

LEXIFY INSIGHTS

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DECODING THE FINFLUENCER PHENOMENON: A PRACTICAL GUIDE

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Introduction

The rise of influencers in the financial sector is a growing phenomenon on social media platforms such as X (formerly Twitter), Instagram, TikTok, and others. This trend is rapidly becoming a pivotal force. In fact, according to a study by the Financial Industry Regulatory Authority (“**FINRA**”) Foundation and the CFA Institute (2023), 37% of U.S. Gen Z retail investors indicated that social media influencers were a major factor in their decision to invest¹.

The term “Finfluencer” refers to individuals who *“leverage social media platforms to share investment-related content, ranging from general financial education to specific stock recommendations”*². These individuals may include not only those who consistently provide financial or investment advice but also celebrities or social media influencers who occasionally promote investment products or schemes without regularly engaging in financial advisory activities.

Platforms and social media

To date, regulatory authorities have responded with a variety of measures, including cease-and-desist orders, financial penalties, and public warnings aimed at deterring misconduct and protecting investors. There is also speculation about potential regulatory adaptations beyond the existing frameworks. These include, for example, the European Directive 2014/65 (“**MiFID II**”) for financial markets and the Regulation (EU) 2023/1114 (“**MiCA Regulation**”) for crypto-assets³. According to a recent report by the International Organization of Securities Commissions (“**IOSCO**”), the platforms commonly used by Finfluencers can be outlined in table 1 below.

Products and services

The activities of finfluencers become particularly critical in scenarios where they are:

- a) unregistered individuals hired by financial firms; and/or
- b) unregistered individuals acting independently of financial firms.

In such cases, the typical practice involves directing users to register with unregulated entities (e.g., investment firms), with finfluencers earning a commission to introduce new investors. This process often leaves investors inadequately informed about potential conflicts of interest or the unauthorized status of such entities. Examples of these services include so-called “FX educators” and “signals providers” which operate in both

¹See ASIC, ASIC issues information for social media influencers and licensees, March 2022.

²IOSCO, Finfluencer, CR/08/24, November 2024. In Italy according to Guideline no. 2 contained in the Annex A to AGCOM Resolution no. 7/24/CONS, “Influencers mean those subjects performing an activity which is similar or otherwise comparable to that of audiovisual media service providers under national jurisdiction, where they cumulatively meet the following requirements: a) the service offered constitutes an economic activity within the meaning of Articles 56 and 57 of Treaty on the Functioning of the European Union (TFEU); b) the main purpose of the service offered is the provision of content, created or selected by the influencer, which informs, entertains or educates and which is likely to generate revenue directly in pursuance of commercial agreements with producers of goods

and services or indirectly in pursuance of the monetization agreements applied by the platform or social media used; c) the influencer has editorial responsibility for the content, which includes effective control over the creation, selection or organisation of the content; d) the service is accessible to the general public, reaches a significant number of users on the Italian territory, has a significant impact on a significant portion of the public and the content is disseminated through a video sharing platform service or social media; e) the service allows content to be accessed upon request of the user; f) the service is characterised by a stable and effective link with the Italian economy; g) the contents are offered through the use of the Italian language or are explicitly addressed to users on the Italian territory.”

³IOSCO, Finfluencer, cit.

traditional financial markets, as well as within the sector of crypto-assets.

A particularly risky service, especially from a regulatory perspective, is the promotion of financial instruments or crypto-assets without proper authorization. In Europe, under the MiCA Regulation, providing advisory services related to crypto-assets now requires specific authorization. In traditional finance, investment advisory services are reserved activities when performed professionally. Consequently, individuals or entities must be properly authorized - either as a consulting firm, an independent advisor, or a tied agent authorized to provide such services.

A critical issue associated with influencers' activities is conflicts of interest. Frequently, their compensation models rely on affiliate links, where they earn commissions for bringing in new clients (acting as business introducers). The problematic aspect of this practice lies in the lack of disclosure regarding the remuneration influencers receive from their partners. This omission leaves retail investors unaware of the benefits their advisor receives, which may misalign the advisor's interests with those of the investor.

This lack of transparency can result in violations of laws governing the so-called European Market Abuse legal framework, as it potentially undermines the integrity of the financial advice provided and exposes investors to hidden risks. Regulatory scrutiny in this area is essential to ensure that investors are protected and fully informed about the motivations and affiliations of those offering financial recommendations.

