

# Warning

## For people posting Investment Recommendation on social media

The European Securities and Markets Authority (ESMA) and National Competent Authorities are raising awareness on some requirements established by the Market Abuse Regulation ([MAR](#)) which apply when posting investment recommendations on social media. They are also warning about the risks of market manipulation when posting on social media.

In recent years EU financial markets have registered an increase in retail participation, showing that investing has become more accessible to the general public. This is naturally accompanied by an increase in the number of fora where retail investors discuss and exchange views on their investment decisions and trading strategies.

In this context, social media play a key role when used to disseminate, share, and discuss information about financial markets and investment strategies.

### ★ What is an Investment Recommendation?

The MAR framework provides a very broad definition of Investment Recommendation<sup>1</sup>. Therefore, any video or any other type of public communications, including social media, 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 may constitute an investment recommendation. The same is valid for any public message containing an opinion regarding the future price of a share or other financial instrument. Please note that a case-by-case assessment is always necessary to understand if a communication qualifies as an investment recommendation.

#### Key message #1:

Be careful when you share on social media any opinion in relation to the value or the price of a financial instrument or recommend an investment strategy. You may be posting an investment recommendation! And remember:

- even if you are using “**non-technical**” language, it does not mean you are not posting an investment recommendation.
- If you post a communication with an “**educational purpose**” (e.g. to illustrate economic theories or valuation strategies), it is best to use historical data and past examples to not lead investors to base their investment choices on that information! Please make sure you avoid recommending an investment strategy or expressing a valuation about the present or future price/value of a financial instrument/issuer.

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<sup>1</sup> Article 3(1)(35) of MAR.

## ★ What are the applicable Regulations?

[MAR](#) and its implementing [Commission Delegated Regulation \(EU\) 2016/958](#), together are referred to as the MAR framework. Their goal is to enhance market integrity and investor protection by:

- ensuring the objective presentation of investment recommendations and that potential conflicts of interests are appropriately disclosed;
- preventing and prohibiting any activity that could constitute market abuse, i.e. market manipulation, insider dealing and unlawful disclosure of inside information.

## ★ What can be the consequences of non-compliance?

**Sanctions!** Depending on the Member State, National Competent Authorities can impose administrative or criminal sanctions that may vary according to the member state for certain types of infringements.

- For **insider dealing**, **unlawful disclosure** of inside information or **market manipulation**, up to EUR 5 000 000 for natural persons and up to EUR 15 000 000 for legal persons<sup>2</sup>.
- For breaches of the **investment recommendation** regime, up to EUR 500 000 for natural persons and up to EUR 1 000 000 for legal persons.

Article 30(2) of MAR provides detailed information in relation to this which is worth consulting.



### Key message #2:

When posting an investment recommendation on social media you must comply with the requirements established in the MAR framework and be mindful that spreading false or misleading information on social media or selectively disclosing inside information can constitute a serious offence that can even be criminally prosecuted in some Member States.

## ★ Who can produce recommendations and to which MAR category do I belong?

**Anyone can produce investment recommendations!** However, the obligations you are subject to are different depending on who you are.

The [MAR](#) framework identifies a **general set of requirements** applying to everyone and some '**additional**' requirements applying to professional and experts. See the table below for more details.

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<sup>2</sup> In many countries market abuse and the attempt thereof is regarded a criminal offence which is pursued by public prosecutors and may be fined with imprisonment and/or a fine.

		General Requirements	Additional Requirements
<b>P R O F E S S I O N A L</b>	<b>1) Independent Analyst</b> <ul style="list-style-type: none"> <li>While not defined in the EU law, independent analysts are commonly understood as analysts who are neither employed by buy-side nor sell-side firms.</li> <li>They typically provide objective research that is not influenced by their employers and their compensation may vary depending on the analysis provided and the analyst's experience level.</li> <li>They may be employed by independent firms or be self-employed and often sell their research reports to their clients on a subscription basis</li> </ul>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
	<b>2) Investment Firms and Credit Institutions</b>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
	<b>3) Any other person whose main business is to produce investment recommendations.</b> Indicators to identify them may be: <ul style="list-style-type: none"> <li>The production of investment recommendations is predominant in comparison to their other activities.</li> <li>There should be a contractual relationship, be it an employment relationship or otherwise.</li> <li>The magnitude of the revenues deriving from the production of investment recommendations.</li> <li>The number of followers or visualisations on an aggregated basis, as they are often the main drivers of influencers' revenues.</li> </ul> <i><b>Note:</b> they do not necessarily have to be employed in the financial sector, nor have financial expertise or produce structured analysis.</i>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
	<b>4) Any natural person working in one of the above categories under a contract of employment or otherwise.</b>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<b>N O N - P R O F E S S I O N A L</b>	<b>1) Expert</b> <ul style="list-style-type: none"> <li>Persons repeatedly proposing investment decisions and presenting themselves as having financial expertise or experience or put forward their recommendation in a manner such that other persons would reasonably believe they have financial expertise.</li> <li>Unlike professionals, experts' main business does not have to be the production of investment recommendations. They do not have to be independent analysts nor do they have to be working for an investment firm or a credit institution.</li> </ul>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
	<b>2) Non-expert</b> <ul style="list-style-type: none"> <li>Anyone who is not a Professional or an Expert.</li> </ul>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

