Regulatory insights

May 2023

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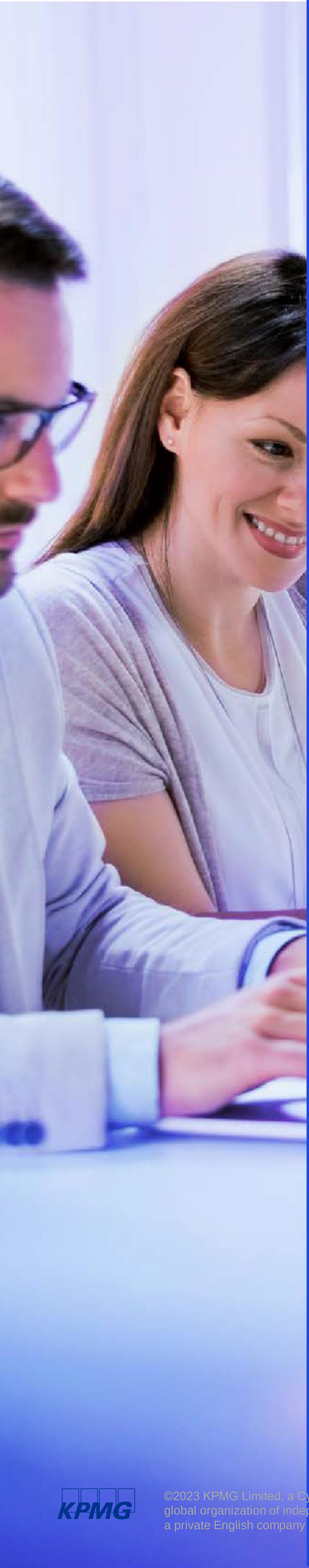

Contents

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Cyprus updates

Cyprus Securities and Exchange Commission

CySEC Circular C575 - ESMA Guidelines on CCP recovery plan indicators Article 9(5) of Regulation (EU) 2021/23 on Guidelines on CCP recovery plan indicators (CCPRRR)

CySEC through its Circular C575 dated 24 May 2023 wishes to inform that ESMA has published the Guidelines on CCP recovery plan indicators (Article 9(5) of CCPRRR) (the 'Guidelines') on March 24, 2023. These Guidelines apply to national competent authorities and to CCPs authorised under Article 14 of Regulation (EU) 648/2012 as amended (EMIR) **as from 24 May 2023**.

CySEC has adopted these Guidelines by incorporating them into its supervisory practices and regulatory approach.

CySEC Circular C573 - Risk-Based Supervision Framework – Electronic submission of information for the year 2022 (Form RBSF-MC).

CySEC published Circular C573 on 12 May 2023 informing Regulated Entities about the Risk-Based Supervision Framework and the Electronic submission of information for the year 2022.

It is noted that CySEC issued a new version of the annual form, RBSF-MC Version 6 ('the Form'), which can be found here.

The form must be completed and submitted to CySEC, by all regulated entities that were authorised, appointed or approved to act as external fund managers (in case no authorisation is required by the relevant legislation), by 31 December 2022. In this respect, regulated entities that were authorised, appointed or approved to act as external fund managers by 31 December 2022, even though they have not made use of their authorisation or appointment, must also submit the form.

The Form must be submitted electronically via CySEC's Transaction Reporting System ('TRS') by 3:00 pm,16 June 2023, at the latest.

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CySEC Circular C571 - EBA Guidelines on Information and Communication Technology (ICT) and security risks management (EBA/GL/2019/04)

CySEC has published on 2 May 2023 Circular C571 in order to bring to the attention of the Cyprus Investment Firms (the "CIFs") the EBA Guidelines on ICT and security risk management (the 'Guidelines').

The Guidelines apply to CIFs that fall under sections 9(1), (3) and (4) of the Prudential Supervision of Investment Firms Law of 2021, i.e., with initial capital requirement of EUR150.000 and EUR750.000.

