

ESMA Opinion on Global Crypto Firms

The lead financial services regulator in the European Union, the European Securities and Markets Authority (“ESMA”) has issued an opinion (the “Opinion”) on the use of non-EU locations for carrying on significant aspects of the activities of international firms providing crypto related services after the implementation of the Markets in Crypto Assets Regulation (“MiCAR”).

Background

MiCAR extends the European financial services regulatory framework to the crypto world. It will become applicable to crypto asset service providers (“CASPs”) from December 2024. Given this timeline, guidance from the lead regulatory authority in Europe is essential to ensure regulatory congruence and consistency across the EU. While MiCAR regulates the provision of crypto services in and into Europe, including setting out comprehensive rules regarding the functioning of trading platforms for crypto-assets, CASP services are typically provided by international businesses offering multiple services from a variety of locations using a network of different firms. These present practical challenges to regulators who may only be responsible for regulating part of the overall framework of such firms.

The Opinion

The Opinion was released by ESMA on 21st July in recognition of the risks associated with global crypto firms’ complex structures. Such structures may include, for example, the involvement of an EU-authorized broker effectively routing orders to

an intra-group execution venue based outside the EU, potentially leading to diminished consumer protection and to an unlevel playing field with EU-authorized execution venues.

Recommendations

ESMA recommends National Competent Authorities (“NCAs”), including the Central Bank of Ireland, note these concerns during the authorisation process to help ensure structures used