Risk Assessment on Money Laundering and Terrorist Financing
- Repeal and replacement of Directive regarding the certification of persons and certification registers

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

I. MiFID II

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

ESMA's MiFID/MiFIR data

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 issues transparency calculations for equity and equity-like instruments

On 6 March 2019, ESMA made available the annual transparency calculations for equity and equity-like instruments (the ESMA website link is above under “Financial Instruments Transparency System (FITRS) Database for equity and non-equity transparency calculation results”). By way of background, MiFID II/MiFIR introduced pre-trade and post-trade transparency requirements for equity and non-equity instruments. Pre-trade transparency requirements may be waived for transactions, whose size is above large-in-scale thresholds (LIS), and systematic internalisers (SIs) have pre-trade transparency obligations for instruments traded on a traded venue which are liquid and when dealing with orders up to the standard market size (SMS). The publication of post-trade information can be deferred for transactions whose size is above large-in-scale thresholds (LIS). Currently, there are 1,344 liquid shares and 389 liquid equity-like instruments other than shares, subject to MiFID II/MiFIR transparency requirements. These calculations shall be applicable from 1 April 2019, until then the transitional transparency calculations continue to apply.

ESMA postpones publication of calculation of LIS and SSTI thresholds for bonds

On 1 March 2019, ESMA announced it would delay the publication of the annual calculation of the large in scale (LIS) and size specific to the instruments (SSTI) thresholds for bonds. By way of background, MiFID II/MiFIR introduced pre-trade and post-trade transparency requirements for equity and non-equity instruments. For transactions whose size is above the relevant LIS and the SSTI thresholds pre-trade transparency requirements may be waived and the publication of post-trade information can be deferred. The transparency requirements based on the results of such calculations shall apply from 1 June 2019 until 31 May 2020. ESMA is aiming to ensure that publication will take place later in March 2019.

ESMA issues latest Double Volume Cap data

On 15 February 2019, ESMA updated its website (the ESMA website link is above under “Double volume cap mechanism data”) with the latest set of double volume cap (DVC) data. By way of background, the double volume cap mechanism aims to limit so called “dark trading” in equities allowed under the reference price waiver and the negotiated transaction waiver. The DVC is calculated per instrument (ISIN) based on the rolling

average of trading in that instrument over the last 12 months. The DVC data and calculations published cover the period of 1 January 2018 to 31 December 2018. Trading under the waivers for all new instruments in breach of the DVC thresholds should be suspended from 20 February 2019 to 19 August 2019. The instruments for which caps already existed from previous periods will continue to be suspended. As of 15 February 2019, there is a total of 378 instruments suspended.

ESMA makes available bond liquidity data

On 1 February 2019, ESMA updated its website (the ESMA website link is above under “Financial Instruments Transparency System (FITRS)”) with bond liquidity data. By way of background, MiFID II introduced pre- and post-trade transparency requirements for equity and non-equity instruments, including for bonds. Post-trade, MiFID II requires real-time publication of the price and quantity of trades in liquid bonds. It is possible to defer the publication of post-trade reports if the instrument does not have a liquid market, or if the transaction size is above large-in-scale thresholds (LIS), or above a size specific to the instrument (SSTI). In order to assist market participants to know whether a bond should be considered as liquid or not, ESMA publishes these quarterly liquidity assessments for bonds. ESMA made available its liquidity assessment for bonds available for trading on EU trading venues at the end of December 2018. For this period, there are currently 439 liquid bonds subject to MiFID II transparency requirements. The transparency requirements for bonds deemed liquid today will apply from 16 February 2019 to 15 May 2019.

ESMA updates plan for systematic internaliser regime calculation and publications

On 30 January 2019, ESMA updated its action plan (within the updated Q&As on MiFID II and MiFIR transparency topics section 7 Question 1 – see below for the link to the Q&A). By way of background, MiFID II and MiFIR stipulates that investment firms dealing on own account when executing client orders over the counter (OTC) on an organised, frequent, systematic and substantial basis are subject to the mandatory systematic internaliser (SI) regime. ESMA, upon request of market participants, decided to compute, on a voluntary and best effort basis, the total volume and number of transactions executed in the EU in order to help market participants in the performance of the SI test since that data is essential for the operation of the SI regime and is not otherwise easily available. ESMA was required to amend its action plan as it considered that data completeness for various non-equity asset classes has not yet reached adequate levels. ESMA therefore considers it premature to publish the SI calculations for non-equity instruments other than bonds at this stage. The updated action plan maintains the ongoing publication for equity, equity-like instruments and bonds while postponing the publication for derivatives and other non-equity instruments until at the latest 2020. For the current data please refer to the ESMA website link above under “Data for the systemic internaliser calculations”.

