



TO : **Cyprus Investments Firms**
FROM : **Cyprus Securities and Exchange Commission**
DATE : **20 June 2014**
CIRCULAR No : **CI144-2014-22**
FILE No. : **E.K. 6.1.14**
SUBJECT : **Capital adequacy and exposures of the Cyprus Investment Firms**

The Cyprus Securities and Exchange Commission ('the Commission') wishes to inform the Cyprus Investment Firms ('the CIFs') about the following:

A. Own Funds and capital adequacy ratio

1. According to section 67 of the Investment Services and Activities and Regulated Markets Law ('the Law') «(1) *The CIFs must have own funds, which are at all times more than or equal to the sum of its capital requirements and the CIF's own funds must in no case fall below the level of initial capital as provided for in section 10 of the Law.*

...

(3) If the CIF's own funds fall below the level stated in section 67 of the Law), this must be notified immediately to the Commission that may, under justified circumstances and at its absolute discretion, set a deadline by which the CIF must remedy the situation».

2. The Commission notes that:
 - i. For a number of CIFs, the own funds and/or the capital adequacy ratio, quite often, fall below the allowable limits, as stated in section 67, of the Law.
 - ii. This fact is not immediately notified to the Commission, as specified in the Commission's Circular CI144-2013-03, but rather this is done with the regular submission of the capital adequacy reports, where a deadline is requested to remedy the situation.
3. According to the European Directive 2013/36/EE, for the access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, the discretion that existed in the previous European Directive, for providing a deadline in case the own funds or the capital adequacy ratio fall below the allowable limits, has been deleted.

The Commission has necessarily proceeded with the corresponding deletion of Article 67(3) of the Law, which will come into force with its enactment by the House of Representatives, which is expected in the coming months.

4. Therefore, the Commission urges all CIFs, to monitor and evaluate on an ongoing basis, the amount and composition of the own funds as well as the capital adequacy ratio, in order to ensure that they comply, **at all times**, with the requirements of the Law and where there are indications that lead to possible non-compliance, CIFs are asked to take preventive measures to avoid such a situation.
5. The Articles 102 and 104 of the European Directive 2013/36/EU specify the supervisory measures and powers of the supervisory authorities, in cases where the requirements of the said Directive or/and the Regulation (EU) No 575/2013 are not met.

In addition, in case where the own funds are negative, the Commission will examine the possibility of suspending the CIF authorization pursuant to Article 26(2) of the Law, until their improvement.

B. Large Exposures

6. Pursuant to article 69 of the Law «(1) *The CIFs may not have, in relation to a person or a group of connected persons, exposures the aggregate of which exceeds the limits defined by the Commission's Directive DI144-2007-06*».

...

(4) If in exceptional circumstances, the exposures taken up exceed the limits set out in subsections (1) and (2), this must be notified to the Commission that may, under justified circumstances and at its absolute discretion, set a deadline by which the CIF must comply with the said limits».

7. The Commission notes that:
 - i. The large exposures, for a number of CIFs, exceed, quite often, the allowable limits, pursuant to section 69 of the Law.
 - ii. This fact is not immediately notified to the Commission, as specified in the Commission's Directive DI144-2013-03, but rather this is done with the regular submission of the capital adequacy reports, where a deadline is requested to remedy the situation.
8. The Regulation (EU) No 575/2013, which entered into force automatically in all Member States from 31 December 2013, provides a similar discretion as in section 69(4) of the Law. However, we emphasized that pursuant to Article 396(1) of the said Regulation, large exposures may exceed the allowable limits **only in exceptional cases** and the competent

supervisory authority may give, **under justified circumstances**, limited time to remedy the situation.

9. The Commission, must strictly apply, the provisions of the Regulation and thus a deadline will be granted only in cases when the provisions of Article 396(1), are met.

Therefore, the Commission urges all CIFs to establish sound mechanisms and procedures to monitor, on an ongoing basis, their large exposures and ensure that they comply, at all times, with the requirements of the Law. Where there are indications that the limits of the large exposures, will lead to possible non-compliance, CIF must take preventive measures to avoid such an event.

10. The same powers and supervisory measures are also applicable for large exposures, as mentioned in paragraph 5 above.

C. Submission of the capital adequacy and large exposures reports

11. According to paragraph 39 (5) Part C of the Directive 144-2007-05, CIFs must submit the Form 144-05-06.1 regarding their capital adequacy, within one month from the end of the reporting period [paragraph 39 (1), Part C of the Directive 144-2007-05].
12. According to paragraph 18(3) of the Directive 144-2007-06, CIFs must submit the Forms 144-06-08.2 and 144-06-08.2 regarding the large exposures, within one month from the end of the reporting period [paragraph 18(1) of the Directive 144-2007-06].
13. The Commission notes that, quite often, a number of CIFs does not proceed with the prompt submission of the capital adequacy and large exposures reports, through the TRS system. Also, quite often, in cases where the submission of the said forms, is not successful through the TRS, a number of CIFs, do not immediately correct the errors that prevent the successful submission and resubmit the reports.
14. The European Commission has adopted on 16 April 2014 [the Implementing Technical Standard \(ITS\) in relation with a common framework reference \(COREP\)](#). The ITS will enter into force, with its publication in the Official Journal of the European Union, which is expected to be made in the near future. As a result, the Commission intends to adopt the ITS, by amending accordingly the Forms 144-05-06.1, 144-06-08.1 and 144-06-08.2.
15. The frequency and the submission date are specified in Chapter 2 of the ITS. The said ITS does not provide granting extensions for not submitting the relative forms on the specified submission date. The reporting frequency is specified as quarterly and half yearly depending on the services provided. According to paragraph 104(1)(j) of the European Directive 2013/36/EU, the Member States may choose more frequent reporting. The Commission is oriented not to make use of the discretion for monthly reporting and will adopt quarterly and half-yearly submission.

Therefore, the Commission invites all CIFs, to establish sound administrative and accounting procedures for the prompt submission to the Commission, of the above mentioned reports, through TRS, in strict compliance with the specified deadlines.

Yours sincerely

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Chairman of the Cyprus Securities and Exchange Commission