

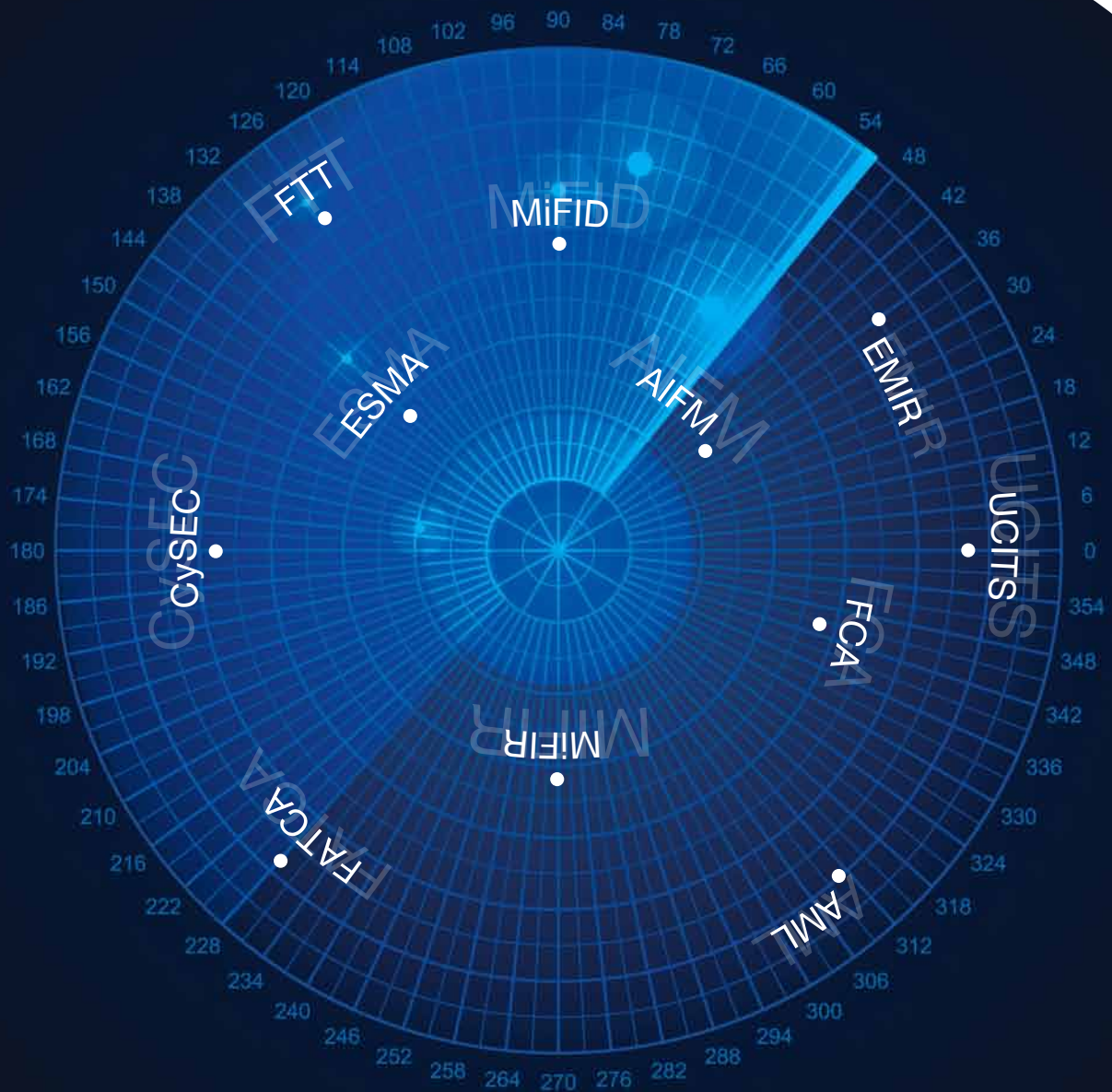


MAP S.Platis
Your Partner in Financial Services!

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REGULATORY RADAR

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





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60 Second Summary

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

- **MiFID II**
 - 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 or EMIR Refit 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 5th Anti-Money Laundering Directive deadline for being transposed into national law by Member States was on 10 January 2020 – several Member States have still not complied
- FATF issues guidance on Digital ID and best practices on beneficial ownership

3. EU Financial Transaction Tax (FTT)

- Political decisions on FTT postponed until Brexit outcome is known

4. FATCA & CRS

- No update

5. Fund Regulation

- No material developments

6. PRIIPS Regulation

- No material developments

7. UK - Developments of Interest to Investment Firms

- Brexit: following the UK's exit from the EU on 31 January 2020, an implementation period runs until 31 December 2020
- Covid-19: UK regulators are working with the financial services sector to ensure it is responding effectively to the Covid-19 outbreak

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

- ESMA published a report with its advice to the European Commission on 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 States

9. CySEC Developments

- CySEC announces exams for Anti-Money Laundering Compliance Officers
- CySEC issues a new Directive on the establishment of simplified obligations as to the content and details of the recovery plans of CIFs
- CySEC issues a new Directive and Policy Statement for the provision of Crowdfunding Services in transferable securities
- CySEC publishes the results of its review on MiFIR Transaction Reporting
- CySEC urges CIFs to take appropriate business continuity and disaster recovery measures in light of COVID-19 virus outbreak

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 28 February 2020, ESMA made available the annual transparency calculations for equity and equity-like instruments. These calculations shall be applicable from 1 April 2020, until then the 2019 annual transparency calculations continue to apply.

