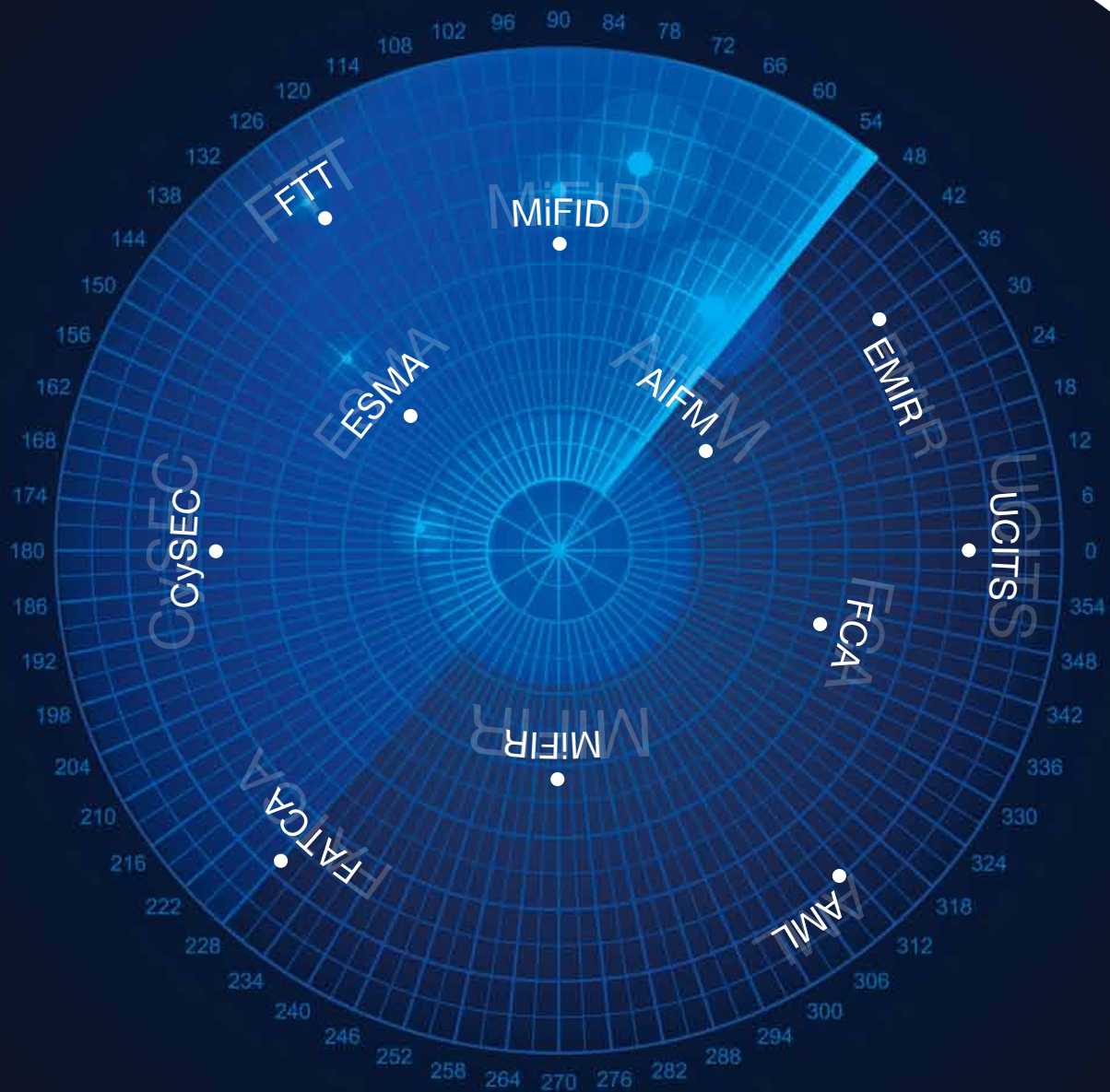


# REGULATORY RADAR

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





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## 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
  - The European Supervisory Authorities published a draft regulation on amended bilateral margin requirements

