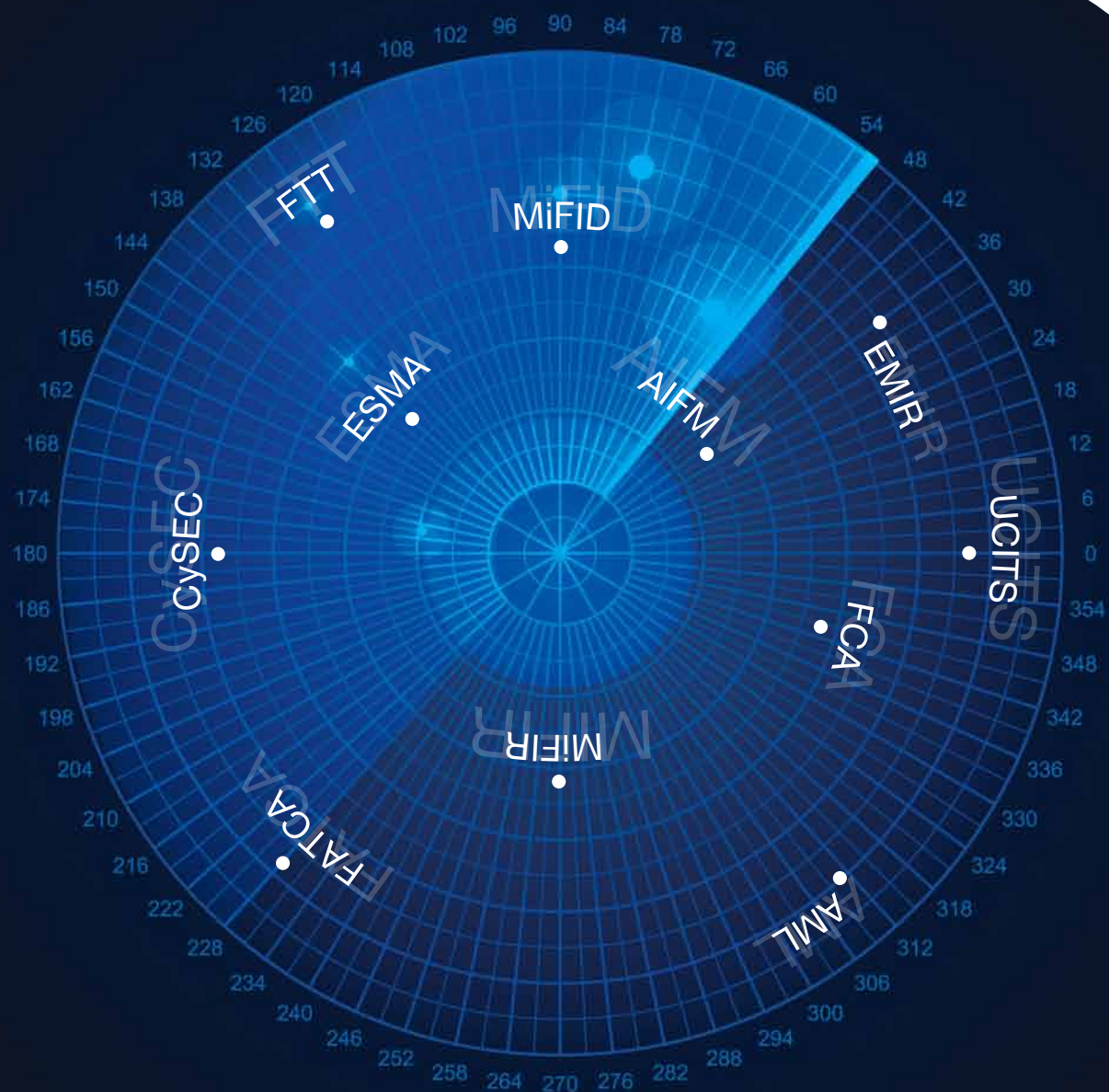


REGULATORY RADAR

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
 - ESMA consults on obligations on market data, on obligations to report transactions and on reference data and sets out view on derivatives trading obligation and trading obligation for shares following the end of the Brexit transition period
- **MAR**
 - ESMA reports on amendments to MAR for the promotion of the use of SME growth markets and on its review of MAR
- **SFTR**
 - ESMA issued its first set of questions and answers
- **EMIR**
 - Mandatory margin requirements for non-cleared OTC derivatives are being introduced on a staggered basis: variation margin is required except for physically-settled FX forwards; initial margin implementation phases are deferred by one year due to Covid-19; the ESAs submitted a revised text and, in addition, ESMA proposes amendments on the clearing obligation regarding intragroup transactions as well as novations under EMIR
- **Brexit**
 - ESMA issued statements on the impact of Brexit on MIFID/MIFID, EMIR and other legislation.

2. Anti-Money Laundering Legislation

- European Commission issued a report assessing whether Member States have identified all trusts and similar legal arrangements
- FATF issued a report on virtual assets red flag indicators of ML/TF

3. EU Financial Transaction Tax (FTT)

- Political decisions on FTT postponed until Brexit outcome is known

4. FATCA & CRS

- No update

5. Fund Regulation

- European Commission launches public consultation on the EU's Alternative Investment Fund market

6. PRIIPS Regulation

- The review of the PRIIPS Regulation is on hold

7. UK - Developments of Interest to Investment Firms

- Brexit: following the UK's exit from the EU on 31 January 2020, the implementation period will end at 23h00 London time on 31 December 2020

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

- ESMA continues to monitor activities in relation to CFDs and binary options and other speculative products notwithstanding permanent restrictions in Member State

9. CySEC Developments

- Findings of CySEC's inspection with respect to AIFMs governance and organizational structures
- Prudential treatment of crypto assets and enhancement of risk management procedures with respect to crypto assets and financial instruments relating to crypto assets
- Guidance on procedures regarding safekeeping of client funds held by CIFs

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 publishes updated annual transparency calculations for equity and equity-like instruments

By way of background, MiFID II/MiFIR introduced pre-trade and post-trade transparency requirements for equity and non-equity instruments. Pre-trade transparency requirements may be waived for transactions, whose size is above large-in-scale thresholds (LIS), and systematic internalisers (SIs) have pre-trade transparency obligations for instruments traded on a traded venue which are liquid and when dealing with orders up to the standard market size (SMS). The publication of post-trade information can be deferred for transactions whose size is above large-in-scale thresholds (LIS).