Behaviors at risk

As mentioned earlier, these activities can fall within the scope of regulated activities under financial laws. The potential consequences include actions such as the blocking of content on the social media platforms used, enforcement procedures and eventually the application of sanctions by each national competent authority. Furthermore, social media companies are expected to proactively monitor, review, and block content that violates applicable financial regulations.

Below at Table 2 there are examples of activities that heighten the level of risk for individuals or entities involved in influencer-related activities. Therefore, if you identify with any of these scenarios in Table 2, we strongly recommend consulting with us to conduct a legal review under applicable laws and regulations.

Compliance steps you can't ignore

An essential requirement for many regulatory authorities is the implementation of legally valid disclaimers that effectively fulfill their purpose. For this reason, it is critical to seek advice from specialized legal experts. Lexify is equipped to handle your requests for the review and enhancement of disclaimers.

Product governance rules also ensure that the placement of financial instruments is carried out in the best interests of the client. Investment firms, trading platforms, or other operators engaging influencers must ensure that their strategies align with their target market and comply with regulatory requirements.

Based on guidance from various national authorities, your internal policies regarding the use of influencers, as well as your contractual documentation, should address the following key points:

- **Conduct appropriate due diligence:** if the influencer acts on behalf of a licensee and is therefore considered its "representative" under financial services laws, additional obligations arise. These include ensuring the influencer is adequately trained and comply with financial services regulations.
- **Target market compliance:** assess whether the influencer is promoting a financial product subject to design and distribution obligations. Ensure reasonable steps are taken so the influencer only markets the product to the intended target market.
- **Adequate compliance resourcing:** ensure your organization has sufficient resources to monitor the influencers you employ, including their adherence to financial services regulations.
- **Robust risk management systems:** implement effective risk management and monitoring processes to ensure influencers are not providing unlicensed financial services.

Investment recommendations: what you need to know

In Europe, investment recommendations and advice on financial instruments are subject to stringent regulations, including Regulation (EU) 2014/596 ("**MAR Regulation**") and Commission Delegate Regulation (EU) 2016/958. These rules apply to any form of public communication, including social media, where individuals share advice or opinions on buying, selling, or holding financial instruments.

What qualifies as an investment recommendation

The definition of an investment recommendation is broad. It includes any public communication, such as videos, posts, or comments, that:

- provides advice or ideas—directly or indirectly—about the purchase, sale, or composition of financial instruments; and
- shares opinions about the future price of a financial instrument.

For instance, a statement like the following may qualify as an investment recommendation:

*"I think that today, at 4 p.m., I will buy some new shares. I will buy those of [First Company], which experienced a considerable drop recently, and diversify my holdings by purchasing shares of [Second Company], as after investigating the company, I find it promising."*⁴

Please consider that even non-technical language can fall under the scope of these rules.

How to mitigate risks on social media

Whether you are a professional or not, European laws⁵ impose specific requirements on how investment-related content is communicated, especially on social media. Specifically, ESMA, in a recent warning⁶, ESMA advised on the following matters:

- disclosure of conflicts of interest. Any potential personal or financial status must be clearly stated;
- proper identification. Using only a social media nickname is not sufficient; your full identity must be disclosed;
- objectivity. The recommendation must be unbiased and based on a clear methodology;
- methodology summary. A brief explanation of how conclusions were reached; and
- risk disclaimer. Clearly outline the risks associated with the suggested operation.



What could happen? Potential consequences of non-compliance

When financial regulations are violated, authorities around the world have a range of enforcement tools at their disposal. These may include cease-and-desist orders, injunctions, and/or financial penalties, depending on the specific legal framework of the jurisdiction, whether European or non-European.

A Practical Example: sanctions by the Italian National Competent Authority

A notable case involves the Italian National Competent Authority "**CONSOB**" which identified violations related to investment recommendations. Here's a breakdown of the situation:

Facts

- ✓ Two individuals, one of whom was an "expert", operated a website publishing articles that explicitly or implicitly recommended investment strategies.
- ✓ These articles were also promoted on the site's Twitter profile, which had approximately 5,100 followers.

Violations

⁴See Warning For people posting Investment recommendation on social media, February 6, 2024, ESMA74-1103241886-912.

⁵Anyone shall provide general set of requirements in accordance with articles 2, 3 and 5 of CDR 2016/958, while

"professionals" and "experts" shall provide additional requirements according to article 4 and 6 of CDR 2016/958.

⁶See, Warning For people posting Investment Recommendation on social media, cit.

- ✓ Following a supervisory review, 12 articles were found to breach the MAR Regulation concerning investment recommendations.