### 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
- The European Council sets strategic priorities for further reform

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

- Political decisions on FTT postponed until Brexit outcome is known

### 4. FATCA & CRS

- No update

### 5. Fund Regulation

- **Liquidity stress test for investment funds**
  - ESMA Guidelines become applicable on 30 September 2020
- **PRIIPS Regulation**
  - The European Supervisory Authorities have issued a consultation on proposed amendments to the Key Investor Document (KID)
  - The European Supervisory Authorities have issued a Supervisory Statement on the application of scope of the PRIIPS Regulation to bonds

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

- Brexit: a temporary permissions regime is available till 30 January 2020

### 7. EU - Developments of interest to CFDs providers

- ESMA will continue to monitor activities in relation to CFDs and other speculative products notwithstanding permanent restrictions in Member States

## 8. CySEC Developments

- Directive DI87-09 for the restriction of marketing, distribution and sale of CFDs to retail customers
- Guidelines on complaints-handling for the securities sector
- Thematic review of best execution obligations of CIFs
- Consultation Paper CP-03-2019 on investment-based crowd funding rules under MiFID II

# 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).

### 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

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).

On 21 June 2019, ESMA made available the annual transparency calculations for equity and equity-like instruments.

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

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.

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.

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 6 December 2019, ESMA updated its [website](#) 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 November 2018 to 31 October 2019.

The number of new breaches is 70: 56 equities for the 8% cap, applicable to all trading venues, and 14 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 **11 December 2019 to 10 June 2020**. The instruments for which caps already existed from previous periods will continue to be suspended. As of 6 December 2019, there is a total of 418 instruments suspended.

#### ESMA makes available bond liquidity data

On 8 November 2019, ESMA made available the latest quarterly liquidity assessment for bonds available for trading on EU trading venues. For this period, there are currently 611 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 8 November 2019 will apply from **16 November 2019 to 15 February 2020**.

#### 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 8 November 2019, ESMA published the total number of trades and total volume over the period April - September 2019 for the purpose of systematic internaliser calculations for 22,015 equity and equity-like instruments and for 334,610 bonds. Please refer to the ESMA website link above under “Data for the systemic internaliser calculations” for the current data.

#### ESMA proposes to frame pricing of market data and recommends real-time consolidated tape for equity

On 5 December 2019, ESMA published a [first Review Report](#) on the development of prices for market data and on the consolidated tape for equity, following the application MiFID II for nearly two years.

By way of background, MiFID II requires venues and data providers to publish market data on a reasonable commercial basis, provide market data in a disaggregated format, and to make market data available free of charge 15 minutes after publication with the objective to lower the cost for market data.

The ESMA review found that, to date, MiFID II has not delivered on its objective to reduce the cost of market data charged by trading venues and Approved Publication Arrangements. ESMA proposes a mix of legislative changes and supervisory guidance to improve transparency and to ensure that market data is provided on a reasonable commercial basis. Moreover, as no consolidated tape has materialised, ESMA recommends the establishment of a European Union wide real-time consolidated tape for equity instruments.

The Review Report will feed into the European Commission’s review of MiFID II on the development in prices for pre- and post-trade transparency data and on the consolidated tape for equity instruments it has to deliver to the European Parliament and Council. ESMA will, in close consultation with market participants, start working on supervisory guidance on the application of the provision to provide market data on a reasonable commercial basis and towards improving the quality of OTC data.

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

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

On 6 December 2019, ESMA updated its [questions and answers \(Q&As\) documents on MiFIR data reporting](#). The Q&A provide clarifications in relation to the requirements for submission of reference data and transactions under MiFIR. In particular, the Q&As relate to the reporting of reference rates not included in RTS 22 and 23, under Article 26 and Article 27 of MiFIR. The amendments to the existing Q&A on MiFIR data reporting became effective from 6 December 2019.

