

9 February 2024

Circular on the Market Abuse Regulation ('MAR'/the 'Regulation')

- ESMA Issues Warning for People Posting Investment Recommendations on Social Media

This Circular is being addressed to all market participants and should be read in conjunction with the Regulation, its Delegated and Implementing Regulations, ESMA's Question and Answer Document on MAR and previous circulars issued by the Authority, as the case may be.

1.0 Requirements when posting investments recommendations on social media

The Authority would like to inform market participants that on 06 February 2024, the European Securities and Markets Authority ('ESMA') issued a [warning](#) (the 'Warning') for people posting investment recommendations on social media in an effort to raise awareness of the requirements established by MAR which apply when posting investment recommendations on social media and to also warn about the risks of market manipulation in such publications.

ESMA explains that when posting on social media, transparency and accuracy are key, especially when making recommendations about investments. Hence, anyone who is a financial influencer, a technical expert, or just someone with an interest in financial investments should be aware of the rules established under the MAR framework and be able to recognise an investment recommendation.

2.0 What is an Investment Recommendation?

According to the MAR, an investment recommendation can be any post, video or any other type of public communication, including social media posts, in which a person gives advice or ideas, directly or indirectly, about buying or selling a financial instrument or on how to compose a portfolio of financial instruments. Even where a person uses "non-technical" language to provide advice or ideas, whether directly or indirectly, about buying or selling a financial instrument or on how to compose a portfolio of financial instruments, it may still constitute an investment recommendation.

3.0 What are the specific requirements?

Within the Warning, ESMA lays down the general set of requirements applicable to any person producing investment recommendations, i.e., to:

- Include the identification of the producers of the recommendation: name, job title of all the persons involved, and the date and time of the recommendation.
- Ensure the objective presentation of investment recommendations: facts clearly distinguished from interpretations, estimates and opinions. Confirm all sources of information are reliable and, where in doubt, clearly indicate it.
- Disclose any conflicts of interest in a clear way, so investor would take notice of it. When recommendations are voiced via different social media channels, each of them must include a disclosure of interests or conflicts of interest.

Furthermore, ESMA also lays down the additional requirements which would apply to “professionals” and “experts”, i.e., to disclose:

- A summary of any basis of valuation/methodology and the underlying assumptions used.
- The length of time of the investment and an appropriate risk warning.
- The planned frequency of updates to the recommendation.
- If the recommendation has been amended after being disclosed to the issuer.
- If they hold a net long or short position above 0.5% of the total issued share capital of the issuer.

4.0 What happens if you do not comply?

Individuals found to have breached the requirements laid down by the Regulation may be liable to sanctions in terms of Article 22 of the Prevention of Financial Markets Abuse Act, Chapter 476 of the Laws of Malta.

5.0 Contacts

Should you have any queries in relation to the above, please do not hesitate to contact the Authority on pfma@mfsa.mt for any further clarifications.