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

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

On 1 February 2019, 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:

- Approved Publication Arrangement (APA) reports to competent authorities and ESMA;
- Identification of high frequency trading technique;
- Publication of request for market data (RFMD) transactions;

- Default transparency regime for equity instruments (amendment to an existing Q&A); and,
- Default Large In Size (LIS) and Size Specific To Instrument (SSTI) thresholds for bonds.

Q&A on MiFID Investor Protection and Intermediaries

The current Q&A on [investor protection and intermediaries topics](#) is dated 3 October 2018.

Q&A on MiFIR data reporting

The current [questions and answers \(Q&As\) documents on MiFIR data reporting](#) is dated 4 February 2018.

ESMA Advice on Initial Coin Offerings and Crypto-Assets

On 9 January 2019, ESMA published its [Advice](#) to the European Commission, Council and Parliament on initial coin offerings and crypto-assets. The Advice clarifies the existing EU rules applicable to crypto-assets that qualify as financial instruments, and provides ESMA's position on any gaps and issues in the current EU financial regulatory framework for consideration by EU policymakers. These gaps and issues fall into two categories:

- For crypto-assets that qualify as financial instruments under MiFID, there are areas that require potential interpretation or re-consideration of specific requirements to allow for an effective application of existing regulations; and
- Where these assets do not qualify as financial instruments, the absence of applicable financial rules leaves investors exposed to substantial risks. At a minimum, ESMA believes that Anti Money Laundering requirements should apply to all crypto-assets and activities involving crypto-assets. There should also be appropriate risk disclosure in place, so that consumers can be made aware of the potential risks prior to committing funds to crypto-assets.

The Advice allows the EU Institutions to consider possible ways in which the noted gaps and issues may be addressed and subjected to further analysis. ESMA will continue to actively monitor market developments around crypto-assets while cooperating with NCAs and global regulators.

ESMA Statement - Reminder to firms on their MiFID obligations on disclosure of information to clients in the context of the United Kingdom withdrawing from the European Union

On 19 December 2019, ESMA issued a [Statement](#) to remind investment firms (and credit institutions) providing investment services of their obligations to provide clients with accurate disclosure on the impact on the provision of services and investors' rights that may emerge from the withdrawal of the United Kingdom from the European Union. The Statement is addressed to the UK firms that provide services to the EU-27 countries (whether directly or through a branch), as well as to EU-27 firms that interact with clients based in the UK (whether directly or through of a branch).

ESMA notes that MiFID II contain several requirements related to the provision of information to clients and potential clients, which are relevant in the context of the preparation for Brexit and provides guidance on some of the areas which should be covered including: impact of UK departure, actions the firm is taking, implications

of any corporate restructuring and contractual rights. ESMA and the National Competent Authorities will continue to monitor developments, including by engaging with firms to assess the level of firms' preparedness and to ensure that their clients are appropriately informed in the context of the firms' preparation for Brexit.

II. MARKET ABUSE REGULATION

The current version of the ESMA [Questions and Answers on the Market Abuse Regulation](#) is dated 12 November 2018. This Q&A clarifies the scope of the trading restrictions for persons discharging managerial responsibilities.

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 4 February 2019, ESMA updated its [EMIR Q&A](#) on practical questions regarding EMIR. The updated Q&A provides clarification on data reporting requirements.

ESMA statement on clearing and trading obligations for small financial counterparties

On 31 January 2019, ESMA published a [statement](#) regarding the challenges that certain small financial counterparties would face to prepare for the 21 June 2019 deadline to start CCP clearing and trading on trading venues some of their OTC derivative contracts, as well as challenges that reporting counterparties would face regarding the backloading requirement by 12 February 2019.

Under EMIR, the clearing obligation start date for counterparties in Category 3 — financial counterparties that are below €8 billion in aggregate month-end average of outstanding gross notional amount of non-cleared derivatives at group level that meet certain criteria — is on 21 June 2019, for the interest rate and credit derivative classes subject to the clearing obligation. The European Commission's proposal to amend EMIR, published on 4 May 2017 (Refit), creates a new category of financial counterparties whose derivative positions are below the clearing thresholds and that will be exempted from the clearing obligation, the so-called small financial counterparties.

