BREXIT Q&As:

THE NEXT CHAPTER

DATE OF ISSUE: 19 FEBRUARY 2021

PURPOSE OF THE PUBLICATION

The Cyprus Securities and Exchange Commission ("CySEC") publishes this Q&As Document in order to provide clarity to market participants and UK firms in relation to the applicable rules post-Brexit. Firms must carefully review their activities and analyse the impact of Brexit on their operations.

Additional queries may be submitted to the Policy Department of the Cyprus Securities and Exchange Commission at policy@cysec.gov.cy. Once the relevant response is formulated, the Q&A will be updated accordingly.

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1. General Q&As in relation to Brexit and the Trade and Cooperation Deal

Q.1.1: What is the Trade and Cooperation Agreement?

A.1.1: The Trade and Cooperation Agreement is the agreement reached between the EU and the UK covering the areas of trade and cooperation in relation to a diverse set sectors, spanning from trade in goods and services to governing intellectual property, aviation and energy. The TCA is supplemented by a number of associated declarations and agreements including an Agreement on Security Procedures for Exchanging and Protecting Classified Information and a separate Nuclear Cooperation Agreement. The Trade and Cooperation Deal is available here and relevant guiding information is available on the European Commission's website here. Comprehensive information on all areas affecting individuals and businesses, as a result of Brexit could be also found on a dedicated website created by the Government of the Republic of Cyprus here.

Q.1.2: Are the financial services included in the Trade and Cooperation Agreement?

A.1.2: The financial services are included in the Trade and Cooperation Agreement under Title II of Part Two in the form of general provisions and under a bespoke section dealing with the financial services. They are also included under an EU/UK Joint Declaration on Financial Services Regulatory Cooperation. However, such coverage does not provide to UK Financial Services Providers the same rights that were afforded to them when the UK was a member of the EU.

Q.1.3: Will the UK financial services providers be able to continue to passport their services across the EU?

A.1.3: As of 1 January 2021, UK Financial Services Providers are no longer able to passport their services across the EU, meaning that they can no longer benefit from the right to provide services on a cross border basis and/or from the freedom of establishment across the EU.

Under the passporting principle a financial firm authorised in a Member State of the EEA may provide its services into the territory of other EEA Member States without being required to seek for further authorisation in each such Member State. The passporting principle is underpinned by the single EU rulebook for financial services and is therefore not applicable to third country firms i.e. countries outside of the EU and the EEA, such as the UK post Brexit.

In some cases, third country firms are allowed pursuant to certain EU Law, to provide a limited number of services into the EEA on the basis of "*third country equivalence*", meaning that it was deemed by the European Commission that the relevant regulatory framework in that specific third country is equivalent to the EU standards. Further information on the third country equivalence decisions by the European Commission, is available here.

However, save for the aforesaid limited cases, generally, the provision of services by third country firms (e.g. UK firms) into the territory of an EEA Member State, is subject to the local legislation, which may impose authorisation requirements in the respective EEA Member State. For the applicable rules in Cyprus, please see the Markets and Investment Services, TPR and Fund Management Q&As below.

Q.1.4: Are there any equivalence decisions taken by the European Commission in relation to the UK so far?

A.1.4: By the date of issue of this Q&As Document there were two European Commission equivalence decisions issued of a limited scope. The decisions were in relation to derivatives clearing, which is valid for 18 months from the date in force (see here) and in relation to securities depositaries which is valid for 6 months from the date in force (see here). Interested parties should monitor the European Commission's work on this area, in order to determine whether additional decisions are published hereinafter.

2. Q&As in relation to markets and investment services

Q.2.1: How is the functioning of the markets affected by Brexit?

A.2.1: As long as there is no equivalence decision by the European Commission in relation to UK trading venues for the purposes of the Shares Trading Obligation or the Derivatives Trading Obligation, the functioning of the markets is expected to be affected as follows:

MiFIR Shares Trading Obligations

Save for certain exemptions that are limited in scope (see Article 23 of MiFIR for the exemptions), according to Article 23 of MiFIR (available here), an investment firm shall ensure that the trades it undertakes in shares admitted to trading on a regulated market or traded on a trading venue shall take place on a regulated market, MTF or systematic internaliser, or a third-country trading venue assessed as equivalent.

