

CP (2016-09)

Consultation Paper of the Cyprus Securities and Exchange Commission regarding a proposed circular on promoting CIF's services/products and soliciting business

In the context of establishing effective arrangements and procedures for consultation with market participants regarding proposed changes in the regulatory framework, the Cyprus Securities and Exchange Commission ('the CySEC') is circulating this paper for consultation in relation to promoting CIF's services/products and soliciting business.

The proposed circular is attached as Appendix 1.

The CySEC invites you to submit your comments/suggestions, in word format, by Monday October 31st, 2016, to the electronic address supervision@cysec.gov.cy only.

TO : **Cyprus Investment Firms**

FROM : **Cyprus Securities and Exchange Commission**

DATE :

CIRCULAR NO :

SUBJECT : **Promoting CIF's services/products and soliciting business**

The Cyprus Securities and Exchange Commission ('CySEC') wishes, with this circular, to inform the Cyprus Investment Firms ('CIFs') about the following:

1. A number of CIFs cooperate with third persons to promote their services and the financial instruments offered, and to solicit business. These persons are usually called as 'Introducing Brokers', 'Business Introducers', 'Affiliates' etc (hereinafter 'the Persons'), which seem to perform the above through various channels, such as personal contact, electronic communication, conducting training programs.

It is noted that the Persons may perform **only** the above activities in relation to potential clients and, in no case, should the following be performed:

- i. To communicate with existing clients for providing information on services and financial instruments offered by the CIF.
 - ii. To receive and/or hold clients funds, and/or to facilitate the transfer of funds to and from clients.
 - iii. To receive and transmit orders for execution of transactions, as well as to provide investment advice [unless they are registered as tied agents as referred to in paragraph 3(i) below].
 - iv. To receive power of attorneys from clients for executing transactions.
2. CIFs must exercise due skill, care and diligence when entering into, managing and terminating any agreement with the Persons.
 3. CIF must ensure, before entering into an agreement, that the Persons are authorised/registered for the performance of those activities within the territories of the country in which the Person is located, if required by the national legislation.

In particular, if the Persons are located in a Member State of the European Union, the CIF must ensure that:

- i. The Persons, if they are acting solely under the full and unconditional responsibility of a CIF, are registered as tied agents either in the public register, pursuant to section 40 of the Investment Services and Activities and Regulated Markets Law of 2007, as in force ('the Law'), or in the corresponding public registers of other Member States which are established under their respective laws enacted in compliance with European Directive 2004/39/EC.
- ii. The Persons, if they are acting for a number of investment firms, comply with the national requirements in their home Member State (eg licensing requirement or registration requirement).

If the Person are located outside the European Union, the CIF must ensure that the Persons comply with the national requirements in force in that country (eg licensing requirement or registration requirement).

4. CIFs must ensure that the Persons only operate within the territories in which they are located.
5. CIFs must ensure that the Persons have the necessary qualifications and skills in order to be able to implement the legislation requirements and the business ethics standards.

In addition, the CySEC expects the CIFs to ask the Persons to be certified either in their home country, if there is such a requirement, or pursuant to CySEC's Directive (RAD 174/2015) on the certification of Persons and the certified registers (success at least in the basic examination and registration in the Public Registry).

6. CIFs must establish, implement and maintain monitoring procedures of the Persons and methods for assessing the standard of their performance in order to ensure that they always act in accordance with the provisions of the agreement signed between them. The responsibility of enforcement of these procedures lies with the compliance function.

Within the framework of continuous monitoring of the Persons, CIFs must ensure that indeed the Persons continue to comply with the national requirements in force in their home country. For example, the CIF must, at all times, be aware of any changes in the regulatory framework applicable to the Persons in their home country, or must ensure, for example requesting analysis of their revenues, that indeed the Persons do not act exclusively for the CIF (where applicable). A reference to non-exclusive cooperation in the agreement signed between the CIF and the Person is not sufficient evidence that it is non-exclusive cooperation.

It is noted that all the provisions of Circular E030 of CySEC on certain aspects of the compliance function requirements are fully applicable in this case.

- 7.** CIFs must ensure that Persons are trained regularly and specifically.
- 8.** Circulars E138 and E145 of CySEC on remuneration policies and practices are applicable to Persons, as well.
- 9.** CIFs must take appropriate actions if they ascertain that the Persons are not acting in accordance with the agreement signed between them.
- 10.** The respective rights and obligations of the Person, including the activities and the country in the territory of which the Person may act, must be clearly defined and set out in a written agreement. It is provided that the content of the agreement is consistent with the requirements of the Law and the directives / circulars issued pursuant to and with the regulatory framework applicable in the home country of the Person.
- 11.** For transparency purposes and the protection of investors, CIFs must post on their website the details of the Persons they cooperate (name, country of location), as well as whether they are acting on an exclusive or non-exclusive basis.
- 12.** CIFs must keep in their records:
 - i. Information on the evaluation of the Person (due diligence) before concluding an agreement.
 - ii. The agreements signed with the Persons.
 - iii. Evidence supporting compliance with this Circular (e.g. copy of license/ registration letter).
 - iv. Assessment of the standard of performance of the Person.
 - v. Information on the audits carried out in the Persons by the compliance function.

It is provided that the CIFs must make available to the CySEC, upon request, all the above necessary information.