

Legal Update

ESMA AI Guidance for investment firms

The European Securities and Markets Authority (“ESMA”) published issued a statement providing initial guidance to firms using Artificial Intelligence technologies (“AI”) when they provide investment services to retail clients on 30th May 2024 (the “Statement”).

Background

ESMA recognises that AI has the potential to transform the market for retail investment services by enhancing investment strategies and client services - but notes that it also presents inherent risks. Accordingly, ESMA has decided to publish the Statement to provide some initial guidance to investment firms utilising AI while it is still in its initial phase, primarily to assist firms ensure compliance with MiFID II obligations including safeguarding investors’ interests and prioritising clients’ best interests.

Opportunities and Expectations

The Statement outlines some potential uses of AI to enhance investor services including with regard to customer service and support, supporting firms in the provision of investment advice/portfolio management services, compliance, risk management, fraud detection and operational efficiency. It also highlights some key areas of perceived risk associated with these technologies including a lack of accountability and oversight (over-reliance), a lack of transparency and explainability / interpretability, security and data privacy issues and concerns with the reliability of

the output, the quality of related data and algorithmic bias.

It provides guidance on ensuring that existing MiFID II obligations in relation to the following key aspects of this regime continue to be complied with:

- Client Best Interest and Information to clients
- Organisational requirements – Governance, Risk Management, Knowledge and competence and Staff training
- Conduct of business requirements
- Record Keeping

Next Steps

ESMA and the National Competent Authorities (“NCAs”) will keep monitoring the use of AI in investment services to determine if further action is needed in this area under the relevant EU legal framework.

How Clerkin Lynch Can Help

Clerkin Lynch’s regulatory team have a keen focus on all aspects of financial services regulation and can assist with ongoing compliance including the preparation of related relevant policies and procedures. Contact us for more information.



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