

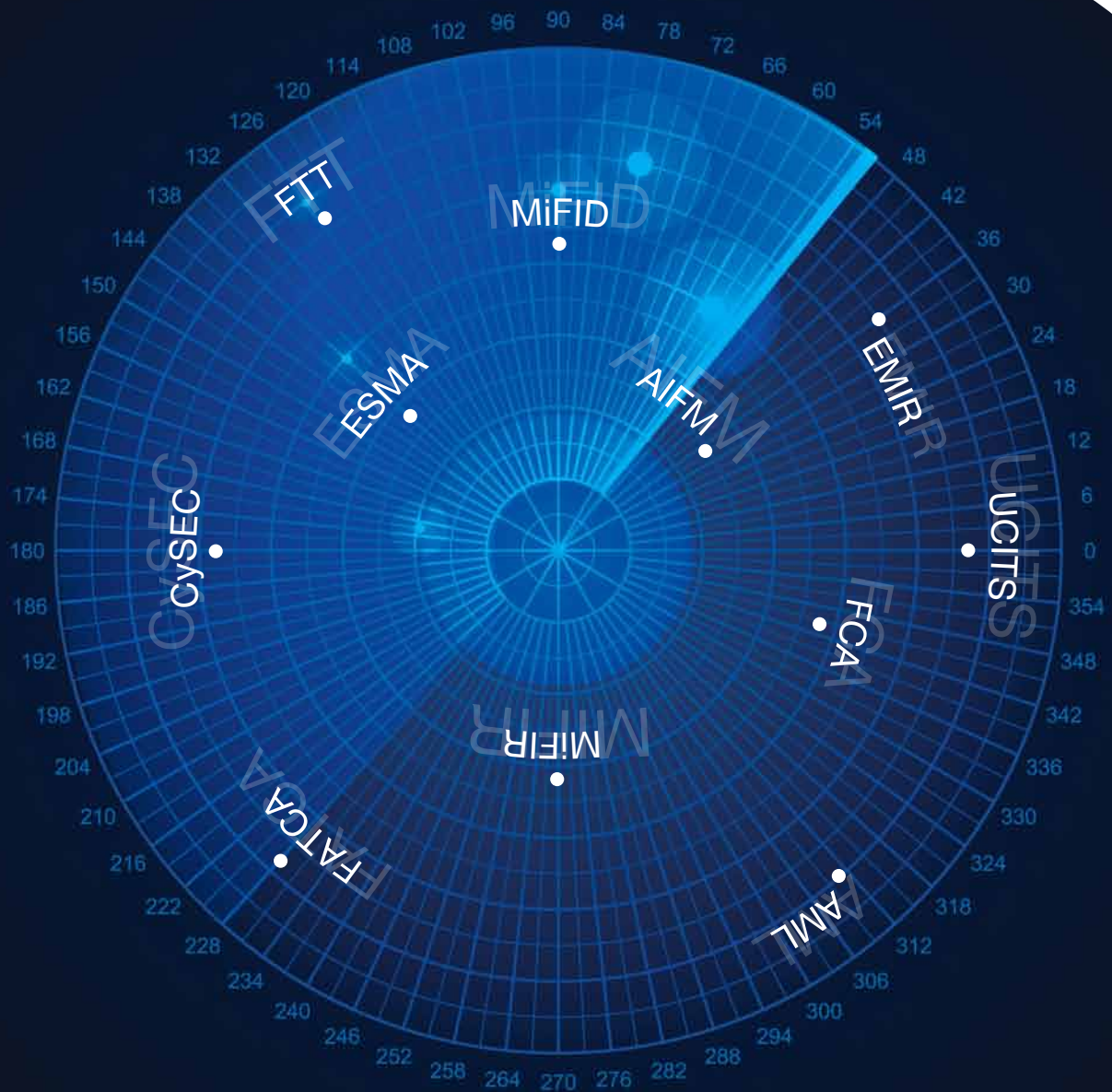


Your Partner in Financial Services!