On 7 July 2020, ESMA made available the updated results of the annual transparency calculations for a limited number of equity and equity-like instruments. These updated annual transparency calculations apply as of 13 July.

The update of the results for around 7,500 ISINs was necessary because ESMA identified a data quality issue with the data reported by a trading venue. In this new publication there are 957 liquid shares and 617 liquid equity-like instruments other than shares, subject to MiFID II/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 30 April 2020, 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 apply from **1 June 2020 until 31 May 2021**.

ESMA issues latest Double Volume Cap data

On 7 December 2020, ESMA updated its website (the ESMA website link is above under “Double volume cap mechanism data”) with the latest set of double volume cap (DVC) data.

By way of background, the double volume cap mechanism aims to limit so called “dark trading” in equities allowed under the reference price waiver and the negotiated transaction waiver. The DVC is calculated per instrument (ISIN) based on the rolling average of trading in that instrument over the last 12 months. The DVC data and calculations published cover the period of 1 November 2019 to 30 October 2020.

The number of new breaches is 22:12 equities for the 8% cap, applicable to all trading venues, and 10 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 2020 to 10 June 2021. The instruments for which caps already existed from previous periods will continue to be suspended. As of 7 December 2020, there is a total of 205 instruments suspended.

ESMA makes available bond liquidity data

On 30 October 2020, ESMA made available the latest quarterly liquidity assessment for bonds available for trading on EU trading venues. ESMA's liquidity assessment for bonds is based on a quarterly assessment of quantitative liquidity criteria, which includes the daily average trading activity (trades and notional amount) and the percentage of days traded per quarter. There are currently 499 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 July 2020 will apply from **16 November 2020 to 15 February 2021**.

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.

On 30 October 2020, ESMA published data for the systematic internaliser quarterly calculations for equity, equity-like instruments, bonds and, for the first time, for other non-equity instruments. The total number of trades and total volume over the period April-September 2020 for the purpose of the systematic internaliser calculations under MiFID II for:

- 22,022 equity and equity-like instruments;
- 120,876 bonds; and
- 5,907 sub-classes of derivatives (including equity derivatives, interest rate derivatives, commodity derivatives, C10 derivatives, emission allowance and derivatives thereof and contracts for difference (CFDs)).

The SI test was performed by 15 November 2020. Please refer to the ESMA website link above under “Data for the systemic internaliser calculations” for the current data.

ESMA consults on MIFID II/ MIFIR obligations on market data

On 6 November 2020, ESMA launched a [Consultation Paper](#) seeking input from market participants in relation to its draft guidelines on the MiFID II/MiFIR obligations on market data.

The proposed Guidelines build on the assessments and recommendations from a 2019 ESMA Report on Market Data. They provide guidance on the requirement to publish market data on a reasonable commercial basis and the requirement to make market data available free of charge 15 minutes after publication.

The proposed Guidelines will ensure better and uniform application of the MiFID II/MiFIR obligations on market data. In addition, ESMA also believes that their implementation supports consistent, efficient and effective supervisory practices.

The consultation closes on 11 January 2021. ESMA will consider the feedback received and expects to publish the final report and Guidelines by Q2 2021.

ESMA consults on obligations to report transactions and reference data

On 24 September 2020, ESMA published a [consultation paper](#) reviewing the reference data and transaction reporting obligations under the Markets in Financial Instruments Regulation (MiFIR). ESMA proposes amendments to the transaction reporting and reference data regime based on its experience in implementing the MiFIR reporting regimes. The objectives are to simplify the current reporting regimes and enhance the quality of the data reported by ensuring consistency among various reporting and transparency requirements.

The consultation considers a wide range of issues, including:

- revision of the “traded on a trading venue” concept;
- revision of the scope of indices subject to the reporting obligation;

- proposals to remove, replace or further clarify specific data elements that should be reported under the transaction reporting obligation;
- proposals to ensure further alignment between the European Market Infrastructure Regulation and MiFIR reporting regimes.

The consultation paper proposals are particularly relevant for trading venues, systematic internalisers, investment firms, data reporting services providers, and asset management companies.

The deadline for comments was 20 November 2020. ESMA intends to submit its final review report to the European Commission in Q1 2021.

ESMA proposal to simplify the transparency regime for non-equity instruments

On 29 September 2020, ESMA published its [final report](#) of proposals to amend the Markets in Financial Instruments Regulation (MiFIR) transparency regime relating to non-equity instruments (bonds, structured finance products, emission allowances and derivatives). ESMA concluded that the regime was too complicated and, therefore, ESMA makes proposals to improve the current regime.

Key proposals include:

- deleting the specific waiver and deferral for respectively orders and transactions above the “size specific to the financial instrument” threshold;
- basing a new simplified deferral regime on volume masking and full publication after two weeks as well as removing the supplementary deferral options left to national competent authorities (NCAs);
- transforming the NCAs’ ability to temporarily suspend MiFIR transparency provisions into an EU-level mechanism;
- including the option to suspend on short notice the application of the derivative trading obligation (DTO) similarly to the mechanism available in the European Market Infrastructure Regulation; and
- complementing the criteria used to grant equivalence to third-country trading venues for the purpose of the DTO with conditions relating to transparency and non-discriminatory access.

The final report has been sent to the European Commission for consideration as legislative proposals. ESMA intends to publish amendments to the ESMA RTS 1 and 2 in due course.

European Commission proposes changes to MiFID II due to COVID-19

On 24 July 2020, the European Commission adopted a [legislative proposal](#) for a directive amending MiFID II as part of a capital markets recovery package designed to facilitate the economic recovery following the COVID-19 pandemic. The amendment to MiFID II applying to investments in financial instrument aims to remove administrative burdens that result from documentation and disclosure rules that are not counterbalanced by corresponding increases in investor protection.