Given that the Refit negotiations have not been finalised, it is yet not known when the resulting text is expected to start applying, potentially after the phase-in for Category 3 counterparties expires. There could therefore be a timing gap during which small financial counterparties, whose derivative positions are below the clearing thresholds, would need to have clearing arrangements in place and start clearing their derivative contracts, before they are once again no longer required to do so once Refit comes into force.

From a legal perspective, neither ESMA nor competent authorities possess any formal power to dis-apply a

directly applicable EU legal text or even delay the start of some of its obligations. Therefore, any change to the application of the EU rules would need to be implemented through EU legislation.

ESMA nonetheless acknowledges the difficulties that certain small financial counterparties whose derivative positions are below the clearing thresholds would face to prepare for the 21 June 2019 deadline to start clearing with CCPs, and trading on trading venues some of their OTC derivative contracts, in the eventuality that the amendments introduced in Refit are not applicable by then. In this respect, ESMA expects competent authorities not to prioritise their supervisory actions towards financial counterparties whose positions are expected to be below the clearing thresholds when Refit enters into force, and to generally apply their risk-based supervisory powers in their day-to-day enforcement of applicable legislation in this area in a proportionate manner. This is an invitation by ESMA to NCAs to apply regulatory forbearance.

ESMA statement on clearing and trading obligations for certain non-financial counterparties

On 31 October 2018, ESMA published a [statement](#) regarding the challenges that certain groups as well as certain non-financial counterparties above the clearing threshold (NFC+) would face on 21 December 2018 to start Central counterparty (CCP) clearing and trading on trading venues some of their over-the-counter (OTC) derivative contracts.

Under the European Markets Infrastructure Regulation (EMIR), both: (i) the current derogation from the clearing obligation for certain intragroup transactions concluded with a third country entity; and (ii) the phase-in for counterparties in category 4, broadly speaking NFCs+, expire on 21 December 2018, for the interest rate derivative classes denominated in the G4 currencies subject to the clearing obligation.

In relation to (i), ESMA has drafted amendments to extend the derogation expiration to 21 December 2020. In relation to (ii), the European Commission's proposal to amend EMIR (currently under negotiation, see below) envisages that NFCs+ would be subject to the clearing obligation only in the asset class or asset classes where their level of activity is above the clearing threshold. If these amendments have not entered into force by 21 December 2018, these counterparties would need to have clearing arrangements in place and to start clearing these transactions.

From a legal perspective, neither ESMA nor competent authorities possess any formal power to dis-apply a directly applicable EU legal text or even delay the start of some of its obligations. However, ESMA acknowledging the difficulties that certain groups as well as certain NFCs+ would face on 21 December 2018 to start clearing with CCPs and trading on trading venues some of their OTC derivative contracts in the eventuality that the amendments in the draft RTS are not applicable by then, expects competent authorities to not prioritise their supervisory actions towards group entities that benefit from the derogation for intragroup transactions meeting certain conditions on and after 21 December 2018, and towards NFCs+ that are not above the clearing threshold (as prescribed under the current EMIR legislation) in the interest rate derivative asset class on or after 21 December 2018. This is an invitation by ESMA to NCAs to apply regulatory forbearance.

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).

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, which remains in force in the UK, please refer to section 6 below.

ESMA Communications on the clearing and the trading obligation for pension scheme arrangements

EMIR introduced a temporary exemption for pension scheme arrangements (PSAs) from the clearing obligation to allow time for a suitable technical solution for the transfer of non-cash collateral as variation margins to be developed by CCPs, and provided for two possible extensions of this temporary extension.

Following the two possible extensions there is no legal mechanism to further extend this temporary exemption

under EMIR. The final exemption from the clearing obligation for PSAs under EMIR expired on 16 August 2018.

On 3 July 2018, ESMA issued a [Communication](#) explaining that it was aware of the difficulties that PSAs will face during the timing gap between the expiry of the current EMIR clearing exemption on 16 August 2018 and the day on which the EMIR review comes into force.

The Communication invites national competent authorities to exercise regulatory forbearance (i.e. to not require PSAs and their counterparties to start putting processes in place to clear derivatives for which they are currently exempt from clearing under EMIR) during such timing gap.