Issue 025 / September 2019

# 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 > **11**

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

FATCA & CRS > **11**

Fund Regulation > **12**

UK – Developments of Interest to Investment Firms > **13**

EU - Developments of interest to CFDs and Binary Options providers > **15**

CySEC Developments > **16**

Acronyms & Definitions used > **21**

Remarks/Disclaimer > **22**

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 and further consultations
- **EMIR**
  - The revisions to EMIR known as EMIR 2 came into force on 17 June 2019 (with certain provisions at later dates)
  - Mandatory margin requirements for non-cleared OTC derivatives were 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 2021 – the final phase having been extended by one year to 2021
  - ESMA invited Member States' national competent authorities to apply regulatory forbearance in relation to the requirement for variation margin for physically-settled FX forwards.
- **Central Securities Depositories Regulation**
  - The “internalised reporting requirement” applies from 12 July 2019. ESMA updated its Q&A

### 2. Anti-Money Laundering Legislation

- The 5<sup>th</sup> 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
- Delegated Regulation under the 4<sup>th</sup> Anti-Money Laundering Directive on the minimum action and type of additional measures to mitigate money laundering and terrorist financing in certain third countries came into force on 3 September 2019

### 3. EU Financial Transaction Tax (FTT)

- Political decisions on FTT postponed until Brexit outcome is known

### 4. FATCA & CRS

- 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 which is still awaited

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

- Brexit webpage gives guidance to regulated firms; a temporary permissions regime is available till 30 October 2019
- FCA introduces permanent restrictions on the sale, marketing and distribution of CFDs and CFD-like options to retail customers which will apply from 1 August 2019 for CFDs and 1 September 2019 for CFD-like options

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

- ESMA will not renew its temporary product intervention measures for CFDs or binary options on the basis that most national competent authorities have taken permanent national product intervention measures at least as strict as the ESMA measures

- ESMA issued a warning to CFD providers to not engage in activities that are intended to circumvent its temporary product intervention measures. ESMA will continue to monitor activities in relation to CFDs and binary options and other speculative products notwithstanding permanent restrictions in Member State.

## 8. CySEC Developments

- CySEC delays the introduction of permanent restrictions on the sale marketing and distribution for CFDs, CIFs to continue abiding by ESMA's restrictions post their expiry
- Presentation of the deficiencies identified during CySEC's EMIR thematic inspections/desk-based reviews
- Reminder to all AIFs (inclusive of AIFLNPs, self-managed AIFs/AILFNPs) that were authorized under the repealed AIF law to raise capital from investors till the 31st of July 2019
- Clarifications to ICF members on how to treat the additional cash buffer for the own funds calculations
- Notification to CIFs regarding the commencement of the reporting obligations for Settlement Internalisers under the CSDR

# 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 21 June 2019, as announced on 6 March 2019, ESMA made available the annual transparency calculations for equity and equity-like instruments.

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).

The updated results of the annual transparency calculations for equity and equity-like instruments shall apply from **8 July 2019 until 31 March 2020**. In the updated results, there are 1,379 liquid shares and 370 liquid equity-like instruments other than shares, subject to MiFIDII/MiFIR transparency requirements.

The full list of assessed equity and equity-like instruments is on the ESMA website link above under “Financial Instruments Transparency System (FITRS) Database for equity and non-equity transparency calculation results”.

From 1 April 2020, the next annual transparency calculations for equity and equity-like instruments to be published by 1 March 2020, will become applicable.

### ESMA publishes the annual transparency calculation of LIS and SSTI thresholds for bonds

On 18 March 2019, ESMA published 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 “large in scale” (LIS) thresholds and the “size specific to instrument” (SSTI) threshold, 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 the annual calculations of the large in scale (LIS) and size specific to the instruments (SSTI) thresholds for bonds shall apply from **1 June 2019 until 31 May 2020**.

From 1 June 2020, the results of the next annual calculations of the LIS and SSTI thresholds for bonds, to be published by 30 April 2020, will become applicable.

#### ESMA issues latest Double Volume Cap data

On 7 August 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 July 2018 to 30 June 2019.

The number of new breaches is 84: 56 equities for the 8% cap, applicable to all trading venues, and 28 equities for the 4% cap, that applies to individual trading venues. Trading under the waivers for all new instruments in breach of the DVC thresholds should be suspended from **12 August 2019 to 11 February 2020**. The instruments for which caps already existed from previous periods will continue to be suspended. As of 7 August 2019, there is a total of 267 instruments suspended.

#### ESMA makes available bond liquidity data

On 1 August 2019, ESMA made available the latest quarterly liquidity assessment for bonds available for trading on EU trading venues. For this period, there are currently 594 liquid bonds subject to MiFID II transparency requirements. The full list of assessed bonds is available on the ESMA website through the “Financial Instruments Transparency System (FITRS)”.

By way of background, MiFID II introduced pre-trade 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.

The transparency requirements for bonds deemed liquid on 1 August 2019 will apply from **16 August 2019 to 15 November 2019**.