Key changes include:

- Phase-out of the paper-based default method for communication
- Costs and charges disclosure: Introduction of an exemption for eligible counterparties and for professional clients for other services than investment advice and portfolio management
- Alleviate ex-post reporting requirements: in particular, the end-of day loss reporting requirement promotes a short-term view among inexperienced investors and fosters “herd behaviour” which is not conducive to taking informed views of the market. Professional clients are allowed to opt-in
- Suspend best execution reports: In their current form best execution reports are not read by investors, while buy-side investment firms receive all the relevant information via other means (e.g. via brokerage meetings). To reduce the burden of producing those reports, this obligation will be suspended for two years, pending a thorough analysis with regard to a possible streamlining of the reports
- Alleviate cost benefit analysis: As part of the suitability assessment, firms are required to obtain information about the client in order to perform a cost-benefit analysis in case they ‘switch’ between products in the course of an ongoing relationship. For professional clients this is overly burdensome
- Product governance: to facilitate the financing of the economy bonds with make-whole clauses will be exempted from the product governance regime

The proposed amendments to MiFID II will now be reviewed by the European Parliament and Council, and if approved, they must then be transposed into national law by each Member State before they can take effect.

On 27 November 2020, the European Parliament published the [provisional version of its adopted text](#) of the proposed Directive amending MiFID II.

European Commission consults on authorising bundled SME research

On 24 July 2020, the European Commission launched a [consultation](#) on amendments to the MiFID II Delegated Directive (EU) 2017/593 to increase the regime for research on small and mid-cap issuers and on fixed-income instruments to help the recovery from the COVID-19 pandemic. The European Commission believes that increasing the visibility of European companies to investors will promote more investment for the economic recovery. Therefore, this amending act introduces a narrowly defined exception authorising the joint payment for execution services and research on small and midcap issuers and research on fixed income instruments. Small and mid-cap companies would be defined as companies that did not exceed a market capitalization threshold of EUR 1 billion over a 12 months period. The consultation closed on 4 September 2020.

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

Q&A on MiFIR data reporting

On 28 September 2020, ESMA updated its [questions and answers \(Q&As\) documents on MiFIR data reporting](#). The Q&As contain clarification in relation to requirements for transaction reporting in respect of (i) algorithm trading, (ii) national client identifiers for natural persons and (iii) which legal entity identifier should be used to identify the issuer when reporting reference data on funds to the Financial Instruments Reference Data System.

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

The current Questions and Answers regarding [transparency issues](#) is dated 8 July 2020.

The current Q&A on [market structures](#) is dated 29 May 2020.

Q&A on MiFID Investor Protection and Intermediaries

On 6 November 2020, ESMA updated its [Questions and Answers](#) on to include three new Q&As on 'product governance' that aim to give guidance on how firms manufacturing financial instruments should ensure that:

- financial instruments' costs and charges are compatible with the needs, objectives and characteristics of the target market;
- costs and charges do not undermine the financial instrument's return expectations;
- the charging structure of the financial instrument is appropriately transparent for the target market, ensuring that it does not disguise charges or is too complex to understand.

II. SECURITIES FINANCING TRANSACTIONS (“SFTs”)

ESMA issues Questions and Answers

On 5 November 2020, ESMA published its first set of [Questions and Answers](#) relating to reporting under the Securities Financing Transactions Regulation (SFTR).

The purpose of this Q&A is to provide greater clarity to market participants on how to comply with their reporting requirements under SFTR. The Q&A includes clarifications on how reporting of certain business events should be performed, such as:

- Reporting of fields related to time and applicable calendars
- Reporting of settlement legs
- Reporting of SFTs collateralised initially at transaction and then at net exposure level
- Reporting of SFTs concluded off venue and cleared on the same day
- Reporting of zero collateral for margin loans

The set of Q&A complements ESMA's guidance on reporting under SFTR and is aimed at trade repositories and at entities that have a reporting obligation under SFTR.

ESMA consultation on draft guidelines on the calculation of positions by trade repositories

On 9 July 2020, ESMA launched [consultation](#) on draft guidelines on the calculation of positions by trade repositories (TRs) under the Securities Financing Transactions Regulation (SFTR).

The aim of the guidelines is to ensure consistency of position calculation across TRs, with regard to the time of calculations, the scope of the data used in calculations, the data preparation, the recordkeeping of data and the calculation methodologies.

The consultation paper on the draft guidelines sets out the relevant clarification to TRs with regard to the compliance with Article 4(6) of SFTR containing a general requirement for TRs to calculate positions (by cross-reference to Article 80 of the European Market Infrastructure Regulation (EMIR)). Article 12(2) of SFTR requires TRs to collect and maintain details of SFTs (i.e. including positions) and Article 5 of the regulatory technical standards on data

aggregation specifically requires TRs to calculate positions in SFTs in a harmonised and consistent manner.

The deadline for comments is 15 September 2020. ESMA will consider the responses to this consultation with a view to finalise the proposed guidelines and to publish a final report in Q4 2020/Q1 2021.

III. MARKET ABUSE REGULATION

ESMA Final report on the amendments to the Market Abuse Regulation for the promotion of the use of SME Growth Markets

On 27 October 2020, ESMA published the [Final Report](#) on the amendments to the Market Abuse Regulation (MAR) for the promotion of the use of SME Growth Markets (SME GMs). These amendments focus on liquidity contracts and insider lists for SME GMs.

This final report aims at identifying solutions that should facilitate the functioning of SME GMs concerning the operation of liquidity contracts and dealing with the insider list obligations. This final report and draft RTS and ITS largely reflect the original proposals included in the consultation paper focused on:

The RTS on Liquidity Contracts

- The relevant requirements applying to those liquidity contracts are set out in the body of the RTS while the actual contractual template includes specific parameters and criteria to ensure compliance with MAR requirements while allowing flexibility for investment firms and issuers;
- The RTS maintain the obligation to open a liquidity account dedicated to the contract and the limits to resources, as well as conditions to be complied with for the trading activity of the liquidity provider.

The ITS on Insider Lists

- The new template for insider lists, to be used by SMEs in jurisdictions that opt for including in them all persons who have access to inside information, only contains the minimum fields that are necessary for supervisory purposes.

ESMA report on its review of MAR

On 23 September 2020, ESMA published a [review](#) of the Market Abuse Regulation (MAR). The report concludes that MAR has generally worked well in practice and is fit for purpose.