Currently, there are 1,493 liquid shares and 788 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”.

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 7 February 2020, 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 January 2019 to 31 December 2019.

The number of new breaches is 66: 55 equities for the 8% cap, applicable to all trading venues, and 11 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 **13 February 2020 to 12 August 2020**. The instruments for which caps already existed from previous periods will continue to be suspended. As of 7 February 2020, there is a total of 406 instruments suspended.

ESMA makes available bond liquidity data

On 31 January 2020, ESMA made available the latest quarterly liquidity assessment for bonds available for trading on EU trading venues. For this period, there are currently 520 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 31 January 2020 will apply from **16 February 2020 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 31 January 2020, ESMA published the total number of trades and total volume over the period July-December 2019 for the purpose of systematic internaliser calculations for 22,604 equity and equity-like instruments and for 322,835 bonds. Please refer to the ESMA website link above under “Data for the systemic internaliser calculations” for the current data.

Investor protection ESMA launches common supervisory action with National Competent Authorities on MiFID II suitability rules

On 5 February 2020, ESMA launched a common supervisory action (CSA) with national competent authorities (NCAs) on the application of MiFID II suitability rules across the European Union (EU). The CSA will be conducted during 2020. The CSA will focus on the application of the MiFID II requirements on the assessment of suitability. This action will allow ESMA and the NCAs to gauge the progress made by intermediaries in the application of this key requirement. It will also help in the analysis of whether, and how, the costs of investment products are taken into account by firms when recommending an investment product to a client. The CSA contributes to fulfilling ESMA's mandate on building a common supervisory culture among NCAs to promote sound, efficient, and consistent supervision throughout the EU. ESMA's promotion of supervisory convergence is done in close cooperation with NCAs.

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

Q&A on MiFIR data reporting

The [questions and answers \(Q&As\) documents on MiFIR data reporting](#) dated 6 December 2019 are the current Q&A.

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

The questions and answers (Q&As) documents regarding [transparency topics](#) and [market structures topics](#) both dated 5 December 2019 are the current Q&A.

Q&A on MiFID Investor Protection and Intermediaries

On 18 February 2020, ESMA updated its Q&A on [investor protection and intermediaries topics](#). The new Q&As include new answers on MiFID practices for firms selling financial instruments subject to the Bank Recovery and Resolution Regime.

II. MARKET ABUSE REGULATION

ESMA 2019 report on accepted market practices

On 13 December 2019, ESMA published its second [annual report](#) on the application of accepted market practices (AMPs) in accordance with the Market Abuse Regulation (MAR).

ESMA's report provides an overview on the establishment and application of AMPs in the EU after MAR became applicable, including the AMPs established under the Market Abuse Directive that remained applicable afterwards. In addition, the report provides information and data on the application of AMPs in practice and recommendations to national competent authorities.

ESMA publishes responses received to its consultation on the MAR review

On 13 December 2019, ESMA published the responses it received from stakeholders on its consultation on the review of the Market Abuse Regulation (MAR). Responses are available on its [website](#).

ESMA recommends measures to strengthen STOR supervision

On 12 December 2019, ESMA published a [peer review report](#) on how national competent authorities (NCAs) handle suspicious transactions and order reports (STOR) under the Market Abuse Regulation (MAR).

Overall, ESMA found that NCAs are performing well in the analysis of suspected market abuse reported in STORs but also identified some areas for improvement in NCAs' supervision and enforcement of the STOR requirements.

Overall, six NCAs were assessed as fully complying in at least four of the six assessment areas, namely those from Belgium, France, Italy, the Netherlands, Portugal and the United Kingdom. In the areas identified for improvements:

- 11 NCAs were assessed as partially-compliant (Austria, Bulgaria, Greece, Iceland, Ireland, Latvia, Liechtenstein and Luxembourg) or non-compliant (Cyprus, Norway and Romania) in their supervision of the STOR requirements by certain financial players; and
- 13 NCAs were assessed as partially compliant (Croatia, Denmark, Estonia, Greece, Iceland, Latvia, Lithuania, Malta, Poland, Romania and Slovakia) or non-compliant (Cyprus and Liechtenstein) in their response to poor-quality or suspected non-reporting of STORs and associated enforcement actions.

In all cases of less than full compliance, ESMA identifies bespoke improvements for each NCA.