In a further [Communication](#) on 8 August 2018, ESMA acknowledged the difficulties that PSAs trading certain OTC derivative contracts will also face during this timing gap, to meet the trading obligation under Markets in Financial Instruments Regulation (MiFIR).

ESMA invited national competent authorities to exercise regulatory forbearance (i.e. not require PSAs and their counterparties to start putting processes in place to trade their OTC derivative contracts on trading venues, which they are currently exempt from under MiFIR), during such timing gap. This direction given under the Communication remains in force.

EMIR review - revised rules

The proposed Regulation to amend EMIR (Refit) introduces simpler clearing rules, a new category of “small financial counterparties” which will be exempted from clearing obligations, reduced clearing obligations for non-financial counterparties, extending by a further two years the temporary exemption of pension scheme arrangements from the clearing obligation, and modifications to the reporting obligations. 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. The proposals have been in trilogue negotiations since June 2018.

On 5 February 2019, the Council of the EU and the European Parliament announced a preliminary political agreement on the proposals. The deal will now be submitted for final endorsement by EU ambassadors after which the Parliament and the Council will be asked to adopt the proposed regulation. The final compromise text is [here](#).

2. Anti-Money Laundering

European Commission adopted a new list of third countries with deficiencies in anti-money laundering and countering the financing of terrorism

On 13 February 2019, the European Commission adopted a [Delegated Regulation supplementing the fourth and fifth Money Laundering Directives](#) (MLD4 and MLD5) by identifying an updated list of high-risk

third countries with strategic deficiencies in relation to anti-money laundering and countering the financing of terrorism (AML/CFT). This is the first list adopted using the extended criteria and methodology under MLD 5. The Commission has concluded that 23 third countries have strategic deficiencies; the countries are listed in the [Annex](#) to the Delegated Regulation. The Delegated Regulation will be submitted to the Council of the EU and the European Parliament for approval. Some Member States have already indicated their opposition to the inclusion of Saudi Arabia, Guam, the US Virgin Islands, American Samoa and Puerto Rico on the list.

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 - ESMA Q&As

The current ESMA [questions and answers document \(Q&A\) for UCITS](#) is dated 23 July 2018.

AIFMD – Commission Report on AIFMD and ESMA Q&As

In January 2019, the European Commission published a [Report on the Operation of the Alternative Investment Fund Management Directive](#) which was prepared by KPMG (which the Commission engaged to carry out research on how AIFMD has worked in practice) and submitted to the Commission on 10 December 2018. This report provides and assesses evidence for the European Commission's review of AIFMD pursuant to Article 69 AIFMD. The key finding of the report is that AIFMD has played a major role in helping to create an internal market for AIFs and a harmonised and stringent regulatory and supervisory framework for AIFMs; most areas of the provisions are assessed as having contributed to achievement of the specific and operational objectives, to have done so effectively, efficiently and coherently, to remain relevant and to have EU added value. The Commission will continue its work on the review and report in 2019.

The current ESMA [questions and answers document \(Q&A\) for AIFMD](#) is dated 4 October 2018.

PRIIPs Key Investor Document Regulation – Final report

On 8 February 2019, the Joint Committee of the European Supervisory Authorities (ESAs) published their [Final Report](#) relating to the proposed amendments to the Delegated Regulation on key information documents for packaged retail and insurance-based investment products (PRIIPs KID Regulation).

Taking into account the feedback received in the consultation and the legislative developments in the European Parliament (which the ESAs are assuming are likely to be ratified by the European Commission and the Council) to delay the review of PRIIPs to 31 December 2019 and to extend the exemption for UCITS and relevant non-UCITS funds until 31 December 2021, the ESAs decided:

- To not propose targeted amendments at this stage
- To initiate a more comprehensive revision of the PRIIPs Delegated Regulation to be undertaken in the course of 2019, including to launch a consultation on the draft Regulatory Technical Standards

The ESAs also issued a [Supervisory Statement](#) regarding the performance scenarios. The ESAs recommend PRIIP manufacturers to include a warning in the KID to ensure that retail investors are fully aware of the limitations of the figures provided in the performance scenarios.