ESMA updated plan for systematic internaliser regime calculation and publications and publication of data for systematic internaliser calculations for equity, equity-like instruments and bonds.

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.

On 1 August 2019, ESMA published the total number of trades and total volume over the period January - June 2019 for the purpose of systematic internaliser calculations for 22,961 equity and equity-like instruments and for 333,459 bonds. Please refer to the ESMA website link above under “Data for the systemic internaliser calculations” for the current data.

#### ESMA consultation on cost of market data and consolidated tape

On 12 July 2019, ESMA launched a [public consultation](#) on the development in prices for pre- and post-trade data and on the post-trade consolidated tape (CT) for equity instruments. MiFID II/MiFIR aims at ensuring fair access to and lowering the cost of market data and has established the legal framework for the provision of a CT. However, to date, no CT has emerged and, based on ESMA's analysis, it appears that MiFID II has so far not delivered on its objective to lower the prices of market data.

The consultation closed on 6 September 2019 and, based on stakeholder feedback, ESMA will develop a final review report, which it intends to submit to the European Commission in December 2019.

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

##### Q&A on MiFIR data reporting

On 29 July 2019, ESMA updated its [questions and answers \(Q&As\) documents on MiFIR data reporting](#). These Q&As provide clarifications in relation to the requirements for submission of reference data under MiFIR. The Q&As provide clarifications in relation to the requirements for submission of reference data under MiFIR. In particular, the Q&As relate to reporting obligations for financial instruments without a defined expiry date (e.g. Perpetual FX Rolling Spot Futures). The Q&A provides a new answer on how operators should populate field 24 of RTS 23. The amendments to the existing Q&A on MiFIR data reporting becomes effective from 29 July 2019.

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

On 12 July 2019, ESMA updated its questions and answers (Q&As) documents regarding [transparency topics](#) and [market structures topics](#) under MiFID II.

## Q&A on MiFID Investor Protection and Intermediaries

On 11 July 2019, ESMA updated its Q&A on [investor protection and intermediaries topics](#) and provides new answers on best execution and classification of financial instruments under RTS 27, in situations where ESMA has not published any calibrated market sizes. The new Q&As provide clarification on the following topics:

- The use of pre-arranged transactions for non-equity instruments (Amendment to an existing Q&A);
- The hedging exemption of Article 8 of MiFIR;
- The treatment of constant maturity swaps; and
- The application of the tick size regime to periodic auction systems.

## **ESMA – Investor protection – Consultation on MiFID II compliance requirements**

On 15 July 2019, ESMA launched a [consultation](#) on draft guidelines on certain aspects of the compliance function requirements under MiFID II.

The closing date for responses from stakeholders is 15 October 2019 and ESMA, taking into account the feedback received, aims to publish a final report, and final guidelines, in Q2 2020.

## **ESMA – Investor protection – Appropriateness and execution-only**

On 4 April 2019 ESMA published an updated version of its [supervisory briefing](#) on MiFID II appropriateness requirements. This supervisory briefing is an updated version of ESMA's 2012 supervisory briefing on the same topic and takes into account the new version of ESMA's guidelines on suitability published on 28 May 2018 with respect to aspects also relevant to the appropriateness rules.

This supervisory briefing covers the following topics:

- Determining situations where the appropriateness assessment is required;
- Obtaining information from clients;
- Assessment of appropriateness;
- Warnings to clients;
- Qualification of firm's staff; and
- Record-keeping.

On 3 June 2019, ESMA launched a common supervisory action (CSA) which participant national competent authorities (NCAs) will carry out simultaneously, **in the second half of 2019**. The supervisory activity will focus on the application of the MiFID II requirements on the assessment of appropriateness, a topic on which ESMA published a supervisory briefing on 4 April (see above) that will serve as a starting point for the CSA. NCAs that participate in the CSA will assess the application of the appropriateness requirements by a sample of investment firms under their supervision.



## II. MARKET ABUSE REGULATION

The current version of the ESMA [Questions and Answers on the Market Abuse Regulation](#) is dated 29 March 2019.

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

### EMIR 2 comes into force

The [Regulation](#) amending the European Markets Infrastructure Regulation as regards the clearing obligation, the suspension of the clearing obligation, the reporting requirements, the risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty, the registration and supervision of trade repositories and the requirements for trade repositories (sometimes referred to as “EMIR 2.1” or “EMIR REFIT”) came into force on 17 June 2019. Not all the provisions will be immediately applicable with certain provisions which will become applicable from 18 December 2019, 18 June 2020 and 18 June 2021.