ESMA Q&As

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 Refit

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: certain provisions became applicable on 18 December 2019, other provisions will become applicable from 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

The current [EMIR Q&As](#) are dated 7 January 2020. The latest amendments to the Q&As relate to the level of stringency in admission criteria with respect to individuals acting as clearing members.

ESMA Final Report on alignment of MiFIR/EMIR Refit

On 7 February 2020, ESMA published its [final report](#) suggesting 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 European Commission.

After consulting with stakeholders, ESMA finalised its recommendations to the European Commission, which consist in aligning the scope of counterparties subject to the clearing and the trading obligations. ESMA is submitting its final report to the European Commission. 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 Organisation 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 19 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 19 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.

IV. Securities Financing Transactions Regulation (SFTR)

ESMA updates SFTR reporting

On 20 December 2019, ESMA published [updated](#) SO 20022 XML Schemas to be used for reporting under SFTR.

ESMA clarifies SFTR reporting

On 6 January 2020, ESMA published its [final report](#) and its [guidelines](#) for reporting under the Securities Financing Transactions Regulation (SFTR), as well as amended validation rules and a [statement](#) on Legal Entity Identifiers (LEIs). The guidelines provide clarity as to the following aspects:

- the reporting start date when it falls on a non-working day;
- the number of reportable securities financing transactions (SFTs);
- the population of reporting fields for different types of SFTs;
- the approach used to link SFT collateral with SFT loans;
- the population of reporting fields for margin data;
- the population of reporting fields for reuse, reinvestment and funding sources data;
- the generation of feedback by Trade Repositories and its subsequent management by counterparties, namely in the case of (i) rejection of reported data and (ii) reconciliation breaks; and
- the provision of access to data to authorities by Trade Repositories.

The LEI statement clarifies the expectations with regards to reporting of LEI for issuers of securities used in SFTs, as well as the relevant supervisory actions to be carried out by authorities.

Finally, ESMA has updated the SFTR validation rules. The amended SFTR validation rules are fully aligned with the updated XML schemas published in December 2019, as well as with the aforementioned LEI statement.

V. Central Securities Depositories Regulation (CSDR)

ESMA updates Q&A

On 17 February 2020, ESMA published updated [questions and answers](#) (Q&As) in relation to the implementation of the Central Securities Depositories Regulation (CSDR).

The updated Q&As clarify the practical impact of the settlement discipline regime, including the impact on:

- the costs of the penalty mechanism charged by a central securities depository;
- settlement instructions sent by central counterparties; and
- the length of the extension period in the buy-in process.

2. Anti-Money Laundering

The Fifth Money Laundering Directive

The Fifth Money Laundering Directive (MLD5) came into force on 9 July 2018 and Member States had until **10 January 2020** to transpose the Directive into national law. The European Commission has sent letters of formal notice to Cyprus, Hungary, the Netherlands, Portugal, Romania, Slovakia, Slovenia and Spain for failing to notify any implementation measures in relation to MLD 5.

The Fourth Money Laundering Directive (MLD4)

On 5 February 2020, the European Banking Authority issued a [consultation paper](#) on revised guidelines on anti-money laundering and countering terrorist financing (AML/CTF) risk factors. In June 2017, the three European Supervisory Authorities (ESAs) issued Guidelines on customer due diligence and the factors credit and financial institutions should consider when assessing the money laundering and terrorist financing risks associated with individual business relationships and occasional transactions. However, since then, the applicable legislative framework in the EU has changed. On 9 July 2018, MLD5 entered into force and became applicable from 10 January 2020 (see above).

Moreover, new risks have emerged and have been identified in the ESAs' 2019 Joint Opinion. The European Commission's post mortem report and the EBA's implementation reviews have highlighted widespread challenges in the operationalisation and supervision of the risk-based approach to AML/CFT. Therefore, a review of the original Risk Factors Guidelines was warranted. The scope of the EBA's consultation is limited to the amendments and additions to the original risk factors Guidelines, which will be repealed and replaced with the revised Guidelines. The EBA now has a new legal mandate to lead coordinate and monitor the financial sector's fight against AML/CTF across the EU.

The revised guidelines will apply to credit institutions and financial institutions, as defined in MLD 4, and competent authorities responsible for supervising their compliance with AML/CFT obligations.

In its revised version, the EBA is proposing key changes, including:

- new guidance on compliance with the provisions on enhanced customer due diligence related to high-risk third countries
- new sectoral guidelines on crowdfunding platforms, corporate finance, payment initiation services providers and account information service providers and for firms providing activities of currency exchanges offices
- more details on terrorist financing risk factors
- more details on customer due diligence measures including on the identification of the beneficial owner
- the use of innovative solutions to identify and verify the customers' identity
- regulatory expectations of firms' business-wide and individual ML/TF risk assessments.

The consultation is open till 5 May 2020.

