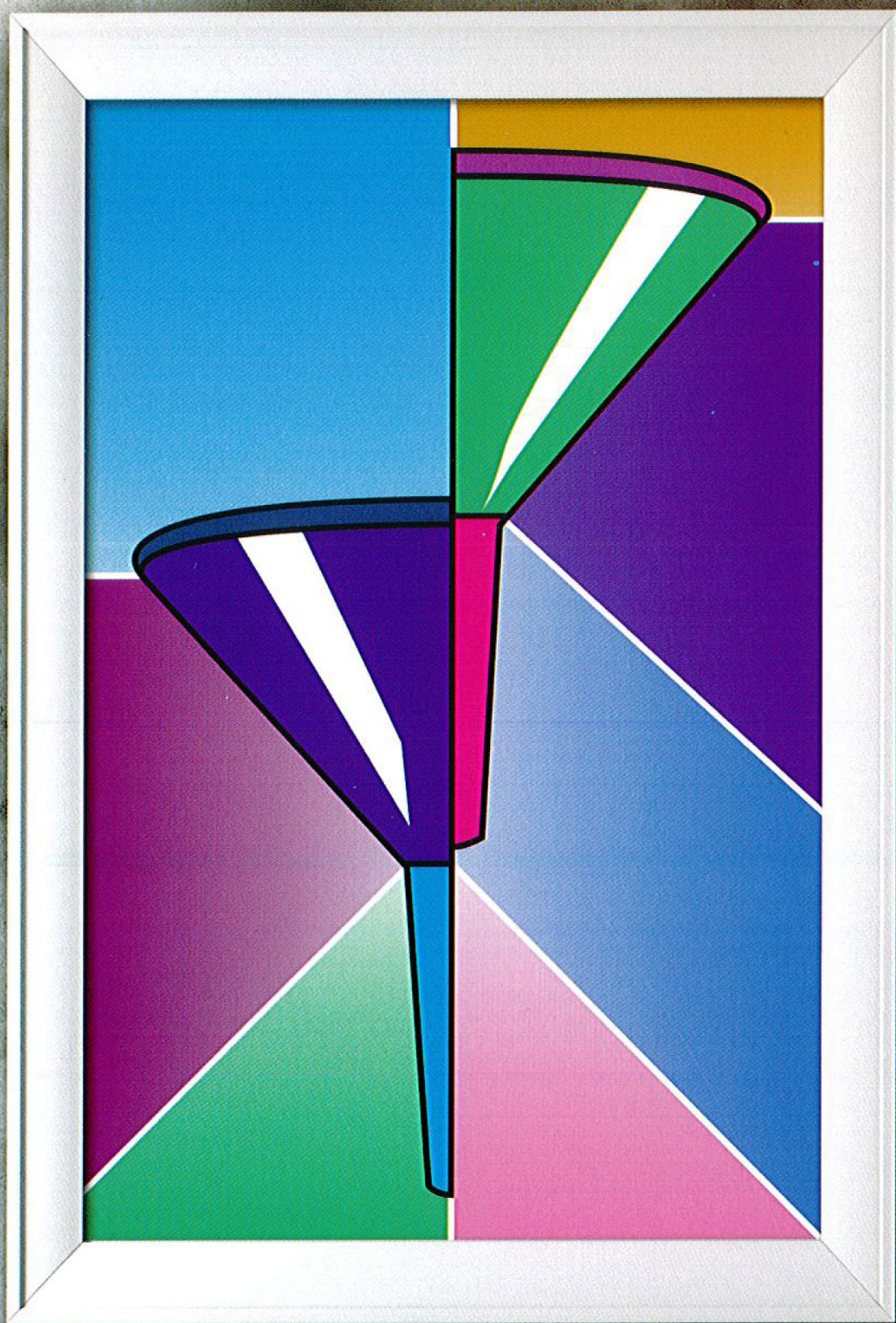


iFX EXPO

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the art of **CONVERSION**

IN THE ONLINE FINANCIAL INDUSTRY



PASSPORT RIGHTS

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Introduction

Financial market integration in the EU is primarily achieved through the harmonization of laws and regulations. Market in Financial Instruments Directive 2004/39/EC (the "MiFID") which came into effect on 1st of November 2007 allows investment firms to operate in the European Economic Area (the "EEA") on the basis of authorization in the home EEA Member State (the "single passport") and ensures harmonized protection for investors in financial instruments.