The Regulation to amend EMIR 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 ESMA Statements on clearing and trading obligation for small financial counterparties, on clearing and trading obligations for certain non-financial counterparties and on clearing and trading obligations for pension scheme arrangements, in which ESMA invited National Competent Authorities to exercise regulatory forbearance in the period of the gap before EMIR 2 comes into force are no longer required.

### ESMA EMIR Q&As

On 15 July 2019, ESMA updated its [EMIR Q&A](#) on practical questions regarding EMIR. Following the entry into force of the EMIR review (the so-called EMIR Refit referred to above), ESMA is reviewing the existing Q&As to align them, where necessary, with the new text requirements. A new Q&A not related to the entry into force of EMIR Refit has been added too. The changes refer to:

- Removal of references to the frontloading requirement, as frontloading is no longer a requirement under EMIR Refit;
- Removal of references relating to backloading, following the elimination of the backloading requirement;
- Identification and reporting obligations for funds, and block trades and allocations;
- Clarification on the applicability of reporting to intragroup transactions;
- Reporting of notional amount field for credit index derivatives

On 14 June 2019, ESMA updated its Q&As on practical questions regarding EMIR (the link to the Q&A is as above) with respect to:

- Q&A OTC 3 on the calculation framework towards the clearing thresholds; and

- TR Q&A 51 regarding the notifications to be made by market participants to their competent authorities to apply an intragroup exemption from reporting.

## ESMA Statement on MiFIR implementation considerations regarding the trading obligation following the entry into force of EMIR Refit

On 12 July 2019, ESMA issued a [Public Statement](#) addressing the misalignment between the scope of counterparties subject to the EMIR clearing obligation and those subject to the MiFIR derivatives trading obligation. Following the entry into force of EMIR Refit on 17 June 2019, some counterparties are exempted from the clearing obligation while still being subject to the trading obligation. ESMA's statement addresses the possible implementation challenges that this misalignment creates for counterparties exempted from the clearing obligation. In addition, ESMA clarifies the application date of the trading obligation for those counterparties impacted by the modified application date of the clearing obligation under EMIR Refit.

## Margin requirements for non-centrally cleared derivatives – final phase of initial margin implementation postponed to September 2021

Margin rules for non-centrally cleared derivatives set by the global standard setters the Basel Committee on Banking Supervision and the Board of the International Organization of Securities Commission (BCBS and IOSCO) have been progressively entering into force in the EU since early 2017. The EU rules are set out in the [Commission Delegated Regulation](#) with regard to regulatory standards for risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty; please also refer to [Issue 14](#) of MAP S.Platis Regulatory Radar]. Under the EU rules, initial margining requirements for non-centrally cleared trades started to apply from February 2017 for the largest institutions and were followed by an annual phase-in (with a total of 5 phases from 2017 to 2020), such that all other institutions that are within scope above a minimum threshold would be subject to initial margin by 1 September 2020.

On 23 July 2019, BCBS and IOSCO [agreed](#) to extend by one year the final implementation of the initial margin requirements from 1 September 2020 to 1 September 2021 so that the final implementation phase will now take place on 1 September 2021. The “aggregate average notional amount” of non-centrally cleared derivatives threshold for the fifth implementation phase for initial margin which was due to be implemented on 1 September 2020 will now be raised from 8bn EUR to 50bn EUR and the 8bn EUR threshold will be postponed to September 2021, becoming the sixth and final phase.

The European Supervisory Authorities (ESAs) will need to implement these changes into EU law. In terms of process, the ESAs would first need to consult on proposed changes to the relevant regulation before submitting them to the European Commission for adoption.

## 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. For UK FCA position on regulatory forbearance, which remains in force in the UK, please refer to section 6 below.

## IV. CENTRAL SECURITIES DEPOSITARIES REGULATION (CSDR)

### Internalised reporting requirement

By way of background, the broad aim of CSDR is to harmonise certain aspects of the settlement cycle and settlement discipline and to provide a set of common requirements for CSDs operating securities settlement systems across the EU.

One of the requirements of the CSD Regulation is for “internalised settlement reporting” which requires the settlement “internaliser” to report, to the competent authorities of its place of establishment, on a quarterly basis, the aggregated volume and value of all securities transactions that it settles outside securities settlement systems. ESMA has published [technical standards](#) to establish the forms, templates and procedures for the reporting and the transmission to the relevant competent authorities; ESMA has also published a [Final Report](#) on Guidelines on Internalised Settlement Reporting under Article 9 of CSDR. The first Internalised Settlement report due to the national competent authority was on **12 July 2019**.