As of 1 January 2021, UK trading venues have become third-country trading venues and EU investment firms will no longer be able to trade the shares referred to in the previous paragraph on UK trading venues.

The European Securities and Markets Authority (ESMA) has issued two public statements (see here and here) clarifying that in the absence of a European Commission equivalence decision, EEA investment firms, must undertake transactions in relation to shares with EEA ISINs on an EEA trading venue, whereas trades in shares with an EEA ISIN which are mainly traded on UK trading venues in GBPmay be undertaken on UK Trading Venues by EEA investment firms, on the basis that such trades occur on a non-systematic, ad-hoc, irregular and infrequent basis and they therefore fall under the exemptions of Article 23 of MiFIR.

MiFIR Derivatives Trading Obligations

Article 28 of MiFIR, inter alia, provides that EEA investment firms must undertake transactions in certain derivatives on a Regulated Market, a Multilateral Trading Facility, an Organised Trading Facility or third country trading venues deemed as equivalent by the European Commission. Such derivatives include certain fixed-to-float interest rate swaps denominated in EUR, USD and GBP and two credit default swap indices and are specified by virtue of the Commission Delegated Regulation (EU) 2017/2417 (available here).

In the absence of an equivalence decision by the European Commission covering UK Trading Venues, market participants shall not use UK trading venues when meeting their obligations under Article 28 of MiFIR (see ESMA's relevant statements here and here)..

EMIR Reporting

In the absence of an equivalence decision by the European Commission, derivatives transactions on UK trading venues, will be considered as transactions in OTC derivatives for the purposes of EMIR.

Q.2.2: How are UK investment firms offering investment services into Cyprus affected?

A.2.2: The provision of investment services by third country investment firms (e.g. UK investment firms) into the territory of an EEA Member State, in relation to retail clients and elective professional clients, on a solicited basis, is subject to the applicable local rules, which may provide for authorisation in the respective EEA Member State.

In the case of Cyprus, the provision of investment services to elective professional clients (i.e. those of Section II of Annex II of MiFID II, as transposed in Part II of Annex II of Law 87(I)/2017), on a solicited basis, falls under Article 40 of Law 87(I)/2017 (see here), which requires the establishment of a Branch.

The provision of investment services (including the performance of investment activities) by third country firms (e.g. by UK firms) to *per se* professional clients (i.e. those of Section I of Annex II of the Markets in Financial Instruments Directive (MiFID) II, as transposed in Part I of Annex II of Law 87(I)/2017) and to eligible counterparties in the EEA, is governed by MiFIR. MiFIR provides that in the absence of an equivalence decision by the European Commission in relation to the respective third country's relevant regulatory framework and a subsequent registration of third country investment firms with ESMA, pursuant to Articles 47 and 46 of MiFIR respectively, which will allow the third country investment firms in question to provide Investment Services solely to *per se* professional clients and to eligible counterparties across the EU on a solicited basis, national rules apply. In the case of Cyprus the national rules (see the CySEC Directive DI87-04 here) provide that a branch must be established in such cases as well. However, CySEC has launched a separate Temporary Permission Regime for UK firms that do not have a physical presence in Cyprus and provide investment services to *per se* professional clients and to eligible counterparties on a solicited basis (see Q&As on TPR).

Q.2.3: Are branches established by UK investment firms in Cyprus able to passport their services into other EEA Member States?

A.2.3: No. According to the EU Law (see recital 109 of MiFID II here), third country firms' establishments in an EEA Member State, such as branches, may not provide investment services into other EEA member states. Therefore, for the provision of investment services from Cyprus on a cross border basis to residents of other EEA Member States, it is a prerequisite that a different legal entity fully authorised and regulated by CySEC is established.

Q.2.4: Is the provision of investment services on a reverse solicitation basis to Cypriot residents subject to authorization requirements?

A.2.4: The case of reverse solicitation is exempted in all cases (i.e. retail clients, elective professional clients, *per se* professional clients and Eligible Counterparties) pursuant:

i. To Article 43 of Law 87(I)/2017 (see here) and
ii. To the third Subparagraph of article 46(5) of MiFIR (see here); and
iii. To Paragraph 5 of the CySEC Directive DI87-04 (see here).

