

CP (2016-08)

Consultation Paper of the Cyprus Securities and Exchange Commission regarding a proposed circular on maintaining merchant accounts with payment service providers for the clearing/settlement of payment transactions

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 paper for consultation in relation to maintaining merchant accounts with payment service providers for the clearing/settlement of payment transactions.

The proposed circular is attached as Appendix 1.

The CySEC invites you to submit your comments/suggestions, in word format, by Monday October 31st, 2016, to the electronic address supervision@cysec.gov.cy only.

TO : Cyprus Investment Firms

FROM : Cyprus Securities and Exchange Commission

DATE :

CIRCULAR NO :

SUBJECT : Maintaining merchant accounts with payment service providers¹
for the clearing/settlement of payment transactions

Further to [Circular No C034](#) with regards to maintaining merchant accounts with Payment Service Providers (PSPs) for the clearing/settlement of payment transactions (inwards and outwards payments), the Cyprus Securities and Exchange Commission wishes to inform the Cyprus Investment Firms ('CIFs') about the following:

1. In accordance with paragraph 20(1) of Directive DI144-2007-01 of 2012 ('the Directive), the CIFs are required, on receiving any client funds, promptly to place those funds into one or more accounts, denoted as 'clients' accounts' and opened with any of the following:
 - (a) Central bank;
 - (b) Credit institution;
 - (c) Bank authorised in a third country;
 - (d) Qualifying money market fund².

For the purpose of this circular **only**, points (a), (b), (c) and (d) above will be referred to as 'credit institutions'.

2. CIFs usually maintain merchant accounts with PSPs for, among other purposes, the clearing/settlement of their clients' payment transactions (inwards and outwards payments).
3. CIFs must, at all times, ensure that clients' funds are transferred to clients' accounts held by the CIF with a credit institution **immediately** after the clearing/settlement of the payment transactions.

¹ It is clarified that this circular refers also to electronic money institutions, when they are providing similar services to CIFs.

² It is provided that CIF's clients do not oppose to the placement of their funds in a qualifying money market fund [article 20(4) of Directive].

4. By way of derogation from paragraph 3 above, amounts cleared may not be transferred immediately to client account held by the CIF with a credit institution **only if** the below conditions are applied (cumulatively):
- i. The PSP is an EU regulated payment institution.
 - ii. The PSP holds the funds in a segregated bank account with an EU credit institution, under which it is specifically allowed and is legally binding by the credit institution to make use of these funds **solely** for the benefit of the CIF's clients.
 - iii. The PSP has provided the CIF with the necessary written confirmation indicating that the PSP holds the funds with a credit institution on behalf of the CIF's clients in denoted clients' bank account in the name of the CIF.

As a matter of clarity, it is indicated that the credit institution must, at all times, be aware that the account is in the name of the CIF for the benefit of its clients.

5. In case where it is the CIF's policy, upon accepting a deposit through electronic means and before the clearing of the funds, to credit the client trading account with the corresponding amount in order for the client to trade with immediate effect, the CIF must ensure that the corresponding amount is transferred (before trading) **from its own funds** to client account held by the CIF with a credit institution.
6. In the case where the PSP withholds funds as rolling reserve or fix deposit, for chargeback or other purposes, for a period of time before releasing the funds to the client account held by the CIF with a credit institution, the CIF must ensure that amounts equaling to rolling reserves and/or fix deposits are transferred from the CIF's **own funds** in the client account held by the CIF with a credit institution, to ensure compliance with the provisions of paragraph 20(1) of Directive.
7. For purposes of performing clients' funds reconciliation, it is clarified that the amounts held by the PSPs either as rolling reserves, and/or funds in transit and/or funds under clearing, and/or fix deposits, shall **not** be considered as clients' funds, as, based on points 5 and 6 above, the equivalent amount is transferred from CIF's own funds to client account held by the CIF with a credit institution and it is taken into account in the above exercise.

CIFs must take all necessary steps to ensure that clients' accounts are properly safeguarded for the benefit of the clients.

The CySEC considers the protection of clients' funds to be of the utmost importance and therefore calls all CIFs to be in full compliance with the aforementioned provisions.

Sincerely
Demetra Kalogerou
Chairman Cyprus Securities and Exchange Commission