

Legal Update

New ESMA MiCAR Market Abuse Guide

The European Securities and Markets Authority (“ESMA”), the lead European financial regulatory and supervisory authority, has issued new guidelines (the “Guidelines”) on supervisory practices to prevent and detect market abuse under the Market in Crypto Assets Regulation (“MiCAR”) dated 29 April 2022.

Background

MiCAR has extended the European financial services regulatory framework to the crypto world. It became applicable to issuers of certain tokens from the end of June 2024 and to the issuers of utility tokens and CASPS from December 2024. Accordingly, while it is now generally applicable to firms seeking to provide relevant services in Europe some existing businesses will be grandfathered for up to 18 months. ESMA has been empowered to develop technical standards and guidelines specifying certain provisions of MiCAR.

The Guidelines

The guidelines are intended for use by National Competent Authorities (“NCAs”), as defined in Article 3(1)(35) of MiCAR, and include general principles for effective supervision and specific practices for detecting and preventing market abuse in crypto assets. They are aimed at supporting consistent and efficient supervisory practices among NCAs, ensuring a common supervisory culture for crypto assets across the EU.

The guidelines set out general principles requiring supervisory activity to be risk-based and proportionate, and set the objective for NCAs to build a common supervisory culture specific for crypto assets through an open dialogue with the

industry and interactions with other NCAs, while noting the specific features of crypto trading, such as its cross-border nature and the intensive use of social media.

More specifically, the Guidelines aim to prevent and detect insider dealing, unlawful disclosure of inside information and market manipulation and reflect ESMA's experience under the existing Market Abuse Regulation (“MAR”).

Timing

The Guidelines will shortly be published on ESMA's website and will start applying three months after that date. However, ESMA has recommended that the NCAs already start implementing the principles included in the guidelines with immediate effect.

How Clerkin Lynch Can Help

Clerkin Lynch's regulatory team can assist with the preparation of policies and procedures to ensure compliance with the regulatory requirements under MiCAR as well as with authorisation applications.

Contact us for more information.



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