MLD4 - ESAs joint guidelines on cooperation and information exchange between authorities

On 16 December 2019, the Joint Committee of the European Supervisory Authorities published a [final report](#) containing joint guidelines on cooperation and information exchange between national competent authorities supervising credit and financial institutions under the Fourth Anti-Money Laundering Directive.

The guidelines establish colleges of anti-money laundering/counter terrorist financing (AML/CTF) supervisors for the first time in the EU. These colleges provide a platform for sharing information between AML/CTF and prudential supervisors. The guidelines aim to clarify the practicalities of supervisory cooperation and information exchange, and to create a common framework that supervisors should use to support effective oversight of cross-border groups from an AML/CTF and prudential perspective cover:

- the mapping of firms;
- the conditions for establishing and maintaining an AML/CTF college;
- cooperation between AML/CTF colleges and prudential supervisors;
- the composition of AML/CTF colleges; and
- procedural issues relating to college meetings, procedures for requesting and providing mutual assistance and a common approach.

The guidelines will apply from 10 January 2020, however there is a transitional period of two years for low-risk firms.

FATF Guidance on Digital ID

On 6 March 2020, the Financial Action Task Force (FATF) published [Guidance](#) on Digital Identity. For the FATF, the growth in digital financial transactions requires a better understanding of how individuals are being identified and verified in the world of digital financial services. Digital identity (ID) technologies are evolving rapidly, giving rise to a variety of digital ID systems. This Guidance is intended to assist governments, regulated entities and other relevant stakeholders in determining how digital ID systems can be used to conduct certain elements of customer due diligence (CDD).

FATF Best practices on beneficial ownership for legal person

In October 2019 FATF published [best practices](#) on beneficial ownership for legal persons. FATF had found that jurisdictions find it challenging to achieve a satisfactory level of transparency regarding the beneficial ownership of legal persons. This best practice paper aims to provide suggested solutions, supported by cases and examples of best practices, in response to challenges faced in implementing FATF Recommendation on beneficial ownership.

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 [10](#) and [12](#) of MAP S.Platis Regulatory Radar for the latest information on FATCA and CRS, respectively.

5. Fund Regulation

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.

6. Packaged Retail and Insurance-based Investment Products (PRIIPs)

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 – ESMA publishes responses to joint consultation

On 21 January 2020, ESMA published the [responses](#) received to the Joint Consultation Paper concerning amendments to the PRIIPs KID – [see MAPs Platis Regulatory Update December 2019].

PRIIPs KID – ESMA Securities and Markets Stakeholder Group Advice

On 13 January 2020, the ESMA Securities and Markets Stakeholder Group published its [advice](#) on the European Supervisory Authorities' Joint Consultation Paper concerning amendments to the PRIIPs KID.

7. UK – Developments of Interest to Investment Firms

UK Financial Conduct Authority – Coronavirus

On 4 March 2020, the FCA published a [statement](#) on Covid-19. The FCA is working closely with the financial services sector to ensure it is responding effectively to the Covid-19 outbreak. This is in conjunction with the Bank of England and HM Treasury. The FCA expects all firms to have contingency plans in place to deal with major events. Alongside the Bank the FCA are actively reviewing the contingency plans of a wide range of firms. This includes assessments of operational risks, the ability of firms to continue to operate effectively and the steps firms are taking to serve and support their customers. The FCA expects firms to take all reasonable steps to meet their regulatory obligations.

UK Financial Conduct Authority - Brexit implementation period

On 31 January 2020 the UK left the European Union (EU) and entered an implementation period, which is due to last until 31 December 2020. Firms and funds will continue to benefit from passporting between the UK and EEA. However, the FCA has cautioned firms not to expect the current passporting arrangements to continue after the transition period ends, to anticipate a range of possible scenarios for the end of the transition period, including that the activities conducted might not be covered by arrangements agreed between the UK and the EU, and to consider what action may be required to be ready for 1 January 2021.

During the implementation period, EU law will continue to apply. Consumer rights and protections derived from EU law will also remain in place.

(The temporary permission regime is not required at this stage and did not come into force at 23h00 on 31 January 2020, as the UK left the EU on exit day with an implementation period in place)

UK Financial Conduct Authority becomes the anti-money laundering and counter terrorist financing supervisor of UK cryptoasset activities

On 10 January 2020, the FCA became the anti-money laundering and counter terrorist financing (AML/CTF) supervisor for businesses carrying out certain cryptoasset activities. Any UK business conducting specific cryptoasset activities falls within scope of the relevant regulations and will need to comply with their requirements.

Amongst other things, the FCA requires cryptoasset businesses to:

- identify and assess the risks of money laundering and terrorist financing which their business is subject to;
- have policies, systems and controls to mitigate the risk of the business being used for the purposes of money laundering or terrorist financing;
- where appropriate to the size and nature of its business, appoint an individual who is a member of the board or senior management to be responsible for compliance with the UK regulations;
- undertake customer due diligence when entering into a business relationship or occasional transactions;
- apply more intrusive due diligence, known as enhanced due diligence, when dealing with customers who may present a higher money laundering / terrorist finance risk;
- undertake ongoing monitoring of all customers to ensure that transactions are consistent with the business's knowledge of the customer and the customer's business and risk profile.