Penalties

- ✓ Administrative fines: the authors of the articles faced pecuniary sanctions.
- ✓ Temporary disqualification: the individuals were barred from exercising managerial functions for a determined period.
- ✓ Corporate liability: the company managing the website was fined €100,000.

Implication for financial intermediaries and individuals

Authorities are increasingly vigilant in monitoring influencers' activities that involve public communications about investments, including those shared via social media platforms.

For individuals and financial intermediaries:

- ensure your communications, messages and posts comply with applicable financial and market abuse regulations, especially if your content involves recommendations or strategies;

- review your disclosure practices to include conflicts of interest, methodologies, and risk disclaimers; and
- seek legal advice to mitigate risks and ensure your activities remain within regulatory boundaries.

Non-compliance with applicable financial regulations can lead to significant financial and reputational repercussions. Depending on the severity of the violations, consequences may range from administrative sanctions to criminal penalties, posing a serious threat to long-term credibility and operational sustainability.

Conclusion

At Lexify, we are one of the first law firms specialized in review compliance associated with influencer and marketing communications on financial products and crypto-assets, uniquely positioned to guide businesses and individuals in navigating these legal frameworks. Our expertise ensures your operations remain compliant and protected from regulatory risks, safeguarding your success in the financial landscape.

Table 1

Platform	Reach	Usage	Attributes
Youtube	Extensive platform with the ability to create detailed, long-form content	Finfluencers produce videos explaining investment strategies; analyze market trends and provide tutorials on various financial topics.	The visual and auditory elements make YouTube an effective medium and the videos help with simplifying complex financial concepts. Finfluencers can also engage audiences through rich, in-depth content.

Instagram	Large user base and popular with younger audiences	Used for sharing snapshots of the influencer's lifestyle, promotional content and financial tips.	Ideal for bite sized, easily digestible information as visual content enhances engagement.
Facebook	Large user base	Posts, live videos, groups that help foster a sense of community and discussions.	Facilitates sense of community building and can combine various content formats.
Tik Tok	Popular with younger audiences	Quick tips and trending investment ideas.	Short-form video format captures the attention quickly and engaging content can go viral quickly.
X (formerly Twitter)	Large user base	Real-time updates, market news and brief opinions on financial matters	Engaging through replies and retweets, rapid communication.
Telegram	Private, secure communication platform	Detailed analysis and trading signals	Allows large, interactive group discussions and is encrypted for privacy.

Table 2

Examples	DON'T
Investment advice (if you are not licensed)	
investment advice is defined by MIFID II as: "[...] the provision of personal recommendations to a client, either upon its request or at the initiative of the investment firm, in respect of one or more transactions relating to financial instruments"	<i>"If I were you, I would switch from shares in Y to shares in X, because you still have such a long investment horizon. Shares in Y are past their peak, and shares in X still have huge potential"</i>
Inducements (fees you receive from third parties)	

Be aware that many countries have strong restrictions on inducement and certain countries (e.g., UK, Netherlands etc.) clearly forbid them!	You receive 50 euros from brokers so and so for every follower you bring to said brokers through their channels
Licensed entities in EU or outside of the EU	
In Europe, financial services and crypto-asset services are regulated by MiFID II and MiCA Regulation	Your partner is an unlicensed investment firm and/or a Crypto Asset Service Provider (“ CASP ”), as defined under MiCA Regulation based outside of the EU (including in “tax havens” and offshore jurisdictions)
CASP and Reverse Solicitation under MiCA	
<p>If you are a CASP operating outside of Europe and collaborate with Finfluencers, it is essential to implement internal policies to manage their activities effectively and ensure compliance with the MiCA Regulation. This includes adhering to the rule of the so-called “Reverse Solicitation”. This rule (also applicable to traditional financial instrument) establishes that where a client based in the European Union initiates at its own exclusive initiative the provision of a crypto-asset service or activity by a third-country firm no license under MiCA Regulation would be triggered.</p> <p>The European Securities and Markets Authority (ESMA) has explicitly stated that “solicitation” under MiCA Regulation must be interpreted in the broadest possible sense. This encompasses a wide range of promotional activities, including banner advertisements, sponsorship deals, and solicitation by affiliates, such as influencers and other celebrities.</p>	If you are a VASP not authorized within the EU and use Finfluencers to target European clientele. In this case, the use of Finfluencers to promote your services could violate the provisions of MiCA Regulation.

Contact

Connect with us

Thank you for taking the time to read our article. We hope you found it informative and engaging. If you have any questions, feedback, or would like to explore our services further, we're here to assist you.



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