In the report, ESMA makes recommendations on the following three issues:

- market soundings: clarify that the MAR requirements represent an obligation for disclosing market participants that, if complied with, will protect them from the allegation of having unlawfully disclosed inside information;
- benchmark provisions and the interplay between the MAR and collective investment undertakings: clarify the responsibility of management companies in relation to the disclosure of inside information; and
- withholding tax (WHT) reclaim schemes: remove the legal limitations for national competent authorities to exchange information with tax authorities.

ESMA also suggests providing additional guidance for:

- inside information and disclosure: ESMA will issue further guidance in relation to the application of the definition and for specific scenarios concerning delayed disclosure; and
- pre-hedging: the report identifies factors which may be considered when assessing if a specific pre-hedging conduct poses risks of market abuse and of violation of conduct rules. ESMA may assess pre-hedging in the

future, considering specific circumstances such as its importance for illiquid instruments or the consequences of pre-hedging activities on the markets.

The report also addresses other aspects of the MAR and states that further analysis of spot FX contracts is required before deciding whether they should be covered by the MAR.

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.

IV. 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 became immediately applicable: certain provisions became applicable on 18 December 2019 and 18 June 2020, other provisions will become applicable from 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.

As of June 18, 2020, financial counterparties (FCs) are legally liable for the timely and accurate reporting of over-the-counter (OTC) derivatives contracts on behalf of both themselves and their non-financial counterparty minus (NFC-) clients.

ESMA EMIR Q&As

On 24 September 2020, ESMA updated its [Questions and Answers](#) document on practical questions regarding data reporting issues, under EMIR. The updated Trade Repository (TR) Q&A 1(c) clarifies that the counterparties should use the underlying to determine the asset class of total return swaps when reporting under EMIR.

A new TR Q&A clarifies that the reporting of the field reference entity for credit derivatives can be made with a country code only in the case where the reference entity is a supranational, a sovereign or a municipality.

Another new TR Q&A indicates how the fields execution timestamp, effective date, maturity date and settlement date should be reported for Forward Rate Agreement derivatives (FRAs).

Margin requirements for non-centrally cleared derivatives – one year deferral of the two implementation phases

On 4 May 2020, the European Supervisory Authorities (EBA, EIOPA and ESMA – ESAs), in response to the COVID-19 outbreak published a [joint draft Regulatory Technical Standards](#) (RTS) to amend the Delegated Regulation on the risk mitigation techniques for non-centrally cleared OTC derivatives (bilateral margining), under EMIR, to incorporate a one-year deferral of the two implementation phases of the bilateral margining requirements.

The Basel Committee on Banking Supervision (BCBS) and the International Organisation of Securities Commissions (IOSCO) had announced on 3 April their agreement to defer by one year, the deadline for completing the final two implementation phases of the bilateral margin requirements, in order to provide additional operational capacity for counterparties to respond to the immediate impact of COVID-19. The ESAs draft RTS present the changes to the Delegated Regulation on bilateral margining to incorporate in the EU regulatory framework the one-year deferral agreed by the BCBS and IOSCO.

These changes would result in covered counterparties with an aggregate average notional amount of non-centrally cleared derivatives above €50 billion becoming subject to the requirement to exchange initial margin from 1 September 2021, while covered counterparties with an aggregate average notional amount of non-centrally cleared derivatives above €8 billion becoming subject to the requirement from 1 September 2022.

A first version of these draft RTS had been submitted to the Commission and published on the websites of the ESAs on 5 December 2019. This first version dealt with the treatment of physically settled FX forward and swap contracts, intragroup contracts, equity option contracts and the implementation of the initial margin requirements. However, in response to the Covid-19 outbreak, the Final Report and the draft RTS have now been updated to take into account the agreement from the BCBS and IOSCO to defer by one year the deadline for completing the final two implementation phases of the bilateral margin requirements. This updated version (4 May 2020) of the [Final Report on the draft RTS on bilateral margining](#) thus replaces entirely the version submitted to the Commission in December 2019.

The ESAs have submitted this second version of the draft RTS to the Commission for endorsement in the form of a Commission Delegated Regulation, i.e. a legally binding instrument applicable in all Member States of the European Union. Following the endorsement, they are then subject to non-objection by the European Parliament and the Council.

ESA Revised Final Report and ESMA Final Report

On 23 November 2020, the ESAs published a [final report](#) with new version of draft RTS. The ESAs have now submitted this new version of the draft RTS on bilateral margin to the Commission for endorsement in the form of a Commission Delegated Regulation, i.e. a legally binding instrument applicable in all Member States of the European Union. It replaces the version submitted and published on 4 May 2020, referred to above.

In addition, on 23 November 2020, ESMA has also published a [final report](#) with new draft RTS proposing to amend the three Commission Delegated Regulations on the clearing obligation regarding intragroup transactions as well as novations under Article 5(2) of EMIR.

Intragroup transactions

The amendments included in these draft RTS propose to extend the temporary exemption for 18 months for intragroup transactions.

The bilateral margin Delegated Regulation and the clearing obligation Delegated Regulations originally introduced temporary exemptions for intragroup transactions with third-country group entities to facilitate centralised risk management-procedures for groups, while the relevant equivalence decisions are being assessed.

Equity options

The amendments included in the draft RTS on bilateral margin propose to extend the temporary exemption for single-stock equity options or index options (equity options) for three years. The bilateral margin Delegated Regulation originally introduced a temporary exemption for equity options so as to facilitate international regulatory convergence with regard to risk-management procedures.

The new draft RTS for intragroup transactions and equity options are proposing to extend the abovementioned temporary exemptions to avoid undue costs and an unlevel playing field situation for EU counterparties.

Novations from UK counterparties to EU counterparties

In the context of the withdrawal of the UK from the EU, the ESAs and other EU authorities and institutions have highlighted the importance for market participants to be prepared for the end of the transition period. These draft RTS reintroduce a regulatory solution to support these preparations.

The draft RTS allow UK counterparties to be replaced with EU counterparties without triggering the bilateral margin and clearing obligation requirements under certain conditions. This limited exemption would ensure a level playing field between EU counterparties and the preservation of the regulatory and economic conditions under which the contracts were originally entered into. Counterparties should start negotiating as soon as possible the novation of their transactions which are in the scope of these amending regulations, given the twelve month timeframe to benefit from this measure.

ESMA has also submitted to the Commission at the same time the draft RTS on the clearing obligation, also for endorsement in the form of a Commission Delegated Regulation. Following their endorsement, they are then subject to non-objection by the European Parliament and the Council.