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.

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

ESMA final report on product intervention requirements

On 4 February 2020, ESMA published its [final report](#) on product intervention requirements under MiFIR. The European Commission asked ESMA to report on its experience with product intervention powers, including the practical effects of the product intervention measures in relation to Contracts for Difference (CFDs) and binary options. The EC sought technical advice from ESMA for the purpose of the preparation of the report that the EC shall present to the European Parliament and the Council in the context of the MiFID II and MiFIR review.

By way of background, ESMA published its first product intervention measures in March 2018, and found that these measures have protected retail investors by limiting distribution of speculative products to retail clients. Nearly all National Competent Authorities (NCAs) have taken national product intervention measures in relation to the marketing, distribution or sale of binary options and CFDs to retail clients. ESMA adopted opinions in relation to these national measures indicating whether they were justified and proportionate.

As part of its review, and renewal process, of the temporary measures in relation to binary options and CFDs, ESMA has collected significant information on the impact of its product intervention measures.

The main elements of the technical advice include:

- A recommendation to the European Commission to address the risk of arbitrage between MiFID firms and fund management companies

- Advice on how to improve convergence and the level playing field across the EU single market, through facilitating the transformation of temporary measures into permanent ones, and alternatively extend ESMA's powers to allow the introduction of temporary bans for 18 months
- A request for further clarification of the application of product intervention measures to firms acting on a cross-border basis
- Measures to facilitate the adoption by an NCA of a measure already adopted by ESMA
- A request for further clarification of the wording of Article 40(3) of MiFIR (ESMA temporary intervention powers)

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 11 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.

9. CySEC Developments

CySEC announces exams for Anti-Money Laundering Compliance Officers (AMLCOs)

On 17 December 2019, through the issuance of a [Press Release](#) and [Announcement](#), CySEC informed regulated entities of the initiation of the first AMLCO Examination, pursuant to Directive [R.A.D. 44/2019 as amended](#).

Registration for the AMLCO Examination was made available through CySEC's website as of Tuesday, 17 December 2019. Currently the AMLCO Examination is only available in English, but will also be made available in Greek at a later stage. The first AMLCO Examination took place on the 4th of February 2020 and thereafter, it is held every Tuesday and Thursday in Nicosia.

Individuals who are already appointed as AMLCOs in CySEC-regulated entities should register for the examination as soon as possible. Such persons must succeed in the examination within twelve (12) months from the first examination date, i.e. starting from 4 February 2020 until 4 February 2021. In case an individual fails to pass the exam in the twelve-month period, their appointment as AMLCO shall not resume until they have passed the exam.

Suspension of redemption of UCITS and AIFs units on 24 December 2019

On 19 December 2019, through the issuance of [Circular 345](#), the CySEC informed Management Companies and AIF Managers that the redemption of UCITS and AIFs units that hold assets in transferable securities listed in regulated markets was suspended for the 24 December 2019. This was done pursuant to article 20 UCI Law and article 43(3) of the AIF Law, taking into account the fact that the 24 December 2019 is a holiday and/or a half-day for most international stock markets, the need to safeguard the interests of unit-holders of UCITS and AIFs, as well as the proper functioning of the market.

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

On 31 December 2019, through the issuance of [Circular C347](#), the CySEC informed regulated entities about the new version of form QST-MC Version 7. The Form must be completed and submitted to CySEC by all Regulated Entities that were authorised by December 31, 2019. The deadline for the submission of the Form for the Q4 2019, was 31st January 2020.

Directive DI20-01 on the establishment of simplified obligations as to the content and details of recovery plans of CIFs

On 4 February 2019, the CySEC published [Circular 351](#) reminding CIFs whose initial capital is EUR 730,000 of their obligations under Directive [DI20-01](#) (hereinafter, the “Directive”) issued on the 20th of December.

The purpose of the Directive is to impose simplified obligations to CIFs whose initial capital is EUR 730,000 in relation to the content and details of their Recovery Plans. In particular, CIFs that have not been determined as Other Systemically Important Institutions by the decision, at the time, of the Central Bank of Cyprus, pursuant to the provisions of Article 6(1) of the Macprudential Supervision of Institutions Law of 2015, and meet one of the following criteria according to their latest audited financial statements, have simplified obligations:

- i. Total Assets are less than EUR 1 billion;
- ii. Total Liabilities are less than EUR 1 billion;
- iii. Total Income is less than EUR 100 million.

In light of the above, CIFs that are subject to simplified obligations should draw a recovery plan which shall include at least the content and details referred to in Form 20-01 of the Commission, and shall submit the relevant Form to CySEC every two years.

CIFs that are not subject to simplified obligations should prepare a Solo Recovery Plan, in accordance with the provisions of section 4 of the Recovery Law, and submit it to CySEC, on an annual basis. In addition, applicable CIFs should submit Form 20-01 on an annual basis also.