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

On 5 December 2019, ESMA updated its questions and answers (Q&As) documents regarding [transparency topics](#) and [market structures topics](#) under MiFID II. The new Q&As provide clarification on the following topics:

- Conversion of LIS/SSTI thresholds in lots;
- Member preferencing and pre-arranged transactions; and
- Scope of Commission Delegated Regulation RTS7.

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

On 4 December and 3 October 2019, ESMA updated its Q&A on [investor protection and intermediaries topics](#).

The new Q&As provide clarification on the following topics:

- Information on costs and charges
  - Ex-post information in case of portfolio management
  - Relationship Article 50(9) and Article 60 of the Delegated Regulation in case of portfolio management
- Product intervention
  - The application of national product intervention measures in case of services provided on a cross-border basis
- Best execution – Disclosure of reports to the public
- Other issues – Drafting change on understanding the term “ongoing relationship”.

## 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

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.



## ESMA EMIR Q&As

On 2 October 2019, ESMA updated its [EMIR Q&A](#) on practical questions regarding EMIR. The Q&As clarify:

- OTC Question 2(h) on when counterparties that start taking positions in OTC derivatives need to notify the relevant NCAs and ESMA;
- OTC Question 4 on whether counterparties not subject to the clearing obligation should also obtain representation;
- OTC Question 13 on how a counterparty should determine whether an entity established in a third country would be an FC+/- or NFC+/- if it was established in the Union;
- TR Question 14 on how the derivatives should be reported in the scenario where a Clearing Member defaults and a CCP temporarily assumes both sides of the outstanding transactions;
- TR Question 17 on how to populate the fields Trading Venue and Compression for derivatives reported at position level; and
- TR Question 53 on how to report derivatives based on €STR and other benchmarks that are not explicitly captured by the EMIR ITS.

## ESMA Consultation on MIFIR alignment following the entry into force of EMIR Refit

On 4 October 2019, ESMA launched a [consultation](#) on possible amendments to the trading obligation under MiFIR following the introduction of EMIR Refit.

The recent changes introduced to EMIR via Refit modify the scope of counterparties subject to the clearing obligation – exemption for small financial counterparties and modified determination of non-financial counterparties. The introduction of EMIR Refit has not been accompanied by direct amendments to MiFIR, which currently leads to a misalignment between the scope of counterparties subject to the clearing obligation (CO) under EMIR and the derivatives trading obligation (DTO) under MiFIR. Instead, in light of the close interconnection between those two obligations, EMIR Refit mandates ESMA to assess whether the DTO under MiFIR should be aligned with changes to the CO introduced by EMIR Refit, and to submit its findings in a report to the Commission.

As a first step towards this report, ESMA has published this consultation. ESMA will consider all comments received and will develop the final report taking into consideration the feedback received to this consultation paper. ESMA intends to submit the final report to the European Commission in early 2020. The European Commission's report shall be submitted to the European Parliament and to the Council by 18 December 2020.

## 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. 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.

On 5 December 2019, the European Supervisory Authorities (ESAs) published a [Final Report](#) and draft RTS on various amendments to the bilateral margin requirements in view of the international framework – see below. This Report includes the proposed amendments with respect to the implementation of the initial margin requirements referred to above. The Report has been sent to the European Commission for endorsement in the form of a Commission Delegated Regulation. Following the endorsement, they are then subject to non-objection by the European Parliament and the Council.

As the ESAs cannot disapply EU law, the ESAs expect competent authorities to apply the EU framework in a risk-based and proportionate manner until the amended RTS enter into force.

## European Supervisory Authorities publish Final Report and a draft RTS on various amendments to the bilateral margin requirements

On 5 December 2019, the European Supervisory Authorities (ESAs) published their joint [draft Regulatory Technical Standards \(RTS\)](#) to amend the Delegated Regulation on the risk mitigation techniques for non-cleared OTC derivatives (bilateral margining).

The report and related RTS set out the proposed amendments with respect to the implementation of the initial margin requirements (see above) as well as setting out amendments in relation to the treatment of physically settled FX forward and swap contracts, intragroup contracts and equity option contracts.

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.