The Guidelines address ICT and security risks that have increased in recent years due to the increasing digitalisation of the financial sector and the increasing interconnectedness through telecommunications channels (internet, mobile and wireless lines, and wide area networks) and with other financial institutions and third parties. This renders financial institutions' operations vulnerable to external security attacks, including cyber-attacks; therefore, recognising the need for preparedness for cybersecurity.

Among others the Guidelines specify the following:

i. The management body of a CIF should ensure that it has adequate internal governance and internal control framework in place for its ICT and security risks. The management body should set clear roles and responsibilities for ICT functions, information security, risk management, and business continuity, including those for the management body and its committees.

ii. A CIF should assign the responsibility for managing and overseeing ICT and security risks to a control function, adhering to the requirements of Section 19 of the EBA Guidelines on internal governance (EBA/GL/2017/11).

iii. The CIF's governance, systems and processes for its ICT and security risks should be audited on a periodic basis by auditors with sufficient knowledge, skills and expertise in ICT and security risks to provide independent assurance of their effectiveness to the management body.

The frequency and focus of such audits should be commensurate with the relevant ICT and security risks. The management body of the CIF should approve the audit plan, including any ICT audits and any material modifications thereto.

Therefore, CySEC expects that the relevant CIFs will take the necessary actions to ensure compliance with the Guidelines the soonest possible, and not later than **31 December 2023**, if they haven't already done so.

Specifically:

- ❑ The CIFs should determine their governance and internal control framework for their ICT and security risks that would be approved by their Board of Directors and establish measures to manage and mitigate their ICT and security risks.
- ❑ The CIFs should assign to their internal audit function to independently review and provide objective assurance of the compliance of all ICT and security related activities and units of the CIF with its policies and procedures, adhering to the requirements of Section 22 of the EBA Guidelines on internal governance (EBA/GL/2017/11).
- ❑ The Board of Directors of the CIF should approve the audit plan, including any ICT audits and any material modifications thereto. The audit plan and its execution, including the audit frequency, should reflect and be proportionate to the inherent ICT and security risks in the CIF and should be updated regularly.

The first internal audit report regarding the review of the CIF' compliance of all ICT and security related activities with its policies and procedures and with external requirements should be submitted to their board of directors by 30 June 2024, the latest. The internal audit reports should be available for submission to CySEC upon request.

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European updates

Asset Management

ESMA points out improvements needed in supervision of asset valuation

ESMA has published on 24 May 2023 its report on the Common Supervisory Action (CSA) with National Competent Authorities (NCAs) on the supervision of the asset valuation rules under the UCITS and AIFM Directives.

In the final Report ESMA presents its analysis and conclusions from the 2022 CSA exercise, and finds room for improvement in the following areas:

1. the appropriateness of valuation policies and procedures;

2. valuation under stressed market conditions;

3. independence of the valuation function and use of third-party valuers;

4. early detection mechanisms for valuation errors and compensation to investors.

The NCAs' supervision addresses the deficiencies identified in the course of the CSA exercise and keeps paying close attention to potential valuation issues arising from less liquid assets. This is particularly true for funds investing in Private Equity (PE) and Real Estate (RE) assets which might be more exposed to revaluation risks in light of the heavy reliance on long-term models and the illiquidity of their assets.

ESMA will facilitate discussions among NCAs on the topic in order to ensure that both market participants and NCAs are better prepared to address valuation-related challenges in future periods of stress.

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ESMA seeks input on rules for the European long term investment funds (ELTIFs)

ESMA issued on 23 May 2023 a consultation paper on draft regulatory technical standards (RTS) under the revised ELTIF Regulation.

The RTS will specify the way the new requirements of the revised ELTIF regulation, in particular on the redemption policy and matching mechanism, will apply. In the consultation paper ESMA is seeking stakeholders' views on:

- the circumstances in which the life of an ELTIF is considered compatible with the life-cycles of each of the individual assets, as well as different features of the redemption policy of the ELTIF;
- the circumstances for the use of the matching mechanism, i.e., the possibility of full or partial matching (before the end of the life of the ELTIF) of transfer requests of units or shares of the ELTIF by exiting ELTIF investors with transfer requests by potential investors;
- the costs disclosure.