Regulation (EU) 2015/2365 on transparency of securities financing transactions and of reuse (SFTR)

On 7 January 2020, through the issuance of [Circular C346](#), the CySEC reminded Regulated Entities of the requirements under the SFTR, particularly with regards to their reporting obligations.

The SFTR applies to counterparties to a securities financing transaction. Regulated Entities which fall under the scope of the SFTR must take action to ensure their compliance with the enhanced obligations prior to the dates when SFTR comes into effect. Specifically, they must:

- i. Consider the products traded to identify which of them are within the scope of SFTR Reporting;
- ii. Amend their systems and procedures and in general, take all necessary actions in order to report transactions in accordance with the SFTR reporting requirements;
- iii. Obtain legal entity identifiers if they do not already have and ensure that all their clients, which are legal entities, have also obtained LEIs.

Directive DI 87-10 for the provision of Crowdfunding Services in respect of Transferable Securities

On 17 of January 2020, following the publication of a [Consultation Paper](#) on 15 November 2019 as well as a [Policy Statement](#) and a [Press Release](#) on 15 January 2020, the CySEC published [Directive DI 87-10](#) for the provision of Crowdfunding Services in respect of Transferable Securities (hereinafter, the “Directive”)

The Directive sets forth the conditions and the requirements regarding the provision of crowdfunding services in transferable securities by means of a crowdfunding platform and applies to CIFs acting as crowdfunding service providers. The provision of crowdfunding services requires the prior consent of CySEC. An application can be made through the completion and submission of the relevant standardised Form which is available on the CySEC’s website.

Under the Directive, CIFs acting as crowdfunding service providers are subject to additional provisions aiming at ensuring investor protection, and these include:

- i. Conflicts of interest: CIFs will be subject to neutral intermediation through licensing and activities restrictions, thereby ensuring, amongst other things, that the fees paid by the project owner to the CIF are not linked to order routing. In addition, CIFs will not be allowed to receive order routing benefits in respect of crowdfunding projects and, nor will they be allowed to acquire participation in crowdfunding projects on a platform or allow “involved persons” to act as project owners.
- ii. Customer due diligence: Additional customer and financial due diligence, in respect of both the crowdfunding project (including credit risk) as well as the project owner, must be implemented before a project can be listed on a platform. Identity verification and anti-money laundering checks must be

performed on both the end-investor and project owner.

- iii. Transparency obligations: Project owners must produce a standardised pre-contractual document, the Key Investment Information Sheet (“KIIS”). CIFs acting as crowdfunding service providers must ensure that the content of KIIS, as well as any marketing communication, is clear, complete and accurate.
- iv. Safeguarding clients’ funds and financial instruments: All monies raised via the crowdfunding platform must be transferred by the CIF to the project owner only after the successful closing of the relevant offer. This is subject to safekeeping, and must be divided into custodial and non-custodial transferable securities. CIFs acting as crowdfunding service providers shall release the funds to the Project Owner only where the transferable securities have been physically delivered or where sufficient evidence is provided by the Project Owner to the CIF that the ownership of the transferable securities has been transferred to the respective investors, in line with their contributions.
- v. Exit opportunities: CIFs which are crowdfunding service providers may operate a bulletin board through which crowdfunding clients of the CIF may advertise their interest to buy and/or sell transferable securities that had been made available through the CIF’s platform, thus providing exit opportunities for the end-investor. The bulletin board should not be designed in a way that renders it a trading system.

The Directive entered into force on 17 January 2020.

CySEC’s announcement in relation to Article 12 of Law 87(I)/2017

On 21 January 2020, the CySEC through the aforementioned [Announcement](#), wished to draw the attention of regulated entities to Article 12 of Law 87(I)/2017 (hereinafter, the “Law”). which concerns notifications to CySEC in case of proposed acquisitions. CySEC via the Announcement asked that Regulated Entities comply with the relevant provisions at all times. Any breach of the Law may result in the imposition of sanctions.

Expansion of CySEC Portal to include Funds Digital Record

On 28 January 2020, through the issuance of [Circular C348](#), the CySEC informed Fund Managers (UCITS management companies, internally managed UCITS and AIFs, AIFMs and subthreshold AIF managers) about the creation of the ‘Funds Digital Record’. The Funds Digital Record forms part of the CySEC Portal, giving Fund Managers a user-friendly interface for submissions and data input. Furthermore, Fund Managers will be able to view all of their reported data and make immediate additions/changes. The publication of the Circular C348 was followed by the issuance of a [Press Release](#) by CySEC on 29 January 2020.

CySEC’s announcement relating to the Withdrawal Agreement between the United Kingdom and the European Union

On 31 January 2020, through the issuance of the above-mentioned [Announcement](#), the CySEC informed Regulated Entities and the general public that, from the 1st February 2020 until the 31st December 2020, which is the transitional period provided in the Withdrawal Agreement between the United Kingdom and the European Union, European Law will continue to apply to the United Kingdom.