As the ESAs cannot disapply EU law, the ESAs expect competent authorities to apply the EU framework in a risk-based and proportionate manner until the amended RTS enter into force. For UK FCA position on regulatory forbearance, which remains in force in the UK, please refer to section 6 below.

## 2. Anti-Money Laundering

### European Council sets strategic priorities for further reform

On 5 December 2019, the European Council adopted conclusions on strategic priorities on anti-money laundering and countering the financing of terrorism (AML).

The conclusions point to significant recent enhancements to the AML regulatory framework. The implementation of the 5th revision of the AML directive, adopted in May 2018, the new capital requirements directive for banks (CRD5), adopted in May 2019, as well as the review of the functioning of the European Supervisory Authorities, adopted on 2 December, will all strengthen the rules on tackling money laundering and terrorist financing.

The Council urges for the swift transposition of all AML legislation into national law and for the strengthening of their effective implementation.

The Council has invited the Commission to explore possible further actions to enhance the existing AML rules, in particular by considering:

- ways of ensuring a more robust and effective cooperation between the relevant authorities and bodies involved in anti-money laundering and terrorist financing, including through addressing impediments on exchange of information between them;
- whether some aspects could be better addressed through a regulation;
- possibilities, advantages and disadvantages of conferring certain supervisory responsibilities and powers to an EU body.

The Commission has been asked by the Council to work on the outlined actions in close consultation with Member States, and to report every 6 months, starting with June 2020.

### The Fifth Money Laundering Directive

The [Fifth Money Laundering Directive](#) (MLD5) which came into force on 9 July 2018 must be transposed into national law by EU Member States by **10 January 2020**.

## 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.

The Guidelines 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.

### AIFMD and UCITS - ESMA Q&As

The current Q&A on the application of [AIFMD](#) is dated 4 December 2019 and of [UCITS](#) is dated 4 June 2019. The AIFMD Q&A provides clarification on reporting requirements on liquidity stress tests for closed-ended unleveraged Alternative Investment Fund.

### PRIIPs KID – ESAs 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 consult on changes to the PRIIPs Key Information Document

On 16 October 2019, the European Supervisory Authorities issued a [Consultation Paper](#) on amendments to existing rules underpinning the Key Information Document (KID) for Packaged Retail and Insurance-based Investment Products (PRIIPs). The consultation paper proposes changes relating to the following topic areas:

- Illustrations of what the retail investor might receive in return from their investment (performance scenarios);
- Information on what the costs of the investment are;
- Specific issues for different types of investment funds;
- Specific issues for PRIIPs offering a range of options for investment (so-called “Multi-Option Products”).

The consultation is open till 13 January 2020.

## PRIIPs - ESAs Supervisory Statement on the application of scope of the PRIIPS Regulation to bonds

On 24 October 2019, responding to uncertainty as to the scope of the PRIIPs Regulation, the Joint Committee of the European Supervisory Authorities (ESAs) published a [Supervisory Statement](#) in order to promote a consistent application by national competent authorities of the scope of the Regulation for the PRIIPs Regulation to bond markets.

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

### UK Financial Conduct Authority - Brexit - temporary permissions regime

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 30 October 2019, following the extension of the date for the UK's departure from the EU, the FCA announced that it would extend the deadline for notifications for the temporary permissions regime to 30 January 2020.

### 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 providers

### ESMA continues to monitor CFDs and binary options

In July 2019, ESMA announced that it would not renew the temporary restrictions on the marketing, distribution or sale of contracts for differences (31 July 2019) and of binary options (1 July 2019) to retail clients in the EU. However, 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 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. The statement remains in force.

### ESMA 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

### Specially Designated Nationals List of the Office of Foreign Assets Control (OFAC)

On 6 September 2019, through the issuance of [Circular C337](#) the CySEC reminded regulated entities to consider OFAC's Specially Designated Nationals List (SDN List), which is updated regularly when assessing the money laundering and terrorist financing risks associated with business relationships and occasional transactions with their clients.