6. UK – Developments of Interest to Investment Firms

UK Financial Conduct Authority Brexit page

The [FCA's Brexit webpage](#) has been updated and provides the FCA's guidance to regulated UK firms and EEA firms conducting business in the UK. The UK has introduced a temporary permissions regime which will allow EEA-based firms passporting into the UK to continue new and existing regulated business within the scope of their current permissions in the UK for a limited period, while they seek full FCA authorisation, if the UK leaves the EU on exit day without an implementation period in place. It will also allow EEA-domiciled investment funds that market in the UK under a passport to continue temporarily marketing in the UK. Firms and funds need to notify the FCA that they want to enter the regime and obtain a temporary permission. The notification window opened on 7 January 2019 and closes at the end of 28 March 2019.

UK Financial Conduct Authority focus in 2019

Areas of focus in 2018 were culture, financial crime (anti-money laundering, innovation and technologies e.g. cryptocurrencies), market conduct (insider dealing, market manipulation, listing rules breaches), and retail markets and protecting consumers and cyber and operational resilience. It is expected that these areas of focus in 2018 will remain areas of focus in 2019.

UK Financial Conduct Authority - culture and diversity in financial services

On 19 December 2018, the FCA published a [speech](#) by Christopher Woolard, FCA Executive Director of Strategy and Competition, on diversity in financial services. In his speech Mr. Woolard stated that diversity is a supervisory priority and a core part of how we assess culture in a firm. The FCA's message to firms is clear: "non-financial misconduct is misconduct, plain and simple".

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 of interest to CFDs and Binary Options providers

ESMA renews its restrictions on binary options for a further three months

On 14 February 2019, ESMA agreed to renew its prohibition on the marketing, distribution or sale of binary options to retail investors, in effect since 2 July 2018, from 2 April 2019 on the same terms as the previous renewal that started to apply on 2 January 2019.

ESMA’s existing restrictions on contracts for differences for a further three months

On 19 December 2018, ESMA agreed to renew its restriction on the marketing, distribution or sale of contracts

for differences (CFDs) to retail clients, in effect since 1 August, from 1 February 2019 for a three-month period.

ESMA updates its Q&As on temporary product intervention measures on CFDs and binary options

On 9 November 2018, ESMA updated its accompanying [Q&As On ESMA's temporary product intervention measures on the marketing, distribution or sale of CFDs and Binary options to retail clients](#). This is the latest update of the Q&As.

8. CySEC Developments

Amendments to the Law regulating the structure, responsibilities, powers, organisation of the (Cyprus) Securities and Exchange Commission and other related issues

The Republic of Cyprus on 30 November 2018 published, in its Government Gazette, Law [137\(I\)/2018](#) that amends the Cyprus Securities and Exchange Commission Laws. Among the changes the amending law ushers in is increasing the number of members of CySEC's Board of Directors to seven members from five.

Moreover, CySEC shall establish an Audit Committee comprised by members of the Board of Directors of CySEC (excluding the Chairman and the Vice Chairman). The scope of the Audit Committee's responsibilities shall be decided by the Board of Directors of CySEC.

Directive DI87-03(A) on Payable Charges and Fees

On 10 December 2018 CySEC published [Directive DI87-03\(A\)](#) amending Directive DI87-03 on Payable Charges and Fees. The amending directive removed the requirement for CIFs to pay five thousand euro where the CIFs intended to conduct investment or ancillary services in relation to CFDs on cryptocurrencies. Moreover the amending directive included charges of one thousand euro for every change in the composition of the CIF's board of directors relating to the appointment of a non-executive director, who has been assessed by CySEC within a two-year period prior to submitting the new application for his/her appointment.

Technical clarifications regarding AIFMD reporting obligations

On 17 December CySEC through the issuance of [Circular C287](#) provided further guidance to registered and authorised AIFMs with respect to their reporting obligations under articles 4(3)(d) and 31 of the AIFM Law of 2013 as amended. The clarifications included guidance on the frequency of reporting, initial reporting for newly established AIFs, contents and preparation of the reports as well as emphasizing the need for AIFMs to take rectification actions in case in case where error feedback is received via the TRS.

Reminder of Guidelines on complex debt instruments and structured deposits

On 19 December CySEC through the issuance of [Circular C288](#) reminded CIFs and AIFMs offering the non-core

services of 6(6) of the AIFM Law, regarding ESMA's Guidelines on Complex debt instruments and structured deposits (refer to MAP S.Platis [Regulatory Radar Issue 010](#)) that were applicable since January 2017 on the issue of assessment of debt instruments/structured deposits that incorporate a structure that makes it difficult for the client to understand risks involved.