However, interested partied are urged to be diligent when evaluating whether the provision of services is indeed provided on the basis of reverse solicitation. ESMA has published a Public Statement in relation to the rules on reverse solicitation (see here).

3. Q&As in relation to CySEC's Temporary Permission Regime

Q.3.1: Will TPR authorised firms be able to provide investment services to elective professional clients as well under CySEC's Temporary Permission Regime (TPR)?

A.3.1: No. The provision of investment services to elective professional clients (i.e. those of Part II of Annex II of Law 87(I)/2017) falls under Article 40 of Law 87(I)/2017, which requires the establishment of a Branch. The TPR applies only to eligible counterparties and professional clients *per se* (i.e. those of Part I of Annex II of Law 87(I)/2017).

Q.3.2: May UK credit institutions benefit from the TPR?

A.3.2: No. The provision of investment services and/or the performance of investment activities by credit institutions in the Republic of Cyprus fall under the competence of the Central Bank of Cyprus. Therefore, save for certain cases otherwise specified, Credit Institutions do not fall under the scope of the CySEC Directives issued pursuant to Law 87(I)/2017.

Q.3.3: Are UK investment firms that duly provided the notification necessary to benefit from the TPR, entitled not only to continue to provide their services to existing clients (per se professional and eligible counterparties) but also to on-board new such clients other than on a reverse solicitation basis and to solicit new business from and market new services and transactions to existing clients?

A.3.3: UK investment firms that duly provide the notification necessary to benefit from the TPR will need to cease their operations that act on a solicited basis in the Republic of Cyprus, by 31 December 2021 if there is no physical presence established in the Republic of Cyprus or if there is no equivalence decisions by the EC (and a subsequent ESMA registration of the respective firm) pursuant to MiFIR.

The TPR, primarily aims at facilitating an orderly winding down of existing operations of UK firms, established on a solicited basis; and at providing the time for a physical presence to be established in the Republic of Cyprus, for the UK firms who wish to continue soliciting *per se* professional clients and eligible counterparties based in Cyprus. The TPR does not prohibit UK firms that are registered under the CySEC TPR from continuing to solicit clients based in Cyprus. However, such continued solicitation is unlikely to be considered as justified in the case that there is no ESMA registration pursuant to MiFIR or an application submitted for the establishment of a physical presence in Cyprus, well before the lapsing of TPR by the respective UK firm, as the year 2021 progresses.

Q.3.4: Will TPR applications submitted after 31 December 2020 be eligible for a Temporary Permission?

A.3.4: Yes. In view of the continued inflow of TPR notifications and the reasonable explanations provided by UK firms, CySEC has decided to extend the deadline for a TPR notification to be submitted (and therefore accepted) up until 28 February 2021 (see here).

Q.3.5: Will a TPR notification submitted by UK Investment Firms who did not notify the passporting of investment services under MiFID II at the time the UK was a Member of the EU be accepted?

A.3.5: Yes. Although the initial notification form contains a reference that such notifications will be rejected, CySEC has updated its approach to facilitate a smooth post-Brexit transition. To this end, the notification form has been amended accordingly.

4. Q&As in relation to Fund Management

For the purposes of this part:

- References to marketing shall be understood as references to active marketing taking place at the initiative of the UK investment fund manager.

- References to a UK investment fund manager shall be understood as references to any UK entity authorized under UK Law for collective portfolio management, whereas references to a UK asset manager shall be understood as references to a UK entity authorized for discretionary asset management in general, including but not limited to a UK investment fund manager.

- In case of a self-managed UCITS or AIF (as the case may be), any references to external managers shall be understood as references to the UCITS or the AIF (as the case may be) itself.

Q.4.1: Can a Cypriot UCITS be managed by a UK investment fund manager, including a UK fund manager, which had been authorized as a UCITS management company pursuant to the provisions of the UCITS Directive?

A.4.1: As of 1 January 2021, EU law, including the freedom to provide services on a cross-border basis within the EEA, ceased to apply vis-à-vis UK entities, including those UK entities that were authorized pursuant to the UCITS Directive.

Furthermore, a UCITS can only be established within the territory of an EEA Member State (thus no UK undertaking for collective investment can qualify as a UCITS from 1 January 2021 onwards) and it can only be managed by an entity established in the territory of an EEA Member State and authorized by the national competent authority of that Member State as UCITS management company, within the meaning of the UCITS Directive.