Interested stakeholders are invited to provide input by 24 August 2023.

ESMA will consider the feedback it receives to this consultation in Q3/Q4 2023 and expects to publish a final report and submit the draft technical standards to the EU Commission for endorsement by 10 January 2024

IOSCO encourages Regulators, Responsible Entities and Trading Venues to review and adopt good practices for ETFs.

IOSCO published on 12 May 2023 Good Practices Relating to the Implementation of the IOSCO Principles for Exchange Traded Funds covering effective product structuring, disclosure, liquidity provision, and volatility control mechanisms.

Following an extensive review of ETF markets, IOSCO has determined that the existing IOSCO Principles for the Regulation of Exchange Traded Funds (ETF Principles) remain relevant and appropriate. Since the publication of the ETF Principles in 2013, ETF markets globally have continued to evolve and exhibit sustained growth in assets under management. ETF industry developments include new products with exposures to less liquid and more novel asset classes and more complex investment strategies. IOSCO has therefore concluded that ETF Principles would benefit from being supported, and further operationalised by a set of Good Practices.

The 11 Good Practices set out in this report can be broadly categorised under four themes that encompass the full life cycle of ETF products:

1. product structuring (including range of assets, strategies for ETF offerings, effective arbitrage mechanisms),

2. disclosure requirements (including on fees and on clear differentiation of ETFs from other Exchange Traded Products and Collective Investment Schemes),

3. liquidity provisions (including market monitoring and ensuring orderly trading), and

4. volatility control mechanisms (including communication between trading venues).

ESMA calls for legislative amendments to prevent undue costs in funds.

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On 17 May 2023, ESMA has published an opinion proposing amendments to the UCITS Directive and AIFMD relating to undue costs. The suggestions would require AIFMs and UCITS ManCos:

- to act to prevent undue costs being charged to a fund and its investors; and
- to develop a pricing process.

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- to act to prevent undue costs being charged to a fund and its investors; and
- to develop a pricing process.

This initiative follows the findings of the ESMA 2021 Common Supervisory Action on costs and fees, which showed divergent market practices as to what industry reported as “due” or “undue” costs in funds. ESMA deems that a lack of supervisory convergence on this topic leaves room for regulatory arbitrage and risks impeding competition in the EU market. Furthermore, it may lead to different levels of investor protection depending on where a fund or a fund manager is domiciled.

ESMA’s proposal is to take as a basis the supervisory expectations enshrined in the 2020 supervisory briefing on the supervision of costs and transform these expectations into clearer legal requirements.

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EU Council adopts legislation on crypto-assets

On 16 May 2023, the EU Council adopted the Markets in Crypto-assets Regulation (MiCA) and the recast Regulation on information accompanying transfers of funds and certain crypto-assets. This formal adoption is the final step in the legislative process. The Regulation enters into force on the twentieth day following that of its publication in the Official Journal of the EU. It applies from 18 months after the date of entry into force.

It is anticipated that mica will be published in the official journal by the end of June and enter into force in July 2023:

- Provisions relating to asset reference tokens (arts) and e-money tokens (EMTS) will apply 12 months later, in **July 2024**.

- Other provisions will apply 18 months after entry into force, in **January 2025**.

Transitional and grandfathering arrangements will be available in some circumstances e.g., unless a Member State chooses not to apply the transitional regime or chooses to reduce its duration, crypto-asset service providers (CASPs) providing services before MiCA becomes applicable should be able to continue to do so for a further 18 months after MiCA starts to apply or until they become authorised. Transitional measures are also available to operators of trading platforms and issuers of ARTs.

For entities which are already authorised to provide crypto-assets services under a Member State's national law at the time of application of MiCA, Member States may choose to apply a simplified authorisation procedure for an 18 month period.

