

## Further Regulatory Focus on Marketing Communications

Marketing and distribution have been key focus areas for European regulators in recent years and this seems set to further intensify as the European Securities and Market Authority (“ESMA”), the overall financial markets regulatory and supervisory authority of the European Union (“EU”), has announced that it is launching a common supervisory action (“CSA”) on the application of MiFID II disclosure rules with regard to marketing communications across the EU.

### Role of a CSA

The CSA is an important tool employed by ESMA in recent years to assist in fostering supervisory consistency and convergence at an EU-level. National competent authorities (“NCAs”) in each member state, including the Central Bank of Ireland in Ireland, collaborate under this process to collect local market data and share supervisory experiences to ultimately assist in ensuring greater levels of regulatory and supervisory consistency across the EU. While this particular CSA will focus on the disclosure rules under MiFID II, previous CSAs conducted have focussed on issues such as undue costs and charges and Clerkin Lynch has published articles on related topics which are available upon request.

### Focus of the CSA

ESMA has recognised the fundamental role that marketing communications, including advertising, can have in determining the behaviour and in influencing the investment activity of consumers. It has therefore launched the CSA to assess the nature of the application by investment firms subject to MiFID II of the relevant requirements pertaining to marketing communications. The main aim of the CSA is to review marketing communications and ensure that they are fair, clear and not mis-leading the target audiences, particularly with respect to risky or complex investment products.

However, ESMA recognises that there are a greater number of less experienced investors, who are particularly vulnerable to online marketing and innovative approaches based on new technologies. Therefore the CSA will in particular closely consider marketing and advertising conducted by platforms through

related distribution avenues such as apps, websites, social media sites and promotions from influencers.

The CSA will also be tasked with the responsibility of collecting data and information about potential “greenwashing” practices within the financial industry, with a focus on communications and advertising. Greenwashing has already been identified as a key focus of European regulatory authorities in the wake of the implementation of recent legislation such as the Sustainable Finance Disclosures Regulation or SFDR.

### Aim of the CSA

ESMA intends that this initiative and the related increased sharing of relevant practices across NCAs which it will foster will help ensure a more consistent implementation and application of the pertinent EU rules across Member States. The CSA will help coordinate NCAs towards a more efficient and consistent application of EU Rules across the EU while also increasing cooperation between the various NCAs. ESMA hopes that this will increase consumer confidence by enhancing the protection of investors in alignment with MiFID II. This in turn will further augment the drive towards a capital markets union and strengthen the financial system of the EU. The CSA will be commenced during the course of 2023.

### How Clerkin Lynch can assist

The asset management team at Clerkin Lynch advises asset managers on fund formation and the ongoing requirements of applicable law, including with regard to marketing requirements.



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