### Directive DI87-02(A) of 2019 for the repeal of certain CySEC Directives

On 20 September 2019, the CySEC issued [Directive DI87-02\(A\)](#) amending Directive DI87-02 which repeals certain directives of CySEC that were issued pursuant to the Investment Services and Activities and Regulated Markets Law of 2007.

### Policy Statement PS-04-2019 on the imposition of National Measures in relation to the marketing, distribution and sale of CFDs

On 27 September 2019, the CySEC issued a [Policy Statement](#) relating to the imposition of the Cypriot National Measures in relation to the marketing, distribution and sale of CFDs, following the issuance of Consultation Paper (CP-02-2019) issued on 30 May 2019. The Policy Statement summarises the feedback received in response to the Consultation Paper and sets out CySEC's final position on the issue.

### Directive DI87-09 for the restriction of marketing, distribution and sale of CFDs to retail customers

On 27 September 2019, the CySEC published [Directive DI87-09](#) (in Greek only). The Directive sets the restrictions in relation to the marketing, distribution, and sale of CFDs to retail clients and was published following the issuance of CySEC's Consultation Paper (CP-02-2019) and the subsequent Policy Statement (PS-04-2019).

The said Directive came into effect on 2 October 2019 and includes the following measures:

- The restriction of leverage limits from 30:1 to 2:1 on the opening of a position by a retail client;
- The adoption of the same leverage limits for all retail clients, with ranges from 2:1 to 30:1 dependent on the type and volatility of the underlying asset:
  - 30:1 for major currency pairs;
  - 20:1 for non-major currency pairs, gold and major indices;
  - 10:1 for commodities other than gold and non-major equity indices;
  - 5:1 for individual equities and other reference values;
  - 2:1 for crypto currencies.
- The introduction of a margin close-out, when the clients' funds fall to 50% of the margin needed to maintain their open positions on their CFD account;

- The introduction of a negative balance protection per account basis, so that retail clients cannot lose more than the total funds in their trading account;
- The prohibition of firms from offering cash or other inducements to encourage retail clients to trade; and,
- The requirement of firms to provide standardised risk warnings informing potential customers the percentage of their retail client accounts;
- A territorial approach in relation to Cyprus National Product Intervention Measures for the provision of services on a cross-border basis to resident of other Member States and in third countries outside the EEA.

## CySEC statement in response to ESMA's Opinion on National Product Intervention Measures for CFD's

On 30 of September 2019, the CySEC [announced](#) that ESMA had published an opinion on 27 September 2019 concluding that overall CySEC's Cyprus National Product Intervention Measures ("CyNPIMs"), as adopted under Directive DI87-09, are justified and proportionate with the exception of the definition the CyNPIMs' territorial scope. CySEC's aforementioned definition can be seen directly below.

Where an entity falling under CySEC's supervision markets, distributes or sells CFDs to a resident of:

- Cyprus, CyNPIMs will have the content of the ESMA Measures except for the risk warning for new CFD providers;
- A Member State where the National Competent Authority ("NCA") has introduced National product Intervention Measures ("NPIMs"), CyNPIMs will have the content of the measures taken by the NCA of the respective Member State;
- A Member State where the NCA has not introduced NPIMs, CyNPIMs will have the content of the ESMA measures except for the risk warning for new CFD providers;
- A third country, CyNPIMs will have the content of the ESMA measures except for the risk warning for new CFD providers.

In relation to the above, CySEC firmly believes that its approach is justified and proportionate and will continue to endeavour to achieve regulatory convergence across the EU through its ESMA participation.

## Guidelines on complaints-handling for the securities sector

On 7 October 2019, through the issuance of [Circular C338](#) (hereinafter the "Circular") the CySEC informed CIFs of the reissuance of ESMA's and EBA's Guidelines on complaints-handling for the securities sector ([JC 2018 35](#)). The aforementioned Guidelines seek to clarify expectations relating to firms' organisation in relation to complaints-handling including, the provision of guidance on the delivery of information to complainants, the procedure for responding to complaints, and the enhancement of harmonisation and supervision. The CySEC notes that the previously published guidelines (JC 2014 43), as well Circular C100 and Circular C198, have been repealed.