Given that EU Law ceased to apply vis-a-vis UK investment fund managers, including those that had been authorized as UCITS management companies under the UCITS Directive before 1 January 2021, the regulatory brands '*UCITS*' and '*UCITS management company*' are reserved only to entities subject to the laws of EEA Member States.

As a result, no UK investment fund manager can be considered as a UCITS management company from 1 January 2021 onwards and is thus not an eligible manager of any UCITS, including a Cypriot UCITS.

Q.4.2: Can a Cypriot AIF be managed by a UK investment fund manager?

A.4.2: The AIF Law provides for a series of regulated Cypriot (CY) alternative investment fund ('AIF') products, whereas the provisions on the constitution and functioning of each one of these, are laid down in the relevant chapters of the AIF Law.

Specifically:

(CY) AIFs under Part II of the AIF Law

As regards those (CY) AIFs falling under Part II of the AIF Law, Article 6(2)(b)(i)-(iii) of the AIF Law provides that the following entities are eligible external managers of the said AIFs:

- AIFMs;
- MiFID Firms; and
- UCITS Management Companies.

Given that the freedoms under EU Law ceased to apply vis-à-vis UK entities after 1 January 2021, a UK entity can no longer be considered a MiFID Firm or a UCITS Management Company. As to the term AIFM, Article 2(1) of the AIF Law provides that, for the purposes of the AIF Law, the term AIFM also includes a non-EU AIFM. This latter term is defined by reference to Article 2(1) of the AIFM Law. As per the said Article, a non-EU AIFM is an AIFM not being an EU AIFM, including thus a UK investment fund manager. However, Article 13(3) of the AIF Law subjects the possibility of the management of a (CY) AIF under Part II of the AIF Law by a non-EU AIFM, to Cyprus being the MS of reference of the non-EU AIFM as per Article 49 of the AIFM Law. Moreover, the activation of Article 49 of the AIFM Law presupposes the introduction of the so-called '*AIFMD third-country passport*' at EU level, which, has not taken place until now. Thus, until the AIFMD '*third-country passport*' is introduced, no non-EU AIFM, including a UK fund manager, can manage a (CY) AIF under Part II of the AIF Law.

(CY) AIFs under Part VII of the AIF Law – Alternative Investment Funds of Limited Number of Persons

As regards to a (CY) AIF falling under Part VII of the AIF Law, Article 125(1)(b)(iv)-(v) of the AIF Law provides that '*it may be setup… as…externally managed AIFLNP, where it appoints an external manager to perform the investment management functions…authorized [a.o.]..as...*

(iv) a company established in a third country, which is authorised to provide the portfolio management service and is subject to prudential regulation regarding the provision of this service· or

(v) any company which, in accordance with its instruments of incorporation, has the sole purpose of providing the portfolio management service to the specific AIFLNP. In this case, the appropriateness of the manager of the AIFLNP is assessed by the Securities and Exchange Commission, on the basis of the information submitted in the file of the application to grant authorisation to the AIFLNP, taking into consideration that the manager has to comply with articles 129(4) and 131;'.

Given that no restriction is placed by the said provision on a non-EU fund manager, including a UK investment fund manager, other than the requirement for a (local) authorization 'to provide the portfolio management service' and to be subject 'to prudential regulation regarding the provision of this service' a licensed UK fund manager is an eligible external manager for (CY) AIFs falling under Part VII of the AIF Law.

(CY) AIFs under Part VIII of the AIF Law – Registered

As regards a (CY) AIF falling under Part VIII of the AIF Law and the possibility of being managed by a non-EU AIFM, such as a UK investment fund manager, section 135(1)(c) of the AIF Law provides that such AIFs can be managed by a non-EU AIFM so long as such AIFM possesses the AIFMD '*third-country passport*'. Until the AIFMD '*third-country passport*' is introduced, no non-EU AIFM, including a UK fund manager can manage a (CY) AIF under Part VIII of the AIF Law.

Q.4.3: Can a Cypriot UCITS Management Company or an AIFM (as the case may be) appoint a UK investment fund manager as a delegate of investment management functions?

A.4.3: Outsourcing/delegation arrangements are subject to the overarching principle that the relevant firm does not become a letter box entity and that there is sufficient oversight over such arrangement.

