

Legal Update

MiCAR: Draft rules on conflicts finalised

The European Securities and Markets Authority (“ESMA”) published their Final Report (the “Report”) on “Draft technical Standards specifying certain requirements in relation to conflicts of interest for crypto-asset service providers under the Markets in Crypto Assets Regulation” (“MiCAR”) on 31st May 2024.

Background

MiCAR requires ESMA to submit draft regulatory technical standards (“RTS”) and implementing technical standards (“ITS”) on a variety of topics under this regulation to finalise granular level rules for market participants. On 12 July 2023, ESMA published a Consultation Paper to seek stakeholders’ views on ESMA’s proposals for 5 RTSs and 2 ITSs. The consultation period closed on 20 September 2023. ESMA received 36 responses, 10 of which were confidential. ESMA also sought the advice of the ESMA Securities and Markets Stakeholder Group’s (SMSG) established under Regulation (EU) No 1095/2010. The Report includes the rules proposed following this in ANNEX III.

Specific Rules Proposed

Article 72(5) of MiCAR essentially requires ESMA to prepare rules dealing with the identification, prevention, management and disclosure of conflicts of interest by crypto-asset service providers (“CASPs”). The draft RTS contains rules addressing the key concerns pertaining to conflicts of interest in considerable detail while noting that the principle of proportionality applies. The rules relate to the following aspects of this issue:

- Conflicts of interest potentially detrimental to clients;
- Conflicts of interest potentially detrimental to the CASP itself;
- General conflicts of interest policies and procedures;
- Remuneration procedures, policies and arrangements;
- Personal transactions;
- Disclosures of a general nature and regarding conflicts of interest and the steps taken to mitigate them; and
- Additional requirements in relation to placing.

Next Steps

The draft technical standards in the Report have been submitted to the European Commission for adoption. In accordance with Articles 10 and 15 of Regulation (EU) 1095/2010, the European Commission shall decide whether to adopt them within 3 months.

How Clerkin Lynch Can Help

Clerkin Lynch’s regulatory team have a keen focus on MiCAR and can assist with applications for authorisation as well as the preparation of all relevant policies and procedures. Contact us for more information.



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