Updated Management Companies and Self-Managed Funds Quarterly Statistics -Revised Form

On 21 December 2018 CySEC with the issuance of [Circular C289](#) informed UCITS Management Companies, AIFMs, AIFLNP managers, as well as self-managed collective investment schemes authorised by CySEC of an updated version of the Quarterly Statistics Form (QST-MC). The updated form includes additional information requested by CySEC, regarding, inter alia, breakdown of UCI investors in accordance to their classification (retail, well informed, professional), geographical breakdown of NAV etc. CySEC informed obliged entities that going forward only this version of the forms would be accepted.

Guidelines on certain aspects of the MiFID II suitability requirements (ESMA35-43-116)

On 21 December 2018, CySEC with the issuance of [Circular C290](#) informed regulated entities providing Investment Advice and/or Portfolio Management services that CySEC adopts ESMA's guidelines on certain aspects of the MiFID II suitability requirements (ESMA35-43-116). The guidelines begin applying 60 calendar days from the day of the Circular's issuance.

CySEC publishes the first issue of the CySEC Statistical Bulletin

On 27 December 2018, CySEC [published](#) its first Statistical Bulletin where CySEC presented key findings collected for the purposes of the Risk Based Supervision Framework (RBS-F) for the years 2015, 2016 and 2017. The Statistical Bulletin provides various data on Regulated Entities by CySEC such as, number of persons employed by the Entities, Trading Income, number of Clients of Cyprus Regulated Entities and more. CySEC expects that going forward it will publish the Statistical bulletin on annual basis enriching it with additional content.

CySEC's Review of compliance with the reporting obligation under the Regulation on OTC Derivatives, Central Counterparties and Trade Repositories ('EMIR') [Regulation (EU) No 648/2012]

On 3 January 2019 through the issuance of [Circular C291](#), CySEC informed regulated entities of the CySEC review of the quality of data reported to Trade Repositories under Article 9(1) of EMIR.

The review identified areas of concern asking regulated entities to consider whether they comply with their EMIR reporting obligations.

Key problematic areas identified were:

- CIFs were not updating Trade Repositories about terminated positions.
- No reconciliations were performed between open positions in CIF records and Trade Repository records resulting in failures.
- Counterparties to a trade failed to pair/match their reports by using different Unique Trade Identifiers resulting in unpaired trades.
- When CIFs were using an intermediary to report to Trade Repositories on their behalf (reporting/submitting firms), no proper communication between the two parties took place, and as a result, the failures were not corrected.

CySEC advised regulated entities to nominate a person from within their firm who will be responsible for the daily monitoring of EMIR reporting. CySEC further stressed that fulfilling the reporting obligation will require dedicated oversight to ensure issues are addressed and/or failures are rectified.

CySEC publishes Quarterly Statistics Reports for Management Companies and Undertaking of Collective Investments.

On 8 January 2019 CySEC [published](#) its first Quarterly statics presenting key findings. The Quarterly statistics presents data concerning AIFs, UCITs and their Management Companies for the third quarter of 2018. In the Quarterly statistics provides data such as assets under management, main investments strategies and geographical concentrations of investments.

It should be noted that on 14 of February 2019 CySEC [published](#) its second quarterly statistics report for the fourth quarter of 2018.

Cyprus National Risk Assessment on Money Laundering and Terrorist Financing

On 16 January 2019, CySEC through the issuance of [Circular C292](#), informed Regulated Entities about the results of the National Risk Assessment (NRA) on money laundering and terrorist financing, which was published by the Ministry of Finance of the Republic of Cyprus.

The NRA was carried out in order to identify, asses, understand and mitigate the money laundering and terrorist financing risks, threats and vulnerabilities that exist in Cyprus' system. Upon competition of the NRA, the Council of Ministers published a concise version on the NRA (the Report).

The purpose of publishing the Report is to inform the relevant stakeholders, including Regulated Entities, of the most important national threats and vulnerabilities that have emerged. It also provides appropriate information for Regulated Entities, in order for them to carry out their own risk assessment of money laundering and terrorist financing. Further, the NRA results formed the basis of drawing up an Action Plan, which includes measures to remedy the vulnerabilities identified and recorded in the aforementioned NRA. The implementation of these measures by the competent supervisory authority has already commenced in order to address the identified vulnerabilities and for which the Regulated Entities will be informed through Circulars.