Preparation, submission of consolidated audited financial statements and consolidated capital adequacy forms

On 5 February 2020, through the issuance of [Circular C350](#), the CySEC provided guidance to CIFs that fall under the consolidated supervision of CySEC. Specifically, CIFs that are subject to consolidated supervision by CySEC are expected to:

- i. submit their consolidated capital adequacy forms on a quarterly basis from December 31, 2019 via TRS;
- ii. submit their consolidated audited financial statements within 4 months from the end of each financial year, if applicable;
- iii. submit their consolidated capital adequacy forms based on the results of their audited financial statements within 5 months from the end of each financial year.

In the case where a CIF or their parent entity is not required by the International Financial Reporting Standards and/or Companies Law and/or any other legislation to prepare consolidated audited financial statements (as per point ii. above) then they should submit a duly signed declaration within 4 months from the end of each financial year, and follow the procedures mentioned in CySEC's [Circular C305](#).

Report on the Activities of CySEC's Innovation Hub

On 10 February 2020, through the issuance of the [Innovation Hub Update Report](#), the CySEC informed Regulated Entities of the activities of CySEC's Innovation Hub. The Update Report provides an overview of the activities of the Innovation Hub since its inception in October 2018.

Announcement of CySEC on the publication of the Fifth Round Mutual Evaluation Report of Cyprus by MONEYVAL

On 14 February 2020, the CySEC issued an [Announcement](#) relating to the publication of the Mutual Evaluation Report (MER) of Cyprus by the MONEYVAL. The MER highlighted therein a number of positive attributes of Cyprus's Anti-Money Laundering and Counter Terrorist Financing Measures, as well as a number of areas that are in need of improvement and further attention. The CySEC expressed its satisfaction that Cyprus' MER reflects the efforts of CySEC and all obliged entities in the investment sector in the fight against money laundering and terrorist financing, within the international community.

Practical Guide on Regulation (EU) 2019/2115 regarding the promotion of the use of SME growth market

On 19 February 2020, CySEC issued a [Practical Guide](#) which aimed to provide the industry with an outline of the new amendments introduced in Regulation (EU) 596/2014 (MAR Regulation) and (EU) 2017/1129 (Prospectus Regulation) by Regulation (EU) 2019/2115 of the European Parliament and the Council of 27 November 2019 as regards the promotion of the use of SME growth markets.

CySEC lists therein the main changes introduced by the aforementioned Regulations as well as their implementation dates.

Consultation Paper on the revised money laundering and terrorist financing (ML/TF) Risk Factors Guidelines issued by the European Banking Authority (EBA)

On 24 February 2020, through the issuance of [Circular C352](#), the CySEC informed Regulated Entities that, following the publication of ESAs 2017 Risk Factor Guidelines and ESAs 2019 Joint Opinion, the EBA issued on 5 February a Public Consultation on the revised ML/TF Risk Factor Guidelines which take into account changes to the EU Anti Money Laundering and Counter Terrorism Financing legal framework and new ML/TF risks

The CySEC encourages Regulated Entities to respond to the Consultation Paper using the consultation form which can be found on the EBA's website by 5 May 2020, the latest.

Consolidated Certification Directive, regarding the certification of persons and the certification registers

On 25 of February 2020, the CySEC published the [Consolidated Certification Directive](#) (available in Greek) regarding the Certification of Persons and the Certification Registers which has consolidated the following Directives:

- i. R.A.D. [44/2019](#),
- ii. R.A.D. [103/2019](#) (available in Greek), and
- iii. R.A.D. [73/2020](#) (available in Greek)

The Amending Directive, R.A.D. 73/2020, was published by CySEC and came into force on 21 February 2020.

Risk Based Supervision Framework – Electronic submission of information for the year 2019 (Form RBSF-CIF)

On 27 February 2020, through the issuance of [Circular C353](#) the CySEC informed CIFs that were authorised by 31 December 2019 of the issuance of Version 3 of RBSF-CIF. The Form must be completed and submitted electronically via CySEC's Transaction Reporting System by 31 March 2020.

Risk Based Supervision Framework – Electronic submission of information for the year 2019 (Form RBSF-ASP)

On 27 February 2020, through the issuance of [Circular C354](#) the CySEC informed ASPs that were authorised by 31 December 2019 of the issuance of Version 3 of the RBSF-ASP Form. The Form must be completed and submitted electronically via CySEC's Transaction Reporting System by 31 March 2020.