On 11 July 2019, ESMA updated its [Q&As](#) to provide answers to questions regarding practical issues on the implementation of the new CSDR regime. These latest CSDR Q&As clarify aspects regarding the scope of internalised settlement reporting, namely:

- investment firms are not required to report in case they do not execute transfer orders themselves, which they forward in their entirety to a custodian, irrespective of whether the custodian is established in the EEA or not; and
- trade netting as such does not qualify as internalised settlement.

On 1 July 2019, ESMA updated its Q&A (same link as above) clarifying aspects regarding the scope of financial instruments subject to internalised settlement reporting.

## 2. Anti-Money Laundering

### **MLD 4 – RTS for minimum action and type of additional measures to mitigate money laundering and terrorist financing in certain third countries**

The [Delegated Regulation](#) with regard to regulatory technical standards for the minimum action and the type of additional measures credit and financial institutions must take to mitigate money laundering and terrorist financing risk in certain third countries began to apply from 3 September 2019.

## 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. FATCA & CRS

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

### ESMA strengthens liquidity stress test for investment funds

On 2 September 2019, ESMA published its [final guidance](#) regarding liquidity stress tests of investment funds – applicable to both Alternative Investment Funds (AIFs) and Undertakings for the Collective Investment in Transferable Securities (UCITS). The new guidelines require fund managers to stress test the assets and liabilities of the funds they manage. This includes redemption requests by investors which are the most common and important source of liquidity risk and could also impact financial stability. Managers of AIFs and UCITS must be aware of the liquidity risk of the funds they manage and use stress testing as a tool to mitigate this risk. The Guidelines also recommend managers to notify National Competent Authorities (NCAs) of material risks and actions taken to address them. One Guideline also applies to depositaries, requiring verification that the fund manager has in place documented procedures for its liquidity stress testing programme.

By way of background, the ESMA Guidelines follow recommendations by the European Systemic Risk Board (ESRB) published in April 2018 on how to address liquidity and leverage risk in investment funds.

The Guidelines will become applicable on 30 September 2020. The requirements set out in the Guidelines are supplementary to the requirements on liquidity stress testing which are set out in the AIFMD and UCITS Directives and are already applicable.

### ESMA consults on performance fee guidelines for retail funds

On 16 July 2019, ESMA launched a [consultation](#) on draft guidelines on performance fees under the Undertakings for Collective Investments in Transferable Securities (UCITS) Directive. ESMA's draft guidelines propose common criteria to promote supervisory convergence in the following areas:

- general principles on performance fee calculation methods;
- consistency between the performance fee model and the fund's investment objectives, strategy and policy;
- frequency for the performance fee crystallisation and payment;
- the circumstances where a performance fee should be payable; and disclosure of the performance fee model.

### AIFMD and UCITS - ESMA Q&As

The current Q&A on the application of [AIFMD](#) and [UCITS](#) are dated 4 June 2019.

### PRIIPs KID – ESAs update Q&A

The current European Supervisory Authorities [Q&A](#) on the key information document (KID) requirements for Packaged Retail and Insurance-based Investment Products (PRIIPs) is dated 4 April 2019.

## PRIIPs KID – ESAs propose amendment to PRIIPs Key Information Document to clarify application to investment funds

On 7 March 2019, the European Supervisory Authorities submitted a [letter](#) to the European Commission on the [draft regulatory technical standards](#) to amend the Delegated Regulation covering the rules for the Key Information Document (KID) for Packaged Retail and Insurance-based Investment Products (PRIIPs). The amendment clarifies the application of the KID to investment funds where these are offered as underlying investment options to a PRIIP (so-called “multi-option products” or “MOPs”). The amendment follows a decision by the European co-legislators to defer the application of the KID to these investment funds by two years from the end of this year until the start of 2022. The aim of the ESAs’ proposal is to provide, in good time, legal certainty to market participants before the expiry of the current provision in the PRIIPs Delegated Regulation at the end of 2019.

## 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

# 6. UK – Developments of Interest to Investment Firms

## UK Financial Conduct Authority Brexit page

The [FCA's Brexit webpage](#) was last updated on 30 August 2019 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.

On 24 May 2019, the FCA the deadline for notifications for the temporary permissions regime will be extended to **30 October 2019**.