Subject to the aforesaid overarching principle, apply the following:

A UK investment fund manager as a delegate of a UCITS Management Company:

Article 115(2)(a)(ii) of the UCI Law in conjunction with Paragraph 9 of CySEC Directive DI78-2012-05 regarding the delegation of one or more activities or functions of the management company to a third person, a third country entity, such as a UK fund manager, can be an eligible delegate of an investment management, i.e. risk and/or portfolio management, function provided that:

- CySEC authorizes the delegation arrangement in question;
- The third-country delegate has been authorised for the function of collective investment management or of asset management in general or is registered in the relevant record of its home state for the provision of the service of collective investment management or asset management in general;
- The third-country delegate is subject to prudential supervision in accordance with the legislation of its home state and this legislation is equivalent to the UCITS Directive or MiFID II (As the case may be); and
- The delegation agreement provides that the delegation in question will be subject to Cypriot Law.

Thus, UK investment fund manager and UK asset managers can be eligible delegates of investment management functions as regards UCITS management, provided the aforesaid conditions are complied with.

A UK investment fund manager as a delegate of a (CY) AIFM:

As regards a delegation by a Cypriot entity authorized as an AIFM pursuant to the rules of the AIFM Law, Article 20(2) of the AIFM Law in conjunction with Article 78 of the Commission Delegated Regulation (EU) No 231/2013, provides that where the delegation concerns part or the whole of the functions of portfolio management or risk management, the said delegation to a third country entity, such as a UK investment fund manager, is allowed, subject to:

- Observance of the general delegation provisions under Article 20(1) of the AIFM Law;
- The delegation of investment management functions being conferred only on undertakings which are authorised or registered for the purpose of asset management and subject to supervision; or where that condition cannot be met, only subject to CySEC's prior approval; and
- A cooperation arrangement between CySEC as the competent authority of the home Member State of the (CY) AIFM and the supervisory authority of the third country undertaking has been signed.

As regards this last condition, an agreement of Memoranda of Understanding (MoUs) between ESMA and EU regulators, including CySEC and the UK's FCA was reached, covering cooperation and exchange of information also for the purposes of delegation of investment management tasks under the AIFMD. The MoUs came into effect on 1 January 2021. Thus, a UK licensed asset manager can be an eligible delegate of investment management tasks by a (CY) AIFM, subject to observance of the conditions laid down above. The relevant memoranda of understanding between ESMA and EU national securities regulators on one hand and the UK's FCA on the other, may be accessed here.

A UK investment fund manager as a delegate of (CY) AIF managers other than a (CY) AIFM

As regards Cypriot AIFs under Part II of the AIF Law, which are externally managed by an entity other than an authorized (CY) AIFM, the provisions of Articles 24(1)(b), 24(1)(c) and 24(2)(b) of the AIF Law respectively apply depending on the regulatory status of the external manager in question.

As regards the Cypriot AIFs under Part VII of the AIF Law, Article 125(3) of the AIF Law provides that the functions of investment management may be delegated to a third party, provided that the third party is authorised for the purpose of portfolio management and subject to efficient prudential regulation and supervision for providing this service in its home country, in accordance with the legislation of its home country. Thus, an authorized and supervised UK asset manager is an eligible entity for receiving an investment management delegation mandate as regards (CY) AIFs under Part VII of the AIF Law.

Q.4.4: Can a UK investment fund manager be an eligible distributor for UCITS in Cyprus?

A.4.4: No, as only EU Law licensed financial services providers are eligible to act as UCITS distributors in Cyprus, as per Article 16(5) of the UCI Law.

Q.4.5: Can a UK investment fund manager be an eligible distributor for AIFs in Cyprus?

A.4.5: No, as only EU Law licensed financial services providers are eligible to act as AIF distributors in Cyprus, as per Article 100(1) in conjunction with Article 36(4) of the AIF Law respectively.

Q.4.6: Can a UK investment fund manager market AIFs under its management in Cyprus without a passport?

A.4.6: A third country fund manager, including a UK fund manager, may market AIFs under its management in Cyprus only where:

- The provisions of Article 66 of the AIFM Law on marketing of AIFs by a non-EU AIFM are observed;
- The said AIFs are subject to effective supervision in their home state as per relevant local rules, which aim at ensuring the protection of investors; and
- Their marketing in Cyprus has been authorised by the CySEC to professional investors only as per the relevant AIF Law provisions and those of the CySEC Marketing Directive.

