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**TO : Cyprus Investment Firms**  
**FROM : Cyprus Securities and Exchange Commission**  
**DATE : May 11, 2020**  
**CIRCULAR No : C386**  
**SUBJECT : COVID-19: ESMA’s Public Statement regarding the conduct of business obligations under MiFID II**

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1. The Cyprus Securities and Exchange Commission (the “CySEC”) wishes herein to draw the attention of the Cyprus Investment Firms (the “CIFs”) to the [Public Statement](#) issued very recently by the European Securities and Markets Authority (the “ESMA”), in relation to the conduct of business obligations under MiFID II and requests CIFs to ensure that they fully comply with these obligations.
2. The Public Statement refers to the risks for retail investors when trading under highly uncertain market circumstances due to the COVID-19 pandemic and reminds investment firms of the key conduct of business obligations under MiFID when providing services to retail investors.

The Public Statement states that the heightened uncertainty due to the COVID-19 outbreak has led to high market volatility and an increase in market, credit and liquidity risks. Under these circumstances, several National Competent Authorities have noticed a significant increase in the number of investment accounts opened by retail clients and a surge in trading by retail clients.

3. In the current environment, ESMA believes that firms have even greater duties when providing investment or ancillary services to investors, especially when these investors are new to the market, or have limited investment knowledge or experience. ESMA therefore issued this Public Statement to draw firms’ and clients’ attention on these risks and to remind investment firms of their conduct of business obligations under MiFID II.
4. In this context, ESMA reminds firms of their obligation to act in accordance with the best interests of their clients, and points to the most relevant conduct of business obligations under MiFID II, namely product governance, information disclosure, suitability and appropriateness.

#### 5. Product Governance

MiFID II states that firms must have adequate product governance arrangements in place to ensure that financial instruments will only be offered when in the interest of the client

or potential client. Amongst others, firms must determine the target market which should be assessed in an appropriate and proportionate manner on the basis of the nature of the financial instrument and the investment service provided, and the associated distribution strategy for the financial instruments that they manufacture or intend to offer. In determining the distribution strategy for such instruments, firms should be mindful of the more limited level of investor protection afforded by the appropriateness test than by the suitability test required when providing investment advice and portfolio management to clients.

The Public Statement reminds investment firms of the above MiFID obligation in relation to product governance.

## 6. Information Disclosure

MiFID states that:

- i. All information, including marketing communications, addressed by the investment firm to clients or potential clients shall be fair, clear and not misleading. Furthermore investment firms shall provide appropriate information in good time to clients or potential clients with regard to the investment firm and its services.
- ii. Firms must provide information on the financial instruments in which their clients or potential clients can invest. This information must include an appropriate description of the nature and risks of financial instruments to enable the client to take investment decisions on an informed basis. The description shall also explain whether the financial instrument is intended for retail or professional clients, taking account of the identified target market.

The Public Statement reminds investment firms of the aforementioned MiFID obligations in relation to information disclosure.

## 7. Suitability and Appropriateness Assessment

According to MiFID:

- i. *Suitability Assessment - Investment advice or portfolio management services*  
*When providing investment advice or portfolio management, firms shall obtain the necessary information regarding the client's or potential client's knowledge and experience, his financial situation including his ability to bear losses, and his investment objectives including his risk tolerance to assess whether the financial instrument or service is suitable for the client. ESMA emphasises that firms should pay particular attention to the possible ramifications of the COVID-19 crisis for the client's personal situation and the risk profile of his financial instruments to ensure that these financial instruments are suitable for him.*
- ii. *Appropriateness Assessment – Investment services other than investment advice or portfolio management*  
*When providing services other than investment advice or portfolio management, firms must obtain information regarding the client's or potential client's knowledge and experience to assess whether the financial instrument or service is appropriate for the client. ESMA stresses that this appropriateness assessment is particularly important*

*for new clients wishing to invest in complex financial instruments during these times of intensified market volatility. Firms should also be sure they correctly categorise financial instruments for the purpose of the appropriateness assessment.*

*iii. Investment services of execution or reception and transmission of orders with respect to non-complex financial products*

*Under certain conditions, when providing the investment services of execution or reception and transmission of client orders with respect to the financial instruments specified in Article 25(4)(a) MiFID II ('non-complex financial instruments'), investment firms are allowed to provide those investment services without the need to undertake an appropriateness assessment. ESMA stresses that firms, when providing investment services that fall under this execution-only exemption, still need to comply with the other requirements outlined in this Statement, especially those relating to product governance and information to clients.*

The Public Statement reminds investment firms of the above MiFID obligations in relation to the suitability and appropriateness assessment.

8. CySEC requests CIFs to review their policies and arrangements in place and ensure that they fully comply with their conduct of business obligations and related organisational requirements under MiFID II.

Yours sincerely,

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Chairman, Cyprus Securities and Exchange Commission