The **general set of requirements** (see Article 2, 3 and 5 of [CDR 2016/958](#)) require any person producing investment recommendations to:

- include the **identification** of the producers of the investment recommendation: the name and the job title of all the natural persons involved in the production of the recommendation;
- include the **date and time** of the recommendation;
- ensure the **objective presentation** of investment recommendations: facts clearly distinguished from interpretations, estimates and opinions;
- ensure that all **sources of information are reliable** and, where in doubt, clearly indicate that;
- disclose any **conflicts of interest** in a clear way and placed within the recommendation (independently of the format) so investor would reasonably take notice of it (an example of disclosure is contained in Example 5 in the Annex of this document). When recommendations are voiced via different social media channels, each of them must include a disclosure of interests or of conflicts of interest.

**Note:** It may not be sufficient to include in the recommendation a link that points to a disclosure, as a link may not ensure that the disclosure is clearly presented and immediately accessible to the public.

The **additional requirements** (see Article 4 and 6 of [CDR 2016/958](#)) require “professionals” and “experts” to disclose:

- a summary of **any basis of valuation or methodology** and the underlying assumptions used in the recommendation;
- 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** to which it relates;
- if they hold a **net long or short position above 0.5%** of the total issued share capital of the issuer to which the recommendation relates.

**Note:** the above lists are not an exhaustive so please check [CDR 2016/958](#) for all the applicable requirements!



### Key message #3:

**Be aware that the obligations to which you might be subject when issuing recommendations may vary according to who you are and your activity!**

**Remember:** prohibitions of insider dealing, market manipulation and unlawful disclosure of inside information always apply to everyone, independently of your ‘MAR category’!

## ★ Market Abuse: which are the risks?

Public communications posted on social media can bring **risks** in relation to market abuse, i.e. market manipulation, insider dealing<sup>3</sup> and unlawful disclosure of inside information<sup>4</sup>.

All these conducts are serious offences and in some Member States they can lead to criminal prosecution. Some examples are included in the 'Alert Boxes' below, please **STOP and READ!**

### **Alert Box 1 – Market manipulation** may take place whenever communications:

- i. Give (or are likely to give) false or misleading signals regarding the supply, demand, or price of a financial instrument;
- ii. Secure (or are likely to secure) the price at an abnormal or artificial level, including the dissemination of rumours where the disseminators knew (or had to know) that the information was false or misleading.

**Note:** for market manipulation to occur, it is not necessary that the persons posting a communication trade in parallel to such communication. Communicating false or misleading information to the public might amount to market manipulation on its own!

**Alert Box 2 – Not disclosing a conflict of interest** can be considered as an indicator of an interest in **giving false or misleading signals** or secure the prices at an artificial level where that person subsequently profits from the impact of the communication on the price of that instrument.

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<sup>3</sup> Article 8(1) of MAR establishes that insider dealing arises when a person possesses inside information and uses that information by acquiring or disposing of financial instruments to which that information relates.

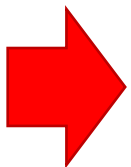
<sup>4</sup> Article 10(1) of MAR establishes that unlawful disclosure of inside information arises where a person possesses inside information and discloses that information to any other person, except where the disclosure is made in the normal exercise of an employment, a profession, or duties.

**Alert Box 3: Market manipulation can be carried out on a larger scale**, e.g. spreading information through social media in the attempt to trigger a reaction from other users.

The competent authorities would analyse such circumstances on a case-by-case basis, but you need to be aware that groups of persons, connected using social media, might aim at having investors (**including you!**) promote or execute coordinated actions with the aim of artificially influencing the price of certain financial instruments.

