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The European Securities and Markets Authority (“ESMA”) Warns on Risks of Unregulated Products offered by Crypto-Assets Service Providers (“CASP”)

Introduction

Malta Financial Service Authority would like to notify the relevant industry stakeholders that on the 11 July 2025 ESMA has issued a [statement](#) on risks associated with utilizing unregulated crypto asset products and services of a CASP authorised under MiCA.

In a published statement [ESMA35-1872330276-2329](#), ESMA has outlined certain risks potentially arising from unregulated products offerings and has advised CASPS on how to avoid misperceptions when utilizing unregulated crypto asset products and/or services.

Identifying the Risks

When CASPs provide both regulated and unregulated crypto asset products and/or services to retail clients, such an approach may create the following issues:

- Clients may misunderstand the protections afforded under MiCA, as they may not be entirely aware that the unregulated services and/or activities do not offer the same or comparable levels of protection as the regulated crypto-asset services under MiCA;
- As the level of protection is not comparable, clients would not benefit from the protections under MiCA with respect to the conflicts of interest, complaints handling, asset safeguarding, and other supervisory remits under the national competent authorities;
- Creation of a potential “halo effect” by a CASP, as the level of protection afforded to regulated products and/or services under MiCA may be perceived as applicable to the unregulated products and/or services by the retail clients, when both are offered through a single platform;
- A potential misuse by the CASP if utilizing the licensed status under MiCA to promote regulated and unregulated products and/or services, creating confusion and blurring the distinctions between the offerings.

Risk Mitigation

In the above context, ESMA has outlined that CASPS should be mindful of the good and bad practices under MiCA. ESMA expects CASPs to:

- avoid any confusion or ambiguity with the afforded levels of protection, when offering both regulated and unregulated products and/or services;
- act fairly, professionally and in the best interest of the clients;
- provide fair, clear and not misleading information, such as marketing communication to the existing and potential client base;
- implement the necessary measures to provide clarity and awareness to its existing and potential clients, by:
 - indicating in a prominent manner the regulatory status of the product and/or service, such as marketing communication indicating the regulatory status of a product and/or service, rather than leading the consumers to believe that the unregulated service and/or product is regulated or providing accurate information only in the Terms of Services;
 - making a clear distinction on the website between the regulated and unregulated products and/or services, rather than using the CASP's licensed status as a promotion, when marketing to the clients both regulated and unregulated products and/or services;
 - effectively disclosing and managing the potential conflicts of interest emanating from the offered regulated and unregulated products and/or services, as opposite to not distinguishing products and/or services when entering the contractual arrangements with clients, decreasing the level of risk awareness and disclosing the necessary information only in the Terms of Services;
 - seeking client's acknowledgement and/or consent before granting access to unregulated products and/or services, as opposite to offering unregulated products and/or services intra-group or by third parties, through the same platform.

Contacts

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