ESMA recognises four new third-country central counterparties

On 2 May 2023 ESMA announced that it had recognised four new third-country central counterparties (TC-CCPs), under Article 25 of the European Market Infrastructure Regulation (EMIR), bringing the total number of TC-CCPs recognised by ESMA to 39.
The newly recognised TC-CCPs are:

- Bursa Malaysia Derivatives Clearing Berhad (Malaysia)
- Taiwan Futures Exchange Corporation (Taiwan)
- Camara de Riesgo Central de Contraparte de Colombia S.A. (Colombia)
- Tel-Aviv Stock Exchange Clearing House Ltd (Israel).

The recognition of these four TC-CCPs follows the conclusion of standard Memorandum of Understanding between ESMA and their respective supervisory authorities, namely the Securities Commission Malaysia, the Financial Supervisory Commission Taiwan, the Superintendencia Financiera de Colombia and the Israel Securities Authority.

In the same announcement, ESMA has also provided an update concerning the withdrawal of recognition of certain TC-CCPs. With effect from 30 April 2023, recognition has been withdrawn from the following six TC-CCPs:

- The Clearing Corporation of India (CCIL), supervised by the Reserve Bank of India (RBI)
- Indian Clearing Corporation Limited (ICCL), supervised by the Securities and Ex-change Board of India (SEBI)
- NSE Clearing Limited (NSCCL), supervised by SEBI
- Multi Commodity Exchange Clearing (MCXCCL), supervised by SEBI
- India International Clearing Corporation (IFSC) Limited (IICC), supervised by the International Financial Services Centre Authority (IFSCA).

ESMA has updated its list of recognised TC CCPs accordingly.

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ESMA postpones to 2024 the annual IFRS amendment of the ESEF

On 10 May 2023, ESMA announced its decision to postpone to 2024 the 2023 annual IFRS amendment of the European Single Electronic Format (ESEF) Regulatory Technical Standard (RTS). In its decision to postpone this amendment ESMA was taken in light of the added value of increased monitoring of the ESEF implementation, the fact that there were limited changes to the 2023 IFRS Taxonomy and the impact that a system update (especially in view of the aforementioned limited changes) would have on preparers and software vendors.

ESMA committed to engage with the IFRS Foundation for the 2024 update of the IFRS Taxonomy and shall combine the IFRS Taxonomy updates of 2023 and 2024 in its proposals to update the ESEF RTS in 2024. In the meantime, in 2023, ESMA shall monitor the implementation of the ESEF requirements, assess how to improve digital reporting and develop the ESEF sustainability taxonomy and requirements.

Further information is available through the following link.

ESMA finds high degree of concentration in natural gas derivatives markets

ESMA has published a study on the structure and functioning of EU natural gas derivatives markets and potential risks for financial stability.

In the study, ESMA reports that the annual turnover of natural gas derivatives on EU futures exchanges reached EUR 4,150bn in 2022, and open positions of EU counterparties amounted to around EUR 500bn as the end of 2022, underlining the importance of natural gas derivatives.

The market is characterised by a high degree of concentration of market participants active in clearing and trading activity, and some energy firms hold relatively large derivative positions.

In that context, liquidity and concentration risks are among the main vulnerabilities identified, along with data fragmentation and data gaps. The recent migration of some of the activity from exchange-traded to Over-the counter derivatives trading raises concerns due to more limited transparency and more bespoke margin and collateral requirements in that market segment.

Natural gas derivative markets came into the spotlight after the Russian invasion of Ukraine, as prices soared amid high volatility and a significant deterioration of liquidity.

IOSCO sets the Standard for Global Crypto Regulation

IOSCO has issued on 23 May 2023 for consultation detailed recommendations for crypto asset and digital asset (CDA) markets. This initiative aims to improve global standards of regulation of crypto assets.