Commission report on assessing whether viable technical solutions have been developed for the transfer by pension scheme arrangements of cash and non-cash collateral as variation margins

On 23 September 2020, the European Commission published a [report](#) under Article 85(2) of EMIR assessing whether viable technical solutions have been developed for the transfer by pension scheme arrangements (PSAs) of cash and non-cash collateral as variation margins, identifying the main issues around PSAs' central clearing, as well as of the solutions explored thus far.

The report explains that facilitated access models have been developed to explore a potentially viable avenue for PSAs' central clearing. The Commission intends to explore further with relevant stakeholders this option, including its cost for PSAs.

The report also explains that a suitable solution will most likely require effort on a number of different fronts, including assessing aspects of banking regulation (such as whether the recent changes in the leverage ratio calculations have helped) and assessing ways of securing liquidity facilities to PSAs in times of stress.

The Commission intends to complete further analysis during the next months to inform its final decision.

EMIR reporting and validation rules

EMIR mandates reporting of all derivatives to Trade Repositories (TRs). TRs centrally collect and maintain the records of all derivative contracts. They play a central role in enhancing the transparency of derivative markets and reducing risks to financial stability.

Rules and guidance

ESMA has developed detailed rules and guidance **on implementing EMIR provisions**, on reporting, registering, and accessing data.

What needs to be reported to TRs:

- [Regulatory technical standards](#)
- [Implementing technical standards](#)
- revised [Regulatory technical standards](#) (applicable from 1 November 2017)
- revised [Implementing technical standards](#) (applicable from 1 November 2017)
- revised [Implementing technical standards](#) (applicable from 11 April 2019)

Legal entity identifier (LEI) codes should be used to identify counterparties which are legal entities. LEI can be issued by any of the [Local Operating Units](#) (LOU) of the global entity identifier system (GLEIS).

When reporting, counterparties should take also into account the validation rules applied by TRs to ensure that reporting is performed according to the EMIR regime, including the specifications of the Technical Standards. Please see [EMIR TRQ&A 20](#) for more details.

Validation rules (last updated 10 September 2020. Updates applicable from 8 March 2021)

On 26 October 2020, ESMA announced that it would postpone the applicability date of the updated [EMIR validation rules](#) from 1 February to 8 March 2021. The amended rules, which were published by ESMA on 10 September 2020, will apply five weeks later than originally planned due to technical issues related to their implementation in light of the UK's withdrawal from the EU.

V. BREXIT

ESMA Statements

ESMA has updated three statements which address the impact on reporting under EMIR and SFTR and on the operation of ESMA databases and IT systems after 31 December 2020, the end of the UK's transition from the

EU. Previously published in preparation for a no-deal Brexit scenario in 2019, the following statements have now been updated:

- [Statement on issues affecting EMIR and SFTR reporting](#) – covering issues affecting reporting, recordkeeping, reconciliation, data access, portability and aggregation of derivatives under Article 9 EMIR and of securities financing transactions reported under Article 4 of SFTR;
- [Statement on the use of UK data in ESMA databases and performance of MiFID II calculations](#) – covering MiFID II/MiFIR publications performed by the various ESMA databases, as well as the annual ancillary activity calculations.; and
- [Statement on ESMA's Data Operational Plan](#) – covering actions related to FIRDS, FITRS, DVCAP, transaction reporting systems, and ESMA's registers and data.

On 1 October 2020, ESMA updated two statements on its approach to the application of key provisions of MiFID II/MiFIR and the Benchmark Regulation (BMR).

- [The Impact of Brexit on MiFID II/MiFIR](#)
- [The Impact of Brexit on the BMR](#)

The MiFID 2 statement covers the C(6) carve-out, the ESMA opinions on third-country trading venues for the purpose of post-trade transparency, the position limits regime and post-trade transparency for over-the-counter transactions and the implementing technical standards on main indices and recognised exchanges under the Capital Requirement Regulation. The BMR statement covers the consequences of Brexit for the ESMA register for benchmark administrators and third-country benchmarks under the BMR.

The statements update previous ones issued in [March 2019](#) and [October 2019](#) reflecting ESMA's approach, should the UK have left the EU under a no-deal Brexit. However, as the Withdrawal Agreement entered into force on 1 February 2020, and the UK entered a transition period that will end on 31 December 2020, these statements needed to be revised.

Brexit: ESMA sets out its final view on the derivatives trading obligation (DTO)

On 25 November 2020, ESMA released a [public statement](#) that clarifies the application of the European Union's (EU) trading obligation for derivatives (DTO) under Article 28 of MiFIR, following the end of the UK's transition from the EU on 31 December 2020.

The statement clarifies that the DTO will continue applying without changes after the end of the transition period. ESMA considers that the continued application of the DTO would not create risks to the stability of the financial system. The statement confirms the approach outlined in ESMA's previous statement in March 2019. Article 28 of MiFIR requires investment firms to conclude transactions in some derivatives on regulated markets (RMs), multilateral trading facilities (MTFs), organised trading facilities (OTFs) or third-country trading venues established in jurisdictions for which the European Commission has adopted an equivalence decision. The classes of derivatives subject to the DTO cover certain fixed-to-float interest rate swaps denominated in EUR, USD and GBP and two credit default swap indices.

ESMA acknowledges that this approach creates challenges for some EU counterparties particularly UK branches of EU investment firms. However, ESMA considers that EU counterparties can meet their obligations under the DTO by trading on EU trading venues or eligible trading venues in third countries, and this situation is primarily a consequence of the way the UK has chosen to implement the DTO.

Based on the current legal framework, and in the absence of an equivalence decision by the European Commission, ESMA does not see room for providing different guidance.

ESMA will continue to closely monitor the situation to assess whether markets would be sufficiently liquid for the purpose of the DTO after the end of the transition period.

On 27 November 2020, ESMA updated the [public register](#) of those derivative contracts that are subject to the trading obligation under MiFIR. The register provides clarity to market participants on the application of the trading obligation under MiFIR and in particular on:

- the classes of derivatives subject to the trading obligation;
- the trading venues on which those derivatives can be traded; and
- the dates on which the obligation takes effect per category of counterparties.