## UK Financial Conduct Authority publishes final permanent rules for CFD products and CFD-like options

On 1 July 2019, the FCA confirmed [new rules](#) restricting the sale, marketing and distribution of CFDs and CFD-like options to retail customers. The rules make the ESMA's temporary restrictions of CFDs sold to retail clients permanent. The FCA's proposed interventions are the same in substance as ESMA's, although the FCA are also including CFD-like options (viewed as a closely substitutable products) on the basis that they consider that they pose the same risk of harm.

The rules apply from 1 August 2019 for CFDs and 1 September 2019 for CFD-like options.

## 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 ceases renewal of product intervention measures on contracts for differences

On 31 July 2019, ESMA announced that it would not renew the temporary restriction on the marketing, distribution or sale of contracts for differences to retail clients in the EU on the basis that most national competent authorities (NCAs) have taken permanent national product intervention measures relating to contracts for differences that are at least as stringent as ESMA's measures. As a result, ESMA's applicable measures expired automatically on 31 July 2019.

ESMA will continue to monitor activities in relation to these and other related speculative products to determine whether any other EU-wide measures may be needed.

## ESMA warning to CFD providers

On 12 July 2019, ESMA [published a statement](#) addressed to providers marketing, distributing or selling contracts for differences (CFDs) to retail clients. The statement is in response to various practices and situations observed in the market, which raise concerns of non-compliance with the legal requirements relating to some CFD providers are advertising to retail clients the possibility to become professional client on request and some third-country firms marketing CFDs that do not comply with ESMA's measures to protect retail clients in the European Union and some EU firms engaging in activities that are intended to circumvent ESMA's temporary product intervention measures, for example, some CFD providers established in the EU are marketing the possibility for retail clients to move their accounts to an intra-group third-country entity.

## ESMA ceases renewal of product intervention measures on binary options

On 1 July 2019, ESMA announced that it will not renew its temporary prohibition on the marketing, distribution or sale of binary options to retail investors in the European Union on the basis that most national competent authorities (NCAs) have taken permanent national product intervention measures relating to binary options that are at least as stringent as ESMA's measure. The existing ESMA measures expired automatically on 1 July 2019.

ESMA will continue to monitor activities in relation to these and other related speculative products to determine whether any other EU-wide measures may be needed.

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

ESMA's current [Q&As on ESMA's temporary product intervention measures on the marketing, distribution or sale of CFDs and Binary options to retail clients](#) are dated 9 November 2018.



## 8. CySEC Developments

### Raising of capital from investors within a specified time period

On 7 June 2019, through the issuance of [Circular C321](#), the CySEC reminded AIFMs managing Cyprus established AIFs that were authorised under the new AIF Law (inclusive of AIFLNPs and RAIFs as well as compartments thereof) either externally or interlay managed, of the requirement to raise capital from investors within twelve months from the date when the AIFs received their authorisation/approval by CySEC. When the required amount of raised capital is reached for each fund/investment compartment under management, AIFMs should notify CySEC the soonest possible. CySEC has also indicated that if no such notification is received within twelve months post authorisation the commission will commence proceedings for the withdrawal of the respective licence/registration of the AIF and/or the respective compartments.

AIFs that were authorised under the repealed AIF Law are required to raise capital from investors no later than the 30th of July 2019 and should notify the commission no later than the 5th of August.

### Suspension of electronic submission of Form RECD until further notice

On **10 June 2019**, through the issuance of [Circular C322](#), the CySEC informed Regulated Entities that the completion of Form RECD according to the instructions of the [Circular C298](#), is no longer required.

In due time, CySEC will issue a new circular in order to notify Regulated Entities regarding the dates for the next collection and the required submission procedure they must follow.

### Risk Based Supervision Framework ('RBS-F') – Electronic submission of information for the year 2018

On 28 June 2019, through the issuance of [Circular C323](#), the CySEC provided information to CIFs regarding the new version of the form, RBSF-CIF Version 2 (the 'Form'). The Form is issued for the collection of statistical information, on annual basis. The deadline for submitting the relevant Form was 18 July 2019.

### Management Companies and Self-Managed Funds Quarterly Statistics – Revised Form

On 2 July 2019, through the issuance of [Circular C324](#), the CySEC provided instructions regarding the completion and submission deadlines for the Quarterly Statistics information for self-managed AIFs, UCITS, AIFLNPs as well for AIF Managers, UCITS Management Companies and Companies managing AIFLNPs.

The deadline for submitting the relevant Form for the second quarter was 15 July 2019. The Form must be completed and submitted to CySEC, on a quarterly basis, by the aforementioned entities.