Publication of CySEC's Review of compliance with the Transaction Reporting obligation under Article 26 of Regulation (EU) No 600/2014 ('MiFIR')

On 28 February 2020, through the issuance of [Circular C356](#), the CySEC informed Reporting Entities of a

review carried out by CySEC in relation to the quality of data reported by Regulated Entities to CySEC under Article 26 of MiFIR. The areas of concern identified by CySEC during the review have been summarised below:

- i. Timing of Reporting: A number of Reporting Entities did not submit the transactions to TREM within the timeframe required by the Article 26(1) of MiFIR.
- ii. Use of invalid index name: Some Reporting Entities had incorrectly populated field 48 with the name of other financial instruments instead of an index.
- iii. Use of default trading time: CySEC identified instances of using the default trading time in field 28 instead of the actual execution time by the Reporting Entities.
- iv. Use of default price: A number of Reporting Entities used a default price in field 33 (price = 0) when reporting their transactions.
- v. Use of Classification of Financial Instruments ('CFI') codes: There have been cases where Reporting Entities used incorrect CFI codes in their transaction reports (field 43).
- vi. Cancellations and Omissions: Many Reporting Entities are cancelling reports or submitting reports after T+1 without first notifying CySEC

Regulated Entities are required to notify CySEC via email, by using the 'Cancellations and Omission Form', before proceeding with any of the actions mentioned below, in the case where:

- a. The Reporting Entity will cancel erroneous reports and not resubmit them;
- b. The Reporting Entity will cancel erroneous reports and resubmit them;
- c. The Reporting Entity omitted to submit reports in due time (T+1);
- d. A report was rejected and the Reporting Entity wishes to resubmit it after T+1;
- e. A transaction report was rejected and the Reporting Entity will not resubmit it.

The Regulated Entity must wait for CySEC's response before proceeding with the necessary corrective measures.

CySEC recommends that all Reporting Entities undertake a full review of their MiFIR reports in order to ensure that the content of their reports is complete and accurate. Further, Reporting Entities should nominate a person responsible for the completeness, promptness and accuracy of MiFIR reporting.

COVID-19 - Business Continuity and Contingency Plans

On 6 March 2020, through the issuance of [Circular C358](#), the CySEC encouraged Regulated Entities to review their business continuity and disaster recovery systems in response to the outbreak of COVID-19 and make any necessary amendments subject to the entity's size, complexity and nature of business, in order to minimize possible business disruptions. Once the amendments have been made, Regulated Entities must circulate the amended Plan among its employees and make sure that all employees know about the plan.

The business continuity plans should include at least the following information:

- i. Regulated Entities should plan for the employees to be able to work from home and report to the management via the internet or telephone, etc.;
- ii. Identify any unique/emergency measures to help slow the spread of the illness, if necessary. These may

include limiting or cancelling social and public gatherings such as seminars, conferences, or requiring staff quarantines in the event on traveling to affected countries, etc.;

- iii. Create alternative communication channels for the employees, clients and/or service providers and consider whether those options would be undisruptive in the worst case scenario (e.g. if the office is shut down or employees with important functions are unable to work for a period of time);

If it is possible to determine the estimates, in the event of an outbreak of the virus in Cyprus, on the number of people who will not need to go to the office to work (e.g. 20%) and the amount of period that such persons can work from home without disrupting consequences to the Regulated Entities' operations (e.g. 1 to 3 weeks).

Acronyms & Definitions used

AIF	Alternative Investment Fund under Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers
AIFLNPs	Alternative Investment Funds of Limited Number of Persons
AIFMs	Alternative Investment Fund Manager
AMF	Autorite des Marchés Financiers
ASPs	Administrative Service Providers
CBC	Central Bank of Cyprus
CDS	Credit Default Swap
CFD	Contracts for Difference
CIF	Cyprus Investment Firm
Commission	European Commission
CP	Consultation Paper
CySEC	Cyprus Securities and Exchange Commission
EMIR	European Market Infrastructures Regulation – Regulation (EU) 648/2012 of the European Parliament and Council on OTC derivatives, central counterparties and trade repositories
EBA	European Banking Authority
ESAs	Joint Committee of the European Supervisory Authorities (EBA, ESMA, EIOPA)
ESMA	European Securities and Markets Authority
ETD	Exchange-Traded Derivative
EU	European Union
FCA	UK Financial Conduct Authority
FTT	Financial Transaction Tax
FX	Foreign Exchange
ICF	Investors Compensation Fund
IRS	Interest Rate Swap
ITS	Implementing Technical Standards
LIBOR	London Inter-bank Offered Rate
MAD	Directive no.2014/57/EU of the European Parliament and of the Council on criminal sanctions for market abuse
MAR	Regulation no. 596/2014 of the European Parliament and of the Council on insider dealing and market manipulation (market abuse)
MiFID	Markets in Financial Instruments Directive – Directive 2004/39/EC of the European Parliament and the Council
MiFID II	Directive no. 2014/65/EU of the European Parliament and of the Council on markets in financial instruments repealing Directive 2004/39/EC of the European Parliament and of the Council (compromise reached, number to be assigned)
MiFIR	Regulation no. 600/2014 of the European Parliament and of the Council on markets in financial instruments and amending Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories [EMIR]
MMF	Money Market Fund
NDF	Non-deliverable forwards
Official Journal	The Official Journal of the European Union

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

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