

## CP (2015-06)

### **Consultation Paper of the Cyprus Securities and Exchange Commission regarding a proposed circular about domains and clients' agreement**

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 document for consultation.

CySEC has prepared this circular in order to bring to inform the Cyprus Investments Firms ('the CIFs') that they:

1. Must, at all times, notify all their domains to CySEC, conduct business only through their domains notified to CySEC, ensure that their domains clearly disclose their name and ensure the uniqueness of their domain's name.
2. Must disclose in due time to their clients the terms and conditions of their agreement and ensure their ability to demonstrate to CySEC the clients' acceptance of the agreement.

The proposed circular is attached as **Appendix 1**.

**The CySEC invites you to submit your comments/suggestions, in word format, by Friday May 29, 2015 to the electronic address [supervision@cysec.gov.cy](mailto:supervision@cysec.gov.cy).**

**TO : Cyprus Investment Firms**

**FROM : Cyprus Securities and Exchange Commission**

**DATE : xxxx2015**

**CIRCULAR NO. : C144-2015-xxx**

**SUBJECT : Domains – Clients’ agreement**

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The Cyprus Securities and Exchange Commission (“CySEC”) would like to inform the Cyprus Investment Firms (the “CIF”) of the following:

**A. CIF Public Register – Website address**

1. The CIFs are required under Articles 8 (disclosure of details) and 34 (changes in CIF information and details) of the Investment Services and Activities and Regulated Markets Law of 2007, as in force (“the Law”) to inform the CySEC on all the addresses of their websites.
2. It has been observed that certain CIFs have not informed the CySEC on all the addresses of their websites, through which they provide investment services.
3. For purposes of compliance with the above articles, all CIFs are called to declare to the CySEC at [supervision@cysec.gov.cy](mailto:supervision@cysec.gov.cy) no later than xx, all the addresses of their websites. The CySEC intends to register these addresses in the public register of Article 7 of the Law, in which all the CIFs are registered and post them on its own website.
4. The CIFs, throughout the duration of their operation, shall ensure that they operate only through the website addresses notified to the CySEC and posted on its website.
5. If a CIF provides investment services through a website whose address is not registered in the public register of Article 7 and posted on the CySEC’s website, it may be considered to violate the provisions of the Law, including Articles 8 and 34 of the Law since the end result is to provide investment services through a website that is not notified to the CySEC and registered in Article 7 of the Law.

**B. Domain name different from the name under which the CIF obtained an authorisation**

6. There are cases where the domain name of a CIF differs from the name under which it obtained authorisation by the CySEC. Where this is the case, it seems that there is not always explicit reference, or if there is, it is not always visible, at the website of the CIF that the domain name operates under the specific CIF and as a result the visitors of the website do not always know or have wrong impression as to the name of the person who operates through that domain name.

7. Pursuant to Article 36 (1) of the Law, the CIF must, when providing investment and ancillary services to customers, act fairly, honestly and professionally and all information addressed by a CIF to its clients or potential clients shall be fair, clear and not misleading.

This Article is further specified by paragraph 6 of Directive OD144-2007-02 of 2012.

Within the framework of the above provisions, investors should be informed, with any detail, about the name of the person they deal with.

8. The CIFs are required to establish and implement measures so that the visitors of their website are informed of their name and there should be no misrepresentation as to their name when establishing a business relationship.

Such measures are e.g. the registration on the home page of their domain in a prominent spot with marked letters, of a statement that this domain is under the operation of this CIF, or informing visitors of the CIF's name through a pop-up message.

### **C. Uniqueness of the domain name**

9. Within the framework of compliance with Article 36 (1) of the Law, there must be no ambiguities as to the name of the CIF with which clients deal and the CIF bears full and exclusive responsibility for any misrepresentation to the clients / visitors of its website.
10. There are cases where CIFs have the same domain name with persons belonging to the same group with them or with third parties.

As a result, the visitors of the domain of the CIFs do not know or have the wrong impression as to the name of the person with which they establish a business relationship and whether this is licensed / supervised by a competent authority.

11. Within the framework of compliance with Article 36 of the Law, the CIFs must operate a domain name that is unique and not used by another company. Furthermore, the domain name must direct visitors to a single website, belonging exclusively to the CIF.
12. Where a CIF is not the owner of the domain name but concludes an agreement with the owner for its use, it must be ensured, under the Agreement, that it has its exclusive use. If this is not possible then the CIF should not proceed to the conclusion of such an agreement.
13. A CIF cannot refer the visitors of its domain to the domain of another person unless that other person belongs to the same group and it is licensed / supervised by a competent authority in the provision of investment services.

It is noted that in case of exemption, the visitor of the domain is clearly informed and consents to the referral. For example, the visitor through a pop-up message:

- i. is informed that he/she is transferred, under his/her own responsibility, outside the domain of the CIF,

- ii. is informed of the name of the person being transferred as well as the name of its supervisory authority,
- iii. is requested to read the terms and conditions of the person being transferred.

The referral must be made only after the consent / acceptance of the customer.

- 14. The content of the CIF's domain is not differentiated based on the IP address of the visitor.

### **C. Agreement with clients**

- 15. In accordance with paragraph 8 of the Directive OD144-2007-02 of 2012, the CIF must disclose in due time to existing or potential retail clients, private customers the terms and conditions of the investment or ancillary services agreement.
- 16. A CIF allowing customers to accept electronically the terms and conditions through its website may be deemed to comply with paragraph 8 of the Directive only when it adopts and implements such measures, which are able to demonstrate the disclosure of the terms and conditions to the clients.

Such measures are e.g. the dispatch of an e-mail to clients to accept the terms and conditions, as well as the detailed description thereof.

The same procedure is expected to apply in the case of addition / amendment of the terms and conditions of the CIF.

The explanation of the terms and conditions of the CIF on its website, followed by a 'tick box' that the client accepts them, is not sufficient proof that the CIF provided its terms and conditions to its clients.

- 17. The agreement, including the case of paragraph 16 above, always includes the name of the CIF.
- 18. The CIF must keep records of all the above evidence, which is available and accessible by the CySEC at any time.
- 19. The CySEC calls for full implementation of the above by the CIFs.

Sincerely

Demetra Kalogerou  
Chairman Cyprus Securities and Exchange Commission