MiFID II Guidelines on Cross Selling Practices

On 17 January 2019, CySEC through the issuance of [Circular C294](#), wished to remind CIFs, AIFMs, and Management Companies of the ESMA Guidelines on Cross Selling Practices (ESMA/2016/574) (refer to MAP S.Platis [Regulatory Radar Issue 014](#)) which became applicable on 3 January 2018, and include the following principles relating to a firm that offers two or more financial services or products as part of a package:

- i. improving disclosures when different products are cross-sold with one another;
- ii. requiring firms to provide investors with all relevant information in a timely and clear manner;
- iii. addressing conflicts of interest arising from remuneration models; and
- iv. improving client understanding on whether purchasing the individual products offered in a package is possible.

Circular regarding the announcement of the United Kingdom's Financial Conduct Authority on the introduction of a Temporary Permissions Regime

On 22 January 2019, CySEC through the issuance of [Circular C293](#), informed Regulated Entities of an update to the UK's Temporary Permission Regime (TPR).

The UK's Financial Conduct Authority (FCA) announced that it was accepting formal notifications from European Economic Area (EEA) firms and investment funds that wished to make use of the UK's TPR. The TPR forms part of the UK's Brexit Contingency Plan. The Contingency Plan becomes important in the event that the UK leaves the EU without a deal, and thus without entering an implementation period. In case of such an event, the UK will become a 'third country' and the pass-porting regime will fall away.

By making use of the TPR, regulated entities would be provided with a mechanism to continue operating in the UK within the scope of their current authorization for a limited period after Brexit, during which time the regulated entities would have to seek full UK Authorizations. The notification window for entering the TPR System closes on 28 March 2019.

AIFs' first reporting - Inception Date - Clarification regarding Circular C287

On 30 January 2019 CySEC through the issuance of [Circular C295](#) clarified the issue of AIF's first submission of the report, which is linked with the AIF's inception date (paragraph 8 of Circular C287). CySEC clarified that inception date for purposes of reporting is the establishment or licence date of the AIF and not the date the AIF started business. AIFs should therefore submit the required reports and indicate YES/TRUE in field 23, titled "AIF No reporting flag", of the AIF Reporting Template.

Policy Statement on the risk management arrangements of Cyprus Investment Firms providing investment services in CFDs.

On 4 February 2019 CySEC issued its first policy statement [PS-01-2019](#). The statement provides guidance

to CIFs regarding the risk management processes they should have in place following ESMA's intervention measures on CFDs and more specifically the measure regarding the Negative Balance Protection for retail investors. CySEC instructs CIFs operating under the STP model (or €125K Licence) to include in their agreements with their Liquidity Providers arrangements that ensure the following:

- i. Liquidity Providers to assume responsibility for the market risk associated with each trading position of the clients (either retail, professional or eligible counterparty) of the €125k CFD CIFs;
- ii. Liquidity Providers to assume responsibility and cover any negative balances that may appear in the trading accounts of the retail clients of the €125k CFD CIFs, on a per account basis.

Moreover CySEC instructed CIFs that are authorised to provide the investment service of Dealing on Own account to evaluate all the risks emanating from the negative balance requirement in the context of their ICAAP which may be challenged in the context of SREP.

Prevention and Suppression of Money Laundering and Terrorist Financing (Amending) Law 13(I)/2018

On 14 February 2019, CySEC through the issuance of [Circular C296](#) (published in Greek), reminded supervised entities of the changes made to the Prevention and Suppression of Money Laundering and Terrorist Financing Laws for the purposes of harmonization with Directive (EU) 2015/849. The most important amendments made by the Law 13(I)/2018 are listed in a table in Circular C296.

Directive R.A.D. 44/2019 Regarding the Certification of Persons and the Certification Registers

On 18 February 2019 CySEC published [R.A.D. 44/2019](#) regarding the Certification of Persons and the Certification Registers (the 'Directive'). The Directive further expands the scope for certifications to persons who work in a CIF or a CIF's tied agent and who place financial instruments without a firm commitment basis, operate an MTF or OTF need to obtain the Advanced CySEC certificate. Moreover, persons who work in a CIF or a CIF's tied agent and who provide information and/or the promote investment and ancillary services in relation to financial instruments as well as the attraction of clients or potential clients, need to obtain the Basic CySEC certificate.

