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The European Securities and Markets Authority (ESMA) Updates Its Guidance on the Definition of Advice in a Supervisory Briefing

Background and Scope

ESMA, as the EU's financial markets regulator and supervisor, has on 11 July 2023 published a [supervisory briefing](#) regarding the definition of advice under MiFID II. The supervisory briefing is an update to the Committee of European Securities Regulators (CESR) document, in particular in light of the evolution of business models and technological developments, including the increase of social media usage. This document is thus intended to continue providing guidance to firms in this important area of advice, with the aim of promoting common supervisory approaches and practices.

The supervisory briefing, among other topics, covers:

- The provision of personal recommendations and whether other forms of information could constitute investment advice;
- Guidance on when recommendations will be viewed as based on a view of a person's circumstances;
- Perimeter issues around the definition of personal recommendation;
- Issues around the form of communication, including use of social media posts.

Target Audience

This supervisory briefing contains the supervisory expectations by ESMA and NCAs in relation to investment firms, including credit institutions, UCITS management companies and Alternative Investment Fund Managers (AIFMs), providing investment advice to clients.

Next steps

ESMA and NCAs will continue monitoring the application of the MiFID II requirements and to make sure that investment services continue to be provided in the best interest of the client.

Contacts

Should you have any queries regarding the above, please do not hesitate to contact: csuinvestments@mfsa.mt.