Q.4.7: What is the action for a UK investment fund manager to take after 31 December 2020?

A.4.7:

- As regards any UCITS management and/or marketing (as the case may be) activity by a UK investment fund manager in Cyprus, any such activity must cease and a relevant de-registration/de-notification, including dissolution process (if applicable) must take place, unless a UCITS Management Company is appointed.
- As regards any (CY) AIF management activity by a UK investment fund manager the guidance provided in the answer to question 4.2 has to be observed for future cases. As regards cases of (CY) AIFs, which were managed by a UK investment fund manager considered an EU AIFM until 31 December 2020, a relevant resignation/replacement and/or dissolution (as the case may be) has to take place where required, as per the guidance provided in the answer to question 4.2 above herein. As regards cases of (CY) AIFs, which were managed by a UK investment fund manager considered an EU AIFM until 31 December 2020 and which can continue to be managed by a non-EU AIFM as per the guidance provided to the question 4.2 above herein, notification of the external manager's replacement has to take place towards CySEC and the AIF Law provisions on major changes towards investors need to be observed.
- As regards cases of AIFs which were managed by a UK investment fund manager considered an EU AIFM until 31 December 2020 and were marketed in Cyprus pursuant to the AIFMD passport, a de-registration/de-notification process has to take place; unless those AIFs re-apply for authorisation for marketing in Cyprus as AIFs managed by a non-EU AIFM as per the guidance provided above herein. In case where it is decided not to pursue any further marketing activities but Cyprus-based investors are retained, such investors can only be professional investors, within the meaning of the AIFM Law; and the UK investment fund manager of the AIF so marketed must proceed into all required filings and reports under the Marketing

Directive, as if the AIF in question were an AIF managed by a non-EU AIFM authorised for marketing in Cyprus without a passport to professional investors only.

5. Q&As in relation to issuers of financial instruments

Q.5.1: Will the issuers of financial instruments admitted to trading on a UK trading venue, which had Cyprus as their Home Member State pre Brexit, continue to fall under CySEC's supervision post Brexit?

A.5.1: From 1 January 2021 onwards, the UK trading venues are considered as third country venues and, therefore, they do not fall under the definition of regulated markets. As such from 1 January 2021, the above issuers, do not fall under the scope of the Transparency Requirements (Securities admitted to trading on a regulated market) Law of 2007, as amended and therefore do not fall under the supervision of CySEC, for the purposes of the said Law.

6. Q&As in relation to prudential supervision

Q.6.1: Do a UK Investment Firm and a UK Bank meet the definition of "*Institution*" per article 4(1) (a) and (b) of CRR?

A.6.1: According to Art. 391 of CRR the term '*institution*' shall include a private or public undertaking, including its branches, which, were it established in the Union, would fulfil the definition of the term '*institution*' and has been authorised in a third country that applies prudential supervisory and regulatory requirements at least equivalent to those applied in the Union. By the date of issue of this Q&As Document there is no equivalence decision in relation to UK Investment Firms and UK Banks for the purposes of CRR.

In the absence of a relevant equivalence decision, as of 1 January 2021, UK Investment Firms and UK Banks do not meet the definition of an I*nstitution* per CRR and thus exposures of CIFs with a UK Investment Firm and UK Bank should be categorised as exposures with Corporates for the purposes of CRR.

Q.6.2: According to Art. 395 of CRR Limits on large exposures "*Where that client is an institution or where a group of connected clients includes one or more institutions, that value shall not exceed 25 % of the institution's eligible capital or EUR 150 million, whichever the higher, provided that the sum of exposure values, after taking into account the effect of the credit risk mitigation in accordance with Articles 399 to 403, to all connected clients that are not institutions does not exceed 25 % of the institution's eligible capital*".

Does this provision continue to apply for exposures of CIFs with a UK Investment Firm and/or a UK Bank?

A.6.2: As of 1 January 2021, the said provision does not apply to exposures of CIFs with a UK Investment Firm and/or a UK Bank.