Persons who provide the aforementioned services and are not yet registered in the public registries have nine (9) months from the date of the Directive's entry into force to obtain the relevant certification. In case of failure to succeed within the above timeframe, their appointment or employment shall not continue until they manage to succeed in the relevant examination.

Moreover, CySEC will be launching a separate certification for AML Compliance Officers. As per the Directive any person currently employed as AML Compliance Officer with any CySEC Regulated Entity, will have a maximum of twelve months from the date the new examination is announced, to participate in the exams and succeed. The maximum number of participations in the examination is twice (2 times) within the twelve (12) month period.

Consultation Paper CP (2019-01) regarding Amendments to Law 188(I)/2007

On 19 February 2019, CySEC issued [Consultation Paper CP \(2019-01\)](#) which called for feedback from market participants regarding the proposal to amend the Prevention and Suppression of Money Laundering and Terrorist Financing Law of 2007 ('AML Law'). The proposed amendments intend to extend the scope of the AML Law by applying AML/CFT obligations to the use of virtual currencies and assets. The proposed amending Law of the AML Law can be found in Greek in the Annex (under section 5) of the Consultation Paper. The deadline for the submission of comments ended on 18 February 2019.

Request for the electronic submission of information concerning Regulated Entities contact details appointed persons

On 28 February 2019, CySEC through the issuance of [Circular C298](#), requested from Regulated Entities to complete Form RECD (the 'Form'), which is attached within the Circular, via which they must submit the contact details of their members of the Board of Directors and Compliance Officers pursuant to 25(1)(c)(ii) & (iii) of the Cyprus Securities and Exchange Commission Law (the 'Law').

The deadline for submitting the relevant forms was 6 March 2019. Failure to promptly and duly comply with the above resulted in the administrative penalties found in section 37(5) of the Law.

Following the initial submission of the Form, the Form must be completed with the updated information and submitted to CySEC on a six-month basis. The next submission is due by 5 July 2019.

Guidance on Identifying, Assessing and Understanding the Risk of Terrorist Financing in Financial Crimes

On 28 February 2019, CySEC through the issuance of [Circular C299](#), following the release of the Guidance on Identifying, Assessing, and Understanding the Risk of Terrorist Financing in Financial Centers (the 'Guidance') in January 2019, wishes to inform Regulated Entities of a summary of the issues found. All Regulated Entities are invited through Circular C299, to consider the Guidance which is attached therein, in assessing identifying and understanding terrorist financing risks for the implementation of adequate and appropriate policies, controls and procedures as to mitigate and manage those risks effectively, pursuant to article 58(a) of the Prevention and Suppression of Money Laundering and Terrorist Financing Law of as amended.

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

Remarks/Disclaimer

(a) This document is made available without any representations or any kind of warranty (whether express or implied by law) to the extent permitted by law. In particular,

MAP S.Platis gives no warranties as to the accuracy of the content or its fitness for your purposes, or that the content does not infringe third party rights. MAP S.Platis does not accept any liability for error or omission in the content.

(b) The content must not be regarded as a substitute for reading or adhering to the provisions of the applicable law. Please note that we cannot confirm that such content will be suitable for all purposes or circumstances in which you may elect to utilise it and that we cannot, and do not, accept any responsibility or liability, nor do we provide any warranty, that such content shall be deemed valid, binding or enforceable under all circumstances or with whatever amendments, alterations, omissions or additions that may be made to such content.

(c) MAP S.Platis is not responsible for how the content is used, how it is interpreted or what reliance is placed on it, whether by you or by any other party.

(d) Under no circumstances will MAP S.Platis be liable for any losses or damage (whether foreseen, foreseeable, known or otherwise) including, but not limited to: (a) loss of data; (b) loss of revenue or anticipated profits; (c) loss of business; (d) loss of opportunity; (e) loss of goodwill or injury to reputation; or (f) losses suffered by third parties however arising (including under negligence).

(e) These terms shall be governed by and interpreted in accordance with the laws of the Republic of Cyprus.

► Contact Us

Mailing Address:

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

Main Offices in Cyprus

Limassol:

74 Archiepiskopou Makariou C'

Amaranton Court, 3rd Floor, Mesa Geitonia

4003 Limassol, Cyprus

Tel: +357 2535 1335

Fax: +357 2535 1330

Nicosia:

2 Diagorou

Era House, 12th Floor

1097 Nicosia, Cyprus

Tel: +357 2287 7744

Fax: +357 2287 7780

www.mapsplatis.com