MiFID is implemented in the single market of EEA. There are 31 EEA Member States with passporting rights, precisely: Austria, Belgium, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Norway, Poland, Portugal, Republic of Cyprus, Romania, Slovak Republic, Slovenia, Spain, Sweden, The Netherlands and United Kingdom.

In compliance with the EU legislation, the Republic of Cyprus adopted the Investment Services and Activities and Regulated Markets Law of 2007-2016 (Law 144 (I)/2007) (the "Law") as amended which governs the provision of investment and ancillary services and incorporates the provisions of MiFID.

Cyprus Investment Firm (CIF) authorization by the Cyprus Securities and Exchange Commission ("CySEC") supports mutual recognition by the competent authority of the host EEA Member State. The mutual recognition principle is restricted to services covered by the authorization from the home competent authority. Ancillary services may only be provided in combination with investment services or activities.

CIFs whose activities in the host EEA Member State fall outside the scope of the CySEC authorization or whose CySEC authorization covers activities which do not fall within the scope of authorization under MiFID, do not benefit from the authorization passport in respect of those activities.

As long as the CIF offers services within the passport's remit, it may either set up a branch in an EEA Member State (an "establishment" or "branch" passport) or provide cross-border services or advice (a "services" passport).

Where a CIF uses a subsidiary in order to provide services which fall within the scope of MiFID in another EEA Member State, it does not benefit from the mutual recognition of authorization and will be subject to the authorization of the EEA Member State where the subsidiary intends to be established. In this case, prior to granting the authorization to the subsidiary of the CIF, the competent authority of the host EEA Member State is required to consult with CySEC.

Establishment of a CIF branch in another EEA Member State

A CIF may provide investment and ancillary services and/or perform investment activities through a branch in the territory of another EEA Member State.

As per definition of MiFID Art 4 (1) a branch is a place of business other than the head office, which is part of an investment firm, which has no legal personality and which provides investment services and/or activities, and which may also perform ancillary services for which the investment firm has been authorised. Notably, all the places of business set up in the same EEA Member State by an investment firm with head office in another EEA Member State are regarded as a single branch.

Where a CIF wishes to establish a branch in the territory of an EEA Member State, it notifies in writing its intention to CySEC by communicating the following information: the EEA Member State in which it intends to operate; the address of the branch; a programme of operations which sets out the investment and ancillary services and/or activities which the CIF intends to perform; the names of those persons responsible for the management of the branch; the organizational structure; and whether it intends to use tied agents in the host EEA Member State (in the event that a tied agent is established in an EEA Member State other than the Republic of Cyprus, the tied agent is affiliated to the branch and subject to the branch provisions).

CySEC within three months receiving the aforementioned information may either allow the establishment of the branch provided that the administrative structure and/or the financial situation of the CIF is adequate or prohibit the establishment of the branch if there is a reason to doubt the adequacy of the administrative structure and/or the financial situation. In the former case, CySEC communicates the required information to the competent authority of the host EEA Member State, as well as information regarding the Investor Compensation Fund for Clients of investment firm that is applicable in the Republic of Cyprus with notification to the CIF. In the latter case, CySEC announces its decision to the CIF.

The CIF may establish the branch and commence business in the host EEA Member State upon receipt of a communication from the competent authority of the host EEA Member State, or failing such communication from the latter after two months from the date of transmission of the required information to the competent authority of the host EEA Member State by CySEC as described above.

It is obvious that the passport-notification process is controlled by CySEC which may even block the exercise of passport rights. The competent authority of the host EEA Member State is not an operative part of the notification process and may not block access by the CIF.