A CIF, as of 1 January 2021, shall not incur an exposure, after taking into account the effect of the credit risk mitigation in accordance with Articles 399 to 403, to a UK Investment Firm and UK Bank the value of which exceeds 25 % of the CIF's eligible capital (Art. 395 of CRR). From 1 January 2021, exposures of a CIF with a UK Investment Firm and a UK Bank should be reported in CySEC's Form 144-14-08.1 as '*Exposures to non-institutions*'.

Q.6.3: According to par. 50 of CySEC's Directive DI144-2014-14 "(*1) Where a CIF, the parent undertaking of which is an institution or a financial holding company or mixed financial holding company, the head office of which is in a third country, is not subject to consolidated supervision under paragraph 36, the Commission shall assess whether the CIF is subject to consolidated supervision by a third-country supervisory authority which is equivalent to that governed by the principles set out in this Directive and the requirements of Part One, Title II, Chapter 2 of Regulation (EU) No 575/2013. …….. (3) In the absence of such equivalent supervision, the Commission may apply on a case by case basis this Directive and Regulation (EU) No 575/2013 to the CIFs mutatis mutandis or may apply other appropriate supervisory techniques which achieve the objectives of supervision on a consolidated basis of CIFs*"

Is the UK considered a third country for the purposes of par. 50 of DI144-2014-14 from 1 January 2021?

A.6.3: As of 1 January 2021 the UK is considered a third country for the purposes of par. 50 of DI144-2014-14. By the date of issue of this Q&As Document there is no equivalence decision regarding the UK in relation to the above.

Thus, for a CIF with a parent undertaking which is an institution or a financial holding company or mixed financial holding company, the head office of which is in the UK and is not subject to consolidated supervision under paragraph 36, CySEC will assess whether the CIF is subject to equivalent consolidated supervision by a third-country supervisory authority. In the absence of such equivalent supervision, CySEC may apply on a case by case basis the provisions of DI144-2014-14 and Regulation (EU) No 575/2013 to the CIF.

7. GLOSSARY OF TERMS

AIF, means alternative investment fund, within the meaning of the AIF Law.

AIF Law, means Law L.124(I) of 2018 on Alternative Investment Funds as in force from time to time.

AIFMD, means Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 as in force from time to time.

AIFM, means AIFM, within the meaning of the AIFM Law.

AIFM Law, means Law 56(I) of 2013 on Alternative Investment Fund Managers as in force from time to time.

Collective Investment Undertakings, means UCITS and AIFs when referred to collectively.

Commission Delegated Regulation (EU) 231/2013, means the Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision.

Commission Delegated Regulation (EU) 2017/2417, means the Commission Delegated Regulation (EU) 2017/2417 of 17 November 2017 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on the trading obligation for certain derivatives.

CRR, means Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms, as in force.

CySEC Directive DI87-04, means the Directive DI87-04 of the Cyprus Securities and Exchange Commission for the Provision of Services by Third Country Firms in the Republic of Cyprus to Eligible Counterparties and Professional Clients in Those Cases that do not Fall Within the Scope of Regulation (EU) No. 600/2014 on Financial Markets (MiFIR)**.**

CySEC Marketing Directive, means CySEC Directive 131-56-02 regarding the terms and the procedure for the marketing of the units of AIFs and AIFs with Limited Number of Persons

EEA, means the European Economic Area.

EMIR, Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories.

EU, means the European Union.

Member State, means an EU or an EEA member state.

MiFID II, means Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU

MiFID Firm, means investment firm, within the meaning of MiFID II

MiFIR, means Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012.

Trade and Cooperation Agreement, means the Trade and Cooperation Agreement Between the European union and the European atomic energy community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part.

UCI Law, means L.78(I) of 2012 on Open-Ended Undertakings for Collective Investment (UCI) as in force from time to time.

UCITS, means Undertakings for Collective Investment in Transferable Securities, within the meaning of the UCITS Directive

UCITS Directive, means 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) as in force from time to time

UK, means the United Kingdom of England and Northern Ireland.

UK Bank, means a UK bank which met the definition of a credit institution of art. 4(1)(a) of CRR prior 1 January 2021.

UK Investment Firm, means a UK company which was a UK MiFID firm prior 1 January 2021.

UK Financial Services Providers, means UK companies subject to EU Single Rulebook for Financial Services prior 1 January 2021.

Any term not otherwise defined herein takes the meaning provided for in EU or National Legislation.