## Risk Based Supervision Framework ('RBS-F') – Electronic submission of information for the year 2018

On 5 July 2019, through the issuance of [Circular C325](#), the CySEC provided information regarding the new version of the form, RBSF-MC Version 2 (the 'Form'), for self-managed AIFs, UCITS, AIFLNs as well for AIF Managers, UCITS Management Companies and Companies managing AIFLNs. The Form is issued for the collection of information by CySEC, on an annual basis. The deadline for submitting the relevant Form was 19 July 2019.

## Directive DI87-08 for the restriction Marketing, Distribution or Sale of Binary Options to Retail Clients

On 8 July 2019, the CySEC published the [Directive DI87-08](#) (in Greek only). The Directive determines restrictions related to the marketing, distribution or sale of binary options to retail clients and the participation in circumvention activities of this restriction.

Binary options that have the following characteristics are excluded from the aforementioned restriction:

- a) a binary option for which the lower of the two predetermined fixed amounts is at least equal to the total payment made by a retail client for the binary option, including any commissions, transaction fees and other related costs;
- b) a binary option that meets cumulatively the following three (3) conditions:
  - the term from issuance to maturity is at least ninety (90) calendar days;
  - a prospectus drawn up and approved in accordance with the Prospectus Directive (2003/71/EC) or in accordance with the Prospectus Regulation (EU 2017/1129) is available to the public; and
  - the binary option does not expose the provider to market risk throughout the term of the binary option and the provider or any of its group entities do not make a profit or loss from the binary option, other than previously disclosed commissions, transaction fees or other related charges.

## Introduction of CySEC's Form 144-14-11 'Prudential Supervision Information

On 10 July 2019, through the issuance of [Circular C326](#), the CySEC requested from all CIFs, to complete the new Form 144-14-11 'Prudential Supervision Information', which will facilitate CySEC's supervisory roles on areas regarding the assessment of ICAAP, annual audited financial statements and the issue of safeguarding clients' money.

CIFs should be submitting the relevant Form by the 30th of June each year. The first submission of the Form was due by the 31st of July 2019.

## ESMA's and EBA's Single Rulebooks

On 10 July 2019, through the issuance of [Circular C327](#), the CySEC informed the Regulated Entities about the interactive single rulebooks published by ESMA and the EBA. The rulebooks provide easy access to level two and level three measures (i.e. delegated acts, guidelines, opinions and Q&As) in relation to a given level one

text, such as the UCITS Directives, MiFID II/MiFIR, CRD IV/CRR etc.

## Country-by-country reporting as required by paragraph 18 of CySEC's Directive 144-2014-14 for prudential supervision of Investment Firms (the 'Directive')

On 10 July 2019, through the issuance of [Circular C328](#), the CySEC provided further guidance to the CIFs with regards to country-by-country reporting, which it is provided in paragraph 18 of [the Directive](#).

## Publication of CySEC's review of the procedures established, implemented and maintained relating to reporting obligations under the Regulation on OTC Directives, Central Counterparties and Trade Repositories ('EMIR') [Regulation (EU) No 648/2012]

On 17 July 2019, through the issuance of [Circular C329](#), the CySEC set its observations about a review that the CySEC carried out during November and December 2018, and asked all Regulated Entities to consider whether they comply with EMIR's reporting obligation.

The review was about the procedures established, implemented and maintained by CIFs for compliance purposes with article 9(1) of EMIR regarding the details of derivative reported to Trade Repositories. CySEC identified a number of deficiencies during the review and asked Regulated Entities to ensure that issues relating to compliance lapses regarding EMIR are promptly rectified.

## Extension of deadline to issue Cyprus National Product Intervention Measures on CFDs

On **18 July 2019**, through the issuance of [Circular C330](#), the CySEC announced that a decision on the content of the Cyprus National Product Intervention Measures ('CyNPIMs') with respect to CFDs was expected to be reached by the end of July.

All CIFs must continue applying the content of the measures under ESMA Decision on CFDs irrespective of whether they are not renewed by ESMA, until such times when CyNPIMs are introduced.

## Financial Action Task Force (FATF) Guidance on Risk-based Approach for Trust and Company Service Providers

On 23 July 2019, through the issuance of [Circular C331](#), the CySEC encouraged the Regulated Entities to take duly account and read the updated [Risk-based Approach \(RBA\) Guidance for Trust and Company Service Providers \(TCSPs\)](#), which will assist them in the assessment of the AML risk and implementation of applicable AML/CFT measures with respect to TCSPs.

