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Democratisation of Trading or Dangerous trend?

Interview with Martina Hoffard, Spectrum Markets, on Financial Influencing

These days, “investment professionals” shoot up like mushrooms. Celebrities, more or less successful start-up entrepreneurs and other lateral entrants become “financial influencers” across social channels. Ironically, very often a “this is not investment advice” disclaimer adorns texts which are crystal clear and explicit recommendations.

Martina Hoffard, Head of Marketing at Spectrum Markets, tells us how this trend emerged, where the demarcation line between marketing and advice is and how even marketing communication must be considerate of straightforward financial market legislation.

Martina, first of all, is there a lack of clear definitions of investment advice and the rights and boundaries related to its provision?

If there are grey areas or services that lack sufficiently rigid legal frameworks as to what is allowed and what isn’t, I wouldn’t deem investment advice to be one of them. However, when the existing rules were established, the legislative bodies are unlikely to have had in mind the rapid changes that have been brought about by the internet and social media – not just in terms of technical options but also in terms of culture.

Which laws are you referring to?

MiFID[1] was introduced in 2004, came into force in 2007, was revised in 2014, entered into force in July 2016 and had to be implemented – with a delay of one year – on 3 January 2018. As a regulated service, investment advice is existing for some time now. The segregation of definitions – between what is investment brokerage and what is investment advice, whether it is independent or not etc. – are precise. National legislative frameworks are equally straightforward and do not only subject the relevant services to permissions but have supervisory and civil law definitions for them. And even if a recommendation doesn’t meet the definition of investment advice – for example, because the recommendation is given publicly rather than being aimed at a defined group of persons – it must meet certain diligence criteria.

Can you give an example?

The revised version of MiFID has introduced the so-called “fair, clear and not misleading information requirements” under a delegated act[2] which oblige firms to ensure that all information they address or disseminate to clients or potential clients satisfies a number of conditions. Most importantly, the information must be accurate and always give a fair and prominent risk warning whenever referencing the potential benefits of an investment service or financial instrument; this includes marketing communications.

But MiFID is for firms, how about individuals not subject to it?

The Market Abuse Regulation[3] and its delegated acts expand the requirements relevant to investment recommendations to persons who present themselves as having financial experience or expertise – and here it is already sufficient that they are perceived as such by market participants. But while most compliance departments scrupulously ensure that everything the company communicates undergoes careful scrutiny, individuals in social networks don’t feel this diligence obligation.

No plaintiff no judge?

In a way, this is at least not wrong or, to put it this way, if going forward damage caused by a financial influencer will entail legal proceedings, it will become clear that there is no lack of legal foundation to condemn wrongdoing in the context of investment advice. This will not just be painful for the influencer who may then be found guilty of offering services he wasn’t entitled or licensed to provide but also for issuers of financial instruments or providers of financial services subject to MiFID and or domestic banking acts who cooperate with those influencers. Some pending and some recently enacted court-decisions on influencer marketing highlight legislators’ awareness of the new distribution channels. It’s just a matter of time until there will be a closer supervisory monitoring of financial influencing. Australian supervisor ASIC[4] has just reminded companies of the regulatory risks of engaging with financial influencers or “finfluencers” as they’re sometimes called.

Would you see this as a fashionable, temporary trend or will we have get used to it and what is your advice on taking advice via social media?

It has to be said that there is nothing fundamentally wrong with the dissemination of recommendations via social channels. It’s just difficult to see any reason why different rules should be applicable here. If you rent a store, put up a sign reading “investment advice” and sit down with clients without a license, it will be no more than one or two days, if at all, until authorities close your shop and penalise you and, should you have had any, your institutional partners. On the internet, these activities are a bit harder to detect; the main problem is that there seems to be an all-new culture of taking risks.

The playful easiness of voting, posting, entering into contracts and actioning purchases or sales of any kind via mobile devices is a blessing – but it involves significant risks, especially for inexperienced individuals that should enjoy a higher level of protection against these risks. I would go so far as to say that the Covid-19-pandemic has amplified this trend due to increased remoteness and the strong desire among young people in particular to meet and interact. Unfortunately, financial education hasn’t found its way into school curricula yet – where it belongs, in my view.

And your recommendation?

In the absence of an institutional education path, and that would also be my recommendation not just to the young, we should draw a clear line between investing for the purpose of wealth creation and trading for the purpose of taking short-term risks. Leave the wealth creation part to investment professionals like the majority of people do, and like most of the wealthiest people in the world do. Because this requires the combination of time, knowledge, experience and risk-bearing capacity that hardly any individual can dedicate. Stay calm when you see your friend making huge profits with a single trade and stay calm when markets turn down. Dedicate just those, and only those funds to individual trading that you can easily afford to lose entirely.

Thank you very much!

[1] Directive 2014/65/EU, the “Markets in Financial Instruments Directive”
[2] Article 44 of Commission Delegated Regulation (EU) 2017/565
[3] Regulation (EU) No 596/2014 on market abuse, “The Market Abuse Regulation (MAR)” and Commission Delegated Regulation 2016/ 958 “RTS Investment Recommendations”
[4] The Australian Securities and Investments Commission (ASIC)

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