

Alert EU 8/2021

ESMA on investment recommendations on social media

Geneva, 3.11.2021

1. References

1.1 Decision

On 28 October 2021, the European Securities and Markets Authority (ESMA) issued a public statement clarifying what investment recommendations are, how to post them on social media platforms and what the consequences of possible breaches of the EU Market Abuse Regulation can be.

1.2 Addressees of this Alert

CM PB	CM EAM	CM Products	CM AM	CM Life Ins Sol	CM Credits
-	-	YES	-	-	-

1.3 Key words

- > Market Abuse Regulation
- > Financial Promotion
- > Marketing Activities

1.4 Reference texts

- > ESMA's Public Statement on investment recommendations on social media of 28 October 2021, (ESMA70-154-2780)
 - > ESMA's Public Statement on episodes of very high volatility in trading of certain stocks of 17 February 2021, (ESMA70-155-11809)
 - > Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (Market Abuse Regulation)
 - > Commission Delegated Regulation (EU) 2016/958 of 9 March 2016 supplementing the Market Abuse Regulation with regard to regulatory technical standards for the technical arrangements for objective presentation of investment recommendations or other information recommending or suggesting an investment strategy and for disclosure of particular interests or indications of conflicts of interest
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2. Context

Following a rise in investment recommendations made on social media and a concern that retail investors are not aware of the risks associated with following such recommendations, ESMA considers that investment recommendations must be produced and disseminated in an objective and transparent way so that investors, before making any investment decision, can distinguish facts from opinions. It is also crucial that investors can easily identify the source of information and any conflicts of interest of those making the recommendations.

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3. Comment

EU law defines an “investment recommendation” as information recommending or suggesting an investment strategy, explicitly or implicitly, concerning one or several financial instruments or the issuers, including any opinion as to the present or future value or price of such instruments, intended for distribution channels or for the public. Distribution channels can be analyst reports, articles, the traditional media, or even social media.

ESMA states that anyone who recommends investments in some way or form via any platform must take special care when spreading such information in order not to mislead investors. Investment recommendations must therefore be made in a specific – and transparent – way so that investors, before making any investment decision, can know and assess: 1) the credibility of the recommendation – and how objective it is; and 2) any conflicts of interest of the advisor. In this way, everyone is free to express opinions without potentially harming others in the process.

A mere discussion of whether to buy or sell financial instruments does not constitute market abuse, whereas organising or executing coordinated strategies to trade or place orders at certain conditions and times to move a product’s price could constitute market manipulation. Similarly, disseminating false or misleading information may also amount to market manipulation.

National competent authorities proactively track conduct, orders and transactions by investors in the market and investigate suspicious transactions. If the rules relating to investment recommendations are not adhered to or market manipulation is established, persons can be fined and/or prosecuted.

4. Practical implication

The provisions against market manipulation of the Market Abuse Regulation do not only apply within the EU, but also to residents of third countries if there are effects resulting from their actions in the EU.

In order to comply with these provisions, it is recommended to disclose the above-mentioned information when making investment recommendations. For experts frequently proposing investment recommendations, it is also recommended to disclose summaries of methodologies, planned updates and previous recommendations. The minimum disclosure requirements are applicable regardless of any contracts or disclaimers.

We are at your disposal for any questions you may have.

Best regards,

BRP Bizzozero & Partners SA

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