Brexit: Impact of the end of the transition period on 31 December 2020 on the trading obligation for shares (Article 23 of MiFIR)

On 26 October 2020, ESMA released a [public statement](#) that clarifies the application of the European Union's (EU) trading obligation for shares (STO) following the end of the UK's transition from the EU on 31 December 2020. The statement outlines that the trading of shares with a European Economic Area (EEA) ISIN on a UK trading venue in UK pound sterling (GBP) by EU investment firms will not be subject to the EU STO. This currency approach supplements the EEA-ISIN approach outlined in a previous ESMA statement of May 2019.

This revised guidance aims at addressing the specific situation of the small number of EU issuers whose shares are mainly traded on UK trading venues in GBP. ESMA, based on EU wide data, regards that such trading by EU investment firms occurs on a non-systematic, ad hoc, irregular and infrequent basis. Therefore, those trades will not be subject to the EU STO, under Article 23 of MiFIR.

ESMA is acting to minimise disruption and to avoid overlapping STO obligations and their potentially adverse effects for market participants. The approach put forward by ESMA will effectively avoid such overlaps if the UK adopts an approach that does not include EEA ISINs under the UK STO. ESMA however notes that the scope of the UK STO after the end of the transition period remains unclear at this stage.

In the absence of an equivalence decision in respect of the UK, the potential adverse effects of the application of the STO after the end of the transition period are expected to be the same as in the no-deal Brexit scenario considered in the previous ESMA statement.

The application of the STO to shares with a different ISIN should continue to be determined taking into account the previous ESMA guidance published on 13 November 2017.

2. Anti-Money Laundering

European Commission report assessing whether Member States have identified all trusts and similar legal arrangements

On 16 September 2020, the European Commission published a [report](#) investigating the extent of Member States' implementation of Article 31 of the Fourth Money Laundering Directive (MLD 4) which requires trustees, or "those holding an equivalent position in a similar legal arrangement", to investigate and retain information on the beneficial ownership of the trust.

The Commission is required under the Directive to compile notifications received from Member States on those arrangements which have a structure or functions similar to trusts. This forms the basis of the report.

The Commission highlighted the lack of a common international definition of a trust or similar legal arrangement, and how this contributes to a lack of legal certainty. The Commission has suggested setting up an informal working group to identify common specific rules for trusts.

FATF report on virtual assets red flag indicators of ML/TF

The Financial Action Task Force (FATF) has published a [report](#) on virtual asset red flag indicators of money laundering and terrorist financing (ML/TF) to help authorities detect whether virtual assets are being used for criminal purposes. The report is based on more than 100 case studies collected by members of the FATF network. Key indicators in this report focus on:

- technological features that increase anonymity, e.g. anonymity-enhanced cryptocurrencies;
- geographical risks: criminals exploit countries with weak, or absent, national measures for virtual assets;
- irregular, unusual or uncommon transaction patterns;
- transaction size with no logical business explanation;
- sender or recipient profiles; and
- source of funds or wealth.

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

European Commission launches public consultation on the EU's Alternative Investment Fund market

On 22 October 2020, the European Commission launched a [public consultation](#) seeking the views of stakeholders on how to make the EU's Alternative Investment Fund (AIF) market more efficient, effective and competitive, while maintaining the overall stability of the EU's financial system. Alternative investment funds include hedge funds, private equity funds, real estate funds and a wide range of other types of funds.

Managers of these funds are responsible for a high amount of investment in the EU and account for significant volumes of trading in financial markets. They contribute to building a Capital Markets Union by channelling savings to companies and projects which contribute to growth and jobs. The Alternative Investment Managers Directive (AIFMD) establishes an EU-wide legal framework for the authorisation, supervision and oversight of these Managers. There are, however, some areas where these rules could be made more efficient.

The consultation therefore aims at gathering feedback with a view to improving the overall functioning and competitiveness of the EU AIF industry, contributing to a well-functioning environment for investors, and at the same time ensuring the stability of the overall financial system. It comes at a timely moment. It is part of the Commission's ongoing efforts to further develop the Capital Markets Union (CMU) and to boost investment around Europe – which is of critical importance at this point in time, given the coronavirus crisis.

The deadline for comments is 29 January 2021. The Commission is expected to published a proposal for a Directive amending the AIFMD in Q3 2021.

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)

ESAs notify the European Commission about the outcome of the review of the PRIIPS key information document

On 20 July 2020, the European Supervisory Authorities (ESAs) [informed](#) the European Commission of the outcome of the review conducted by the ESAs of the key information document (KID) for PRIIPs.

This follows the ESAs' consultation paper published on 16 October 2019 on draft regulatory technical standards (RTS) to amend the technical rules on the presentation, content, review and revision of KID.

The ESAs were not able to adopt the draft RTS and so are not in a position to formally submit the draft RTS to the Commission.

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.

7. UK – Developments of Interest to Investment Firms

UK Financial Conduct Authority – Brexit – 1 month to go

When the transition period ends at 23h00, local time in London, on 31 December, firms will need to be prepared for a number of changes to the regulatory environment in which they operate. EU laws will no longer apply and passporting will end. To help firms prepare, the FCA has published extensive information on its website setting out the key issues firms need to focus on.

Firms should be aware that:

- The FCA is making use of the [Temporary Transitional Power](#) to provide them with more time to comply with a large number of the changes
- However, there are also [key requirements](#) that firms need to comply with by 1 January 2021
- Passporting will end on 31 December 2020: firms that intend to carry on providing services currently covered by a passport will need to ensure they will be able to do so after the end of the transition period

The FCA has set out in detail considerations to help firms understand if or how they will be affected and what action they may need to take. The [FCA Handbook](#) has also been updated with changes to regulatory requirements that will apply to firms. The [temporary permissions regime \(TPR\)](#) will enable relevant firms and funds which passport into the UK to continue operating in the UK providing that they notify the FCA no later than 30 December.

If a firm currently relies on a passport to provide services to or from the UK, and proposes to cease those services at the end of the transition period, the FCA expects them to ensure the right outcomes for their customers, and provide timely communications to enable them to make appropriate decisions.

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.

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

9. CySEC Developments

ESMA Guidelines on Liquidity Stress Testing in UCITS and AIFs

On 10 September 2020, through the issuance of [Circular C403](#), the CySEC informed authorised AIFMs and UCITS Management Companies that the CySEC has adopted ESMA's Guidelines on Liquidity Stress Testing (LST) in UCITS and AIFs (the "Guidelines"). The Guidelines apply from 30 September 2020.