Areas of competence for which the competent authority of the host EEA Member State will assume certain supervisory responsibilities are the following: conduct of business obligations; information provided to clients or potential clients; client profile information; client records; reporting on services provided to clients; best execution and order handling; obligation to uphold market integrity and transaction reporting; pre and post trade transparency; and right to examine arrangements and to request changes to the aforementioned obligations. CySEC (the competent authority of the home EEA Member State), however is permitted to carry out on-site inspections in the branch. Although the organizational requirements are reserved to CySEC, the competent authority of the host EEA Member State is empowered to enforce record keeping obligations with regard to transactions undertaken by the branch, without prejudice to the CySEC's authority to have direct access to those records.

Freedom to provide investment and ancillary services and/or perform investment activities by a CIF in another EEA Member State

A CIF may provide cross-border activities through services provision. Any CIF authorised and supervised by CySEC may freely perform investment services and/or activities, as well as ancillary services within the territory of an EEA Member State as long as such services and activities are covered by the authorization.

Where a CIF wishes to provide investment and ancillary services and/or perform investment activities freely within the territory of an EEA Member State for the first time, it must communicate such intention to CySEC together with the following information: the EEA Member State in which it intends to operate; a programme of operations which sets out the investment and ancillary services and/or activities which the CIF intends to perform; and whether

it intends to use tied agents in the host EEA Member State.

CySEC within one month of receiving the aforementioned required information must forward it to the competent authority of the host EEA Member State by notifying this at the same time to the CIF. The CIF is free to provide services and/or perform activities in the host EEA Member State upon receipt of the aforementioned notification.

All information exchanges takes place on an inter-authority basis. It should be noted that the provision of cross-border services is not accordingly automatic and it depends on the notification to be transmitted to CySEC. Once the notification is received by CySEC and dispatched by the latter to the competent authority of the host EEA Member State, the CIF may commence cross border services from that date. However, if CySEC in exceptional circumstances does not forward the information within a month of receipt, it may not be deemed that the CIF may commence cross border services after that month. This is the official position of the Committee of European Securities Regulators (CESR) as per its Feedback Statement on passport rights according to which the home competent authority (CySEC) should be prepared for cross-border supervision whereas the host competent authority should be "put on notice" on the activities that an investment firm intends to perform in its territory.

Notification of the website address-domain name

In the event that a CIF takes advantage of the passport rights and offers investment services and/or activities either by setting up a branch in an EEA Member State (an "establishment" or "branch" passport) or by providing cross-border services or advice (a "services" passport) and uses a different domain name from the name under which the CIF operates, it should notify to CySEC all the addresses of its domain names as per Article 8 (disclosure of CIF details) and Article 34 (changes in CIF information and details) of the Law.

CySEC registers these addresses in the Public Register according to the Article 7 of the Law. If a CIF provides services through a website that it is not notified to CySEC and registered in the Public

Register then it violates Articles 8 and 34 of the Law and is subject to administrative sanctions.

Conclusion

MiFID has improved the competitiveness and integration of EU financial markets through the "branch" passport and "services" passport.

On 12 June 2014, the European Parliament and the Council adopted Directive 2014/65/EC (MiFID II) and Regulation 600/2014 (MiFIR). The new legislation seeks to make the financial markets more transparent, efficient and resilient, improve investor protection and strengthen the framework for the regulation of markets in financial instruments.

The EU Member States must adopt domestic legislation by July 2016 in respect to the transposition of the MiFID II requirements which will be implemented from 3rd of January 2017. The MiFIR regulations are directly applicable and will take effect automatically on 3rd of January 2017.

The Republic of Cyprus is a licensing hub for investment firms which aim to gain access in the territory of EEA under a single license. Regarding the passport rights, MiFID II and MiFIR will bring radical changes to the regime governing third country access to the EU by centralizing the access process at EU level to a significantly greater extent than under MiFID. It remains to be seen what effect will have on market competition the new regime under MiFID II and MiFIR.



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