The CDA recommendations cover the following six key areas: (i) conflicts of interest arising from vertical integration of activities and functions; (ii) market manipulation, insider trading and fraud; (iii) cross-border risks and regulatory cooperation; (iv) custody and client asset protection; (v) operational and technological risk; and (vi) retail access, suitability and distribution.

IOSCO expects that jurisdictions will review their current regulatory frameworks to ensure that they comply with the standards and fix any gaps promptly.

The deadline for comments on the consultation is **31 July 2023**. IOSCO intends to finalise the CDA recommendations in the fourth quarter of 2023.

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ESAs launch discussion on criteria for critical ICT third-party service providers and oversight fees

The ESAs published on 26 May 2023 a joint Discussion Paper seeking stakeholders' input on aspects of the Digital Operational Resilience Act (DORA). This paper follows the EU Commission's request for technical advice on the criteria for critical ICT third-party providers (CTPPs) and the oversight fees to be levied on them.

The discussion paper is separated into two parts:

1. Proposals covering the criteria to be considered by the ESAs when assessing the critical nature of ICT third-party service providers, in particular, a number of relevant quantitative and qualitative indicators for each of the criticality criteria, along with the necessary information to construct such indicators.

2. Proposals in relation to the amount of the fees levied on CTPPs and the way in which they are to be paid, in particular the types of expenditure that shall be covered by fees as well as the appropriate method, basis and information for determining the applicable turnover of the CTPPs, which will form the basis of fee calculation. The ESAs are also seeking input on the fee calculation method and other practical issues regarding the payment of fees.

Comments to this discussion paper may be sent by **23 June 2023**.

EU Commission publishes proposed changes to the KID rules under PRIIPs

The EU Commission has published on 24 May 2023 a proposal to amend the Level 1 PRIIPs Regulation.

In particular, the changes would affect the contents of the Key Information Document (KID) which must be provided to retail investors before they invest and include. The proposed changes include:

- ❑ new sections in the KID with dashboards
- • new section called 'How environmentally sustainable is this product?' which shall provide investors with key ESG information on the sustainability aspects of products subject to the SFDR (including the minimum proportion of the PRIIP's investment associated with environmentally sustainable eco-nomic activities under the Taxonomy Regulation);
- • new section called 'Product at a glance' summarising information about the total costs of the PRIIP, the risk indicator, the recommended holding period and the existence of insurance benefits;
- ❑ a simplification of the rules on providing a KID by mandating electronic disclosure (unless the client has requested to receive a paper version);
- ❑ specifying how layering can be used in the digital provision of a KID;
- ❑ specifying the disclosure of costs information with respect to Multi-Option Insurance Products (MOPs) to promote choice between different products;
- ❑ the removal of the comprehension alert ('You are about to purchase a product that is not simple and may be difficult to understand') at the start of the KID;
- ❑ confirming that some corporate bonds with make-whole causes are out of scope of the PRIIPs Regulation.

The legislative proposal is now subject to scrutiny by the EU Parliament and the Council of the EU.

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Anti-Money Laundering

EU Council publishes initial institutional positions – AML package.

The EU Council has published on 15 May 2023 the initial positions of the three institutions (the Council, the EP, and the EC) on the Anti-Money Laundering (AML) package prior to commencing trilogues:

- ❑ proposal for a Regulation on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing – (AMLR);
- ❑ proposal for a Directive on the mechanisms to be put in place by the Member States for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and repealing the 4th AML Directive – (AMLD); and
- ❑ proposal for a Regulation establishing the Authority for Anti-Money Laundering and Countering the Financing of Terrorism – (AMLA).

Anti-money laundering: European Commission updates list of high-risk third-country jurisdictions

The EU Commission has updated on 17 May 2023 the list of high-risk third-country jurisdictions presenting strategic deficiencies in their anti-money laundering/countering the financing of terrorism (AML/CFT) regimes. Two third-country jurisdictions were added to it: Nigeria and South Africa, while two other jurisdictions were delisted: Cambodia and Morocco.