Publication of CySEC's Review of compliance with the reporting obligation under the Alternative Investment Fund Managers Law (the 'AIFM Law') as further specified with the Commission Delegated Regulation (EU) No 231/2013 with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision ('the Regulation')

On 15 September 2020, through the issuance of [Circular C404](#), the CySEC informed AIFMs (both authorised and registered AIFMs) of its thematic review regarding the quality of information provided to CySEC under Articles 4(3)(d) and 31 of the AIFM law and Article 110 of the Regulation. The CySEC identified areas of concern, relating to timely submission of valid reports, completeness, accuracy and consistency of information, provided by AIFMs relating to AIFs managed or marketed in the EU. The CySEC presented its findings in the Circular and advised AIFMs to nominate a person from within the firm who will be responsible for the regular monitoring

of the reporting under the AIFM Law and Regulation and who shall deal promptly with all issues/failures that may arise. The CySEC further requested to inform CySEC of the aforementioned nominated person through the Funds Digital record.

CIFs Quarterly Statistics (Form QST-CIF– 30/09/2020 Submission

On 21 September 2020, through the issuance of [Circular C406](#), CySEC reminded CIFs of their obligation to provide information to CySEC by Monday 2 of November 2020, by completing and successfully submitting the latest version of the Quarterly Statistics Form (QST-CIF) via TRS.

ASPs Quarterly Statistics (Form QST-ASP – 30/09/2020 Submission

On 21 September 2020, through the issuance of [Circular C407](#), CySEC reminded ASPs of their obligation to provide information to CySEC by Monday 2 of November 2020, by completing and successfully submitting the latest version of the Quarterly Statistics Form (QST-ASP) via TRS.

Management Companies and Self-Managed Funds Quarterly Statistics –New Version of the Form

On 25 September 2020, through the issuance of [Circular C405](#), the CySEC informed Registered and Authorized AIFMs, UCITS Management Companies as well as self-managed funds of a new version of the Quarterly Statistics Form (QST-MC ver.10). The CySEC reminded the aforementioned entities that the deadline to successfully submit the QST-MC form was 30 October 2020.

New Form FPISA-CIF, Freedom to Provide Investment Services and Activities (Cross Border Activity

On 28 September 2020, the CySEC through the issuance of [Circular C408](#), informed CIFs that it is requiring data for CIFs cross border activity. The CySEC requested from CIFs to complete the FPISA-CIF form and successfully submit to CySEC by 16 October 2020 via TRS.

Common deficiencies and best practice standards identified through on-site inspections regarding certain aspects of the AIFM governance

On 22 October 2020 the CySEC through the issuance of [Circular C409](#), informed AIFMs of the common deficiencies and or omissions identified during CySEC's on-site inspections to the aforesaid AIFMs. CySEC identified issues relating to the Risk Management, Portfolio Management and Compliance Function, AIF's asset valuations, responsibilities of the AIFM regarding managed AIFs in the form of companies/partnerships as well other organizational/human resource/expertise matters. In addition, the CySEC informed AIFMs of best practices identified during on-site inspections relating to control by Senior Management and board of directors as well as practices relating Portfolio/Risk Management/Valuation functions. Finally, the CySEC invited AIFMs to take into account the issues mentioned in the circular and to re-examine and review their policies and practices and, where necessary, take corrective actions.

Information to be submitted on the basis of the ESAs Joint Guidelines on Cooperation and Information Exchange between the Supervisory Authorities of Credit and Financial Institutions – (the ‘AML / CFT Colleges Guidelines’)

On 26 October 2020, through the issuance of [Circular C410](#), the CySEC requested from regulated entities to successfully submit no later than Tuesday 10 November information, regarding their corporate structure, information on UBOs, sister companies and parent undertakings via TRS for the purposes of Guidelines regarding ALM/CFT Colleges.

ESMA Public Statement – Update on the process of revising the guidance published under the Prospectus Directive and applicability of the CESR recommendations concerning specialist issuers

On 30 October 2020, through the issuance of [Circular C411](#), informed Issuers regarding the status of the various Q&As issued by CESR (the precursor entity to ESMA) regarding directive 2003/71/EC (the Prospectus Directive). The CySEC noted that CESR guidance to the extent that it is still compatible with the updated prospectus regulation (Regulation (EU) 2017/1129) is still applicable unless ESMA rescinds the said guidance.

Reporting under Article 9 of Regulation EU 648/2012 as amended (‘EMIR’) – Wind down of CME Trade Repository Ltd (‘CME’)

On 5 November, through the issuance of [Circular C413](#), the CySEC reminded regulated entities of their obligation to comply with EMIR’s reporting requirements at all times. The CySEC urged regulated entities to take urgently necessary actions to ensure timely reports to a TR if regulated entities are affected by the winding down CME TR services that had announced it will cease TR services by the end of November 2020.

UK Temporary Permission Regime – Reminder

On 6 November, through the issuance of [Circular C412](#), the CySEC further to its Circular C304 drew the attention of Regulated Entities to the re-opening on 30 September 2020 of the notification window for entering the UK’s Temporary Permissions Regime (the “TPR”).

Recommendation 2020/6 of the European Systemic Risk Board (ESRB) on liquidity risks arising from margin calls (the ‘Recommendation ESRB/2020/06’)

On 6 November, through the issuance of [Circular C414](#), the CySEC informed Regulated Entities, Credit institutions and Non-Financial Counterparties that CySEC is incorporating the ESRB’s Recommendation 2020/06 on liquidity risks arising from margin calls (issued on 25 May 2020) to its supervisory practices.

The ESRB considered it necessary to issue a recommendation by acknowledging the benefits in terms of liquidity savings for the whole financial system related to the multilateral netting benefit provided by central clearing; the ESRB also appreciates the systemic benefit of central clearing as a critical means to reinforce financial stability by ensuring and developing sound risk management practices in terms of credit and liquidity risk.