## CySEC's Announcement Regarding the ESMA Guidelines on non-significant benchmarks under the Benchmarks Regulation

On **26 July 2019**, the CySEC [announced](#) that the European Securities and Markets Authority (ESMA) have published its [Guidelines](#) on non-significant benchmarks under the Benchmarks Regulation ("the Guidelines"), on June 19, 2019. CySEC announced it will incorporate these guidelines into its supervisory practices.

## Circular on the Public Statement of ESMA with subject 'Considerations on recognition of deferred tax assets arising from the carry-forward of unused tax losses

On **29 July 2019**, the CySEC issued [Circular C332](#) (in Greek), informing Issuers of transferable securities listed for trading on a Regulated Market of [ESMA's Public Statement ' Considerations on recognition of deferred tax assets arising from the carry forward of unused tax losses'](#).

## ESMA Amends Guidelines on the Application of C6 And C7 Under MIFID II (ESMA-70-156-869)

On **1 August 2019**, through the issuance of [Circular C333](#), CySEC wishes to inform the regulated entities that ESMA has published on June 05 2019, its amended Guidelines on the application of C6 and C7 under MiFID II (['the Guidelines'](#)).

The amended Guidelines are the updated version of the guidelines issued under MiFID (ESMA/2015/1341) on the application of definitions and classification of commodity derivatives in section C points 6-7 annex I to MiFID to adapt them to the MiFID II framework.

## Treatment of the additional cash buffer of Investors Compensation fund ('ICF') in the own funds calculation

On **7 August 2019**, through the issuance of [Circular C334](#), CySEC wishes to inform CIFs that additional cash buffer is required when calculating their capital requirements of Investors Compensation Fund. The members of the ICF are required to keep a minimum cash buffer of 3 per thousand of the eligible funds and financial instruments of their clients as at the previous year in a separate bank account in case there is need for an extraordinary contribution and this should not be used for any other purpose. Therefore, CIFs should deduct the additional cash buffer of 3 per thousand of the eligible funds and financial instruments of their clients from the Common Equity Tier 1 capital.

## **CySEC's Announcement Regarding the Application of Regulation (EU) 2017/1129 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC (In Greek)**

On 19 August 2019, the CySEC [announced](#) that Regulation (EU) 2017/1129 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, repealing Directive 2003/71/EC. Regulation (EU) 2017/1129 came in full effect as at the 21th of July 2019. Firms should also take into consideration the Regulation (EU) 2019/980 and the Regulation (EU) 2019/979.

## **Internalised settlement reporting requirements pursuant to Article 9(1) of Regulation (EU) No 909/2014 on improving securities settlement in the European Union and on central securities depositories ('CSDR')**

On 20 August 2019, the CySEC issued [Circular C335](#), whereby it informs CIFs about the Internalised settlement reporting requirements pursuant to Article 9(1) of [Regulation \(EU\) No 909/2014](#) on improving securities settlement in the European Union and on central securities depositories ("CSDR").

The compliance officers should have notified CySEC whether or not the CIF settles securities transactions outside securities settlement systems by the 13th of September 2019. The first reporting period is the quarter ending 30 September 2019 (i.e. covering period from 1/7/2019-30/9/2019), while reports for the previous quarters should be submitted by the 25th of October 2019 the latest.

CySEC will be launching a trial period from the 9th of September till the 4th of October regarding the internalised settlement reporting, for CIFs to submit test reports in order to familiarise themselves with the new reporting obligation.

## **Recent amendments to Regulation (EU) 648/2012 on OTC Derivatives, Central Counterparties and Trade Repositories ('EMIR')**

On **20 August 2019**, through the issuance of [Circular C336](#), CySEC wishes to inform regulated entities about the recent amendments made to the European Market Infrastructure Regulation ("EMIR"). Through the Circular CySEC presented in a comprehensive form the main changes that will apply with to the EMIR's framework such as changes to the definition of a Financial Counterparty, clearing obligations, reporting requirements as well risk mitigation techniques for non-cleared OTC derivatives.

CySEC requested from Regulated Entities to examine the implications of EMIR's amendments and take necessary actions.

# Acronyms & Definitions used

AIF	Alternative Investment Fund under Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers
AIFLNPs	Alternative Investment Funds of Limited Number of Persons
AIFMs	Alternative Investment Fund Manager
AMF	Autorite des Marches Financiers
ASPs	Administrative Service Providers
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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