That could constitute market manipulation, especially when the perpetrators subsequently take advantage of the price impact due to the trading of those investors who were prompted through the social media.

Be aware and evaluate your strategies when taking part in 'financial trends'!



**Key message #4:**

**Some communications can carry risks of market manipulation, insider dealing and unlawful disclosure of inside information.**

**Get informed, be aware and stay away from suspicious posts and invitations to take part in strategies aimed at creating trends.**

**Unlawful conducts might entail serious consequences under MAR!**

## Annex – Practical examples

### Example 1 – INDIRECT RECOMMENDATION

#### Anticipated position sharing

***'I think that today, at 4 p.m. I will buy some new shares. I will buy those of [first Company's name], that in the last few days had a considerable fall and I will further diversify my holdings by buying shares of [second Company's name] as after investigating the company I think it looks promising.'***

This communication:

- ✓ directly refers to one or more financial instruments;
- ✓ indirectly suggests an investment strategy by publicly anticipating an investment decision;
- ✓ includes an opinion regarding the present or future value or price of the instrument;
- ✓ if made public on a social media or on a distribution channel, would likely qualify as an indirect investment recommendation.

### Example 2 - DIRECT RECOMMENDATION

#### Buy stock of [Company A]

***"Do you want to increase your returns? Buy today stock of [Company A], and hold it for a few months as it will soon hit the price of 32 euro".***

This communication:

- ✓ directly refers to a financial instrument;
- ✓ directly suggests an investment strategy;
- ✓ contains an opinion regarding the present or future value or price of the instrument;
- ✓ if made public on a social media or on a distribution channel, would be likely to qualify as a direct investment recommendation.

### Example 3 – RECOMMENDATION by an EXPERT

***Mrs. X regularly discusses financial news on social media and weekly or bi-weekly directly proposes views on which financial instruments should be purchased and which ones should be sold or held.***

***Mrs. X explains she has a finance background as she completed the necessary studies to gain a BA in finance.***

***Mrs. X has a significant number of followers, who actively comment her posts and with whom she engages by providing direct feedback to their comments or answering their questions with more detailed and explicit investment proposals.***

It can be concluded that Mrs. X:

- ✓ repeatedly proposes direct investment recommendations;
- ✓ presents herself as having expertise / experience in the financial field;
- ✓ has a sizable number of followers on the social media platform where she is active, and her number of followers could be seen as an element leading the public to believe she has financial expertise;
- ✓ would be likely to qualify as an expert.



#### Example 4: DIRECT RECOMMENDATION by an EXPERT

Assessment of general + additional requirements (the list is non-exhaustive)



- No Identification of the Producer ❌
- Recommended length of time for the investment ❌
- Planned frequency of updates ❌

- Dr Y is not enough
- Missing length of time of the investment to which the recommendation relates
- NO reference to the planned frequency of updates to the specific recommendation

#### Example 5 - DIRECT RECOMMENDATION by a non-professional and non-expert

Assessment of general requirements (the list is non-exhaustive)



- No Identification of the producer ❌
- No clear distinction between facts and opinions ❌
- No tangible indication of the sources of information ❌
- No statement regarding the reliability of the sources ❌
- No planned frequency of updates ❌
- Unclear date and time when the production of the recommendation was completed ❌
- No duration for the investment ❌

#### Example 6 – Unlawful disclosure of inside information

***Investment firm A has a profile on [social media platform B] where it regularly shares financial news and every day one of its financial analysts goes live at 9 am and explicitly proposes financial strategies concerning one or more financial instruments.***

***Before today's streaming, Mr. X, who is a member of the editorial team of Investment Firm A, anticipated to a close friend what the recommendation of the day would be.***

It can be concluded that:

- ✓ Mr. X is a person who has inside information in relation to an investment recommendation yet to be published by a regularly licensed EU investment firm;
- ✓ the close friend of Mr. X is provided with inside information on which he can act upon by buying or selling the relevant financial instruments attempting to leverage on the foreseen price impact of the recommendation;
- ✓ any activity by the close friend of Mr. X which involves transactions in the concerned financial instruments in accordance with the information received about the upcoming investment recommendation (inside information) could be insider dealing;
- ✓ additionally, communicating inside information by Mr. X outside of the normal exercise of an employment, profession or duty could constitute unlawful disclosure of inside information.

**Remember: before posting financial communications out there, please check the Market Abuse Regulation!**

**1. GATHER INFO!**

**2. FOLLOW THE RULES!**

**3. BE AWARE AND RAISE AWARENESS!**