Further, the CySEC wishes to remind CIFs of their obligation to provide information on a monthly basis in relation to the complaints received and how these are handled via the new form XX\_yymmdd\_COMP-CIF which



is attached in the Circular as Annex 1. The Circular also included guidelines for CIFs outlining the details for the completion and submission of the new form.

## **FATF Guidance on Terrorist Financing Risk Assessment**

On 7 October 2019, through the issuance of [Circular C339](#), the CySEC informed regulated entities that the Financial Action Task Force (FATF) had released its new [Terrorist Financing Risk Assessment Guidance](#) which builds on the previous FATF Guidance on National Money Laundering and Terrorist Financing Risk Assessment of 2013. The CySEC expects that Regulated Entities will take due account and apply FATF's Guidance which will assist them in the assessment of terrorist financing risks and the implementation of appropriate counter measures.

## **ESMA Guidelines for the assessment of knowledge and competence**

On 9 October 2019, through the issuance of [Circular C341](#), the CySEC reminded CIFs, AIFs and UCITS Management Companies of ESMA's Guidelines for the assessment of knowledge and competence of staff in relation to the provision of investment services and activities pursuant to article 25(1) of MiFID II. The relevant Guidelines are applicable since 3 January 2018.

## **Supervisory statement published by Joint European Supervisory Authorities (ESAs) concerning the performance scenarios in the PRIIPS KID**

On 17 October 2019, through the issuance of [Circular C342](#), the CySEC reminded CIFs and Management Companies, of the joint ESAs supervisory statement published on 8 February 2019 concerning the performance of scenarios that should be included in the PRIIPs KID. More specifically the CySEC wished to remind PRIIP manufacturers that performance scenarios based on the recent economic cycle may provide an overly positive outlook for potential future returns. Therefore, KIDs should include a standardised warning which can be found in the ESAs' Supervisory Statement, to ensure that retail investors are fully aware of the limitations of the figures provided in the performance scenarios.

## **Thematic review of best execution obligations of CIFs**

On 25 October 2019, through the issuance of [Circular C343](#), the CySEC informed CIFs about a review that was carried out in order to ensure compliance with the provisions of article 28 of Law 87(I)/2017 with regards to the obligation to execute orders on terms most favourable to the clients. CySEC identified several compliance failures, such as weakness in implementing in practice the Order execution policy, providing less favourable execution terms to clients who were profitable, restrictions on certain order types (e.g. imposing a 2-minute time limit to be able to close a winning position), weaknesses in monitoring the effectiveness of the order execution policy and arrangements and many more failures.

CySEC urged all CIFs to consider the issues raised in this circular and to ensure that they are in a position to identify any weakness to take immediate remedial actions.

## Consultation Paper CP-03-2019 on investment-based crowd funding rules under MiFID II

On 15 November 2019, the CySEC issued [Consultation Paper \(2019-03\)](#) proposing the introduction of specific rules on investment-based crowd funding by means of a Directive (hereinafter the “Crowd Funding Directive”) pursuant to Law 87(I)/2017.

Crowd funding is an alternative method to bank financing, through which small and medium enterprises can have access to funding, by means of small contributions, from many investors. The proposed Crowd Funding Directive will regulate the organization, operations, transparency, and marketing obligations, as well as the supervision of CIFs offering crowd funding services in and/or from the Republic.

CIFs were invited to respond to the Consultation Paper by 2 December 2019.

## Guidelines on risk factors under the Prospectus Regulation

On 29 November 2019 through the issuance of Circular [C344](#) CySEC informed persons responsible for the prospectus that CySEC has adopted ESMA's [Guidelines](#) on the risk factors under the Prospectus Regulation, Regulation 2017/1129.

CySEC instructed persons responsible for the prospectus to consider the guidelines when preparing a prospectus for submission to the relevant competent authorities. The Guidelines begin applying from 4 December.

# 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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