This list takes into account the information from the FATF, and the changes decided at the last FATF Plenary of February 2023 in the list of ‘Jurisdictions under Increased Monitoring' (‘grey list').
European financial institutions and other gatekeepers such as notaries, lawyers and accountants (called ‘obliged entities' in the directive) are required to apply enhanced vigilance in transactions involving high-risk third-country jurisdictions (so-called ‘enhanced customer due diligence requirements').

The updated list of high-risk third country jurisdictions is available here.

Banking

Qualifying holding procedures - ECB publishes March 2023 Guide

The ECB has published on 23 May 2023 its final Guide (the “Guide”) to qualifying holding procedures, dated March 2023, together with a Feedback Statement. This follows publication of a related Consultation Paper in September 2022.

The Guide clarifies how supervisors assess applications to acquire qualifying stakes in banks with a view to making supervisory actions more predictable and to support applicants intending to acquire qualifying holding in banks.
A shareholder owning 10% or more of a bank, or exercising significant influence over it, is said to hold a “qualifying holding”. Prior ECB authorisation is needed to acquire a qualifying holding or to pass certain thresholds, for example 10%, 20%, 30% or 50% of a bank’s capital or voting rights.
Qualifying holding acquisitions are typically triggered by mergers and acquisitions projects.

The Guide considers how the assessment criteria are applied; and guidance on some of the key documentation required in the assessment. In particular, the Guide provides information on complex acquisition structures, the application of the principle of proportionality and specific procedural elements relating to qualifying holding acquisitions.

The ECB also refers to its Guide on the supervisory approach to consolidation in the banking sector for qualifying holding acquisitions which are part of a banking consolidation project.

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EBA: Interactive signposting tool

EBA has issued on 2 May 2023 the first version of an interactive signposting tool. The signposting tool aims to help institutions of different sizes and complexity identify the reporting requirements and templates that are relevant for them. The signposting tool comes in response to one of the recommendations from the June 2021 EBA Report on the cost of compliance with supervisory reporting requirements.

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Glossary

AIF Alternative Investment Fund (EU)

AIFMD Directive 2011/61/EU on Alternative Investment Fund Managers

AIFMs Alternative Investment Fund Managers

AML Anti-Money Laundering

CASP Crypto Asset Service Providers

CySEC Cyprus Securities and Exchange Commission

CP Consultation Paper

DLT Distributed Ledger Technology

DORA Digital Operational Resilience Act

EBA European Banking Authority

EC European Commission

ESG environmental, social, and governance

EMIR European Market Infrastructure Regulation

ESAs European Supervisory Authorities (EBA, EIOPA and ESMA)

ESMA European Securities and Markets Authority

EIOPA European Insurance & Occupational Pensions Authority

EU European Union

ICT Information and Communications Technology

KID Key information Document (under UCITS Directive)

KIID Key Investor Information Document (under PRIIPS)

MiCA Markets In Crypto-Assets regulation

MiFID Markets in Financial Instruments Directive

NCA National Competent Authority

PRIIPs Package Retail and Insurance-based products

RTS Regulatory Technical Standards

SME Small & Medium sized enterprises

SFDR Sustainable Finance Disclosure Directive

OECD Organisation for Economic Co-operation and Development

UCITS Directive directive 2009/65/EC on Undertakings for Collective investments in Transferable Securities

UCITS Undertakings for Collective investments in Transferable Securities (EU)

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Main Contacts

Eleni Neocleous
Board Member
Risk and Regulatory, Risk Consulting
T: + 357 22 209 023
E: eneocleous@kpmg.com

Marie-Hélène Angelides
Senior Associate, Asset Management expert
Regulatory Compliance, Risk Consulting
T: + 357 22 209 227
E: mangelides@kpmg.com

Eleni Poyiadji
Principal, MiFID and AML expert
Risk and Regulatory, Risk Consulting
T: + 357 22 209 248
E: epoyaji@kpmg.com

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