Recommendation 2020/12 of the European Systemic Risk Board (ESRB) on identifying legal entities (LEI) (the ‘Recommendation ESRB/2020/12’)

On 06 November, through the issuance of [Circular C415](#), the CySEC informed Regulated Entities, Non-Financial Counterparties, Central Securities Depositories, Market Operators of RMs and MTFs, APAs, ARMs, Credit Institutions and Issuers of financial instruments admitted to trading on a RM, MTF, OTF, that it is incorporating the ESRB's Recommendation ESRB/2020/12 to its supervisory practices.

The Recommendation ESRB/2020/12 recommends the introduction of an EU framework on the use of legal entity identifier and the use of the LEI until the possible introduction of EU legislation.

Business relationship with persons who have acquired Cypriot citizenship under the Cyprus Investment Program (CIP)

On 10 November 2020, with the issuance of [Circular C416](#), the CySEC requested from Regulated Entities to examine their records in order to identify whether they maintain or have maintained during the last five (5) years, a business relationship with customers and/or customers' beneficial owners who have acquired, either themselves or their spouses and/or their children, Cypriot citizenship under the Cyprus Investment Program (CIP).

Prudential treatment of crypto assets and enhancement of risk management procedures associated with crypto assets

On 25 November 2020, with the issuance of [Circular C417](#), the CySEC provided guidance to CIFs on issues relating to the prudential treatment of crypto assets and financial instruments relating to crypto assets, as well as, how the risk management procedures of CIFs should be enhanced.

In particular the CySEC provided guidance on the following issues when trading with crypto assets or with financial instruments relating to crypto assets:

- Calculation of own funds and capital adequacy ratios (Pillar I),
- Internal Capital Adequacy Assessment Process (“ICAAP”) (Pillar II),
- Pillar III disclosures,
- Enhancement of risk management procedures associated with crypto assets.

Moreover, the CySEC requested from CIFs to examine taking mitigating measures against operational, cybersecurity and reputational risks arising from trading on crypto assets.

Enhancement of procedures regarding safeguarding of client funds held by CIFs

On 27 November 2020, through the issuance of [Circular C418](#), the CySEC provided guidance with respect to the application to the regulatory framework concerning the safekeeping of client funds held with CIFs.

The CySEC reminded CIFs of their obligations under section 17(9) and (10) of L.87(I)/2017 and Part II of Directive DI87-01 and further specified the following:

Requirement for holding separate clients' accounts.

Specifically, CIFs, upon receiving any clients' funds must place them into one or more accounts, opened in an authorised entity (namely, central banks, credit institutions, banks authorised in a third country, qualifying money market funds), provided that these accounts, are sufficiently distinguished from other accounts used to hold funds belonging to the CIF. Additionally, in case the applicable law of the jurisdiction in which the client's funds are held, prevent CIFs from complying with the abovementioned requirement, the Circular provides further requirements on how CIFs must act.

Use of Payment Service Providers (PSPs) and Electronic Fund Institutions (EMIs)

CIFs, if they maintain merchant accounts with PSPs and EMIs, must ensure that client's funds are transferred to clients' accounts held by the CIF, immediately after the clearing/settlement of the payment transaction. In case a CIF, before the clearing of a client's funds, credits his/her trading account to be able to trade immediately, it has to transfer from own funds the corresponding amount to the clients' bank accounts before trading. Similarly, where a PSP/EMI withholds funds for any reason, the CIF must ensure that these are transferred from its own funds to the clients' accounts.

On another note, CIFs should maintain accounts with PSPs/EMIs licenced/regulated in the EU or in a third country provided that it imposes equivalent to the EU measures. In this respect, CIFs should post on their websites a list with the names of PSP/EMI they cooperate, along with the competent authority/ country that supervises them. More details for CIFs licensed to provide ancillary services, as these are defined in the Law, are stated in the Circular.

Due diligence and diversification of institutions holding clients' funds

CIFs are expected to perform due diligence procedures on the banks where clients' funds are held, at least once per year. CIFs shall also consider diversifying the clients' funds with more than one Bank. Further, a list of requirements that CySEC expects CIFs to consider when selecting a bank is included in the Circular.

Depositing clients' funds with a bank or qualifying money market fund of the same group as the CIF

In case that a CIF, deposits funds with a bank of the same group, the CIF must limit the funds that are deposited so that the funds do not exceed 20% of all such funds unless it can be justified based on the proportionality principle. The CIF must periodically review the assessment made and notify its initial and revised assessment to CySEC.

To this point, CySEC, considers that the amount of balance of clients' funds with a bank or money market fund of the same group, should be, at any point of time, lower of:

- €3.000.000
- 50% of the total clients' funds held by the CIF.

Use of Title Transfer Collateral Arrangements ("TTCAs")

CIFs are not entitled to transfer funds belonging to retail clients to a third party and to arbitrarily transfer funds belonging to non-retail clients, without taking into account the factors provided in the Circular.

Maintaining a "buffer" in clients' bank accounts

CIFs, on a discretionary basis, may decide to maintain a buffer of own funds into clients' bank accounts to, inter alia, facilitate the smooth running of their business and cover possible shortfalls. In case that the CIF decides to maintain the said buffer, it should establish an approved by the Board of Directors written policy, explaining the risks and justifying the amount of the buffer kept. It is emphasised that the 'buffer' will be considered as clients' funds and shall be treated as such.

Single officer for the safeguarding of client financial instruments and funds

A CIF should appoint a single officer of sufficient skill and authority with specific responsibility for matters relating to the CIF's compliance with its obligations regarding the safeguarding of client financial instruments and funds who will report to the senior management. This officer shall also verify the reconciliation included in the CySEC's QST- CIF Form. To this point, CIFs are expected to complete and keep up to date the details of this officer in CySEC's portal.

Reconciliation of clients' funds

According to the Directive, CIFs must conduct on a regular basis reconciliation between their internal accounts and records and those of any third parties by whom those assets are held. Regular basis shall be determined by the risks which the business is exposed. Regular basis shall mean on a daily basis where transactions are undertaken daily.

Other matters

CIFs shall ensure that there are at least two persons with combined signatory powers concerned with the clients' accounts. CySEC, emphasised that the persons involved in the preparation of clients' reconciliations and the shareholders of CIFs that do not have executive duties within the CIF, cannot be appointed as signatories. Given the abovementioned, CySEC expects that the CEO or the CFO or the Head of the Accounting Department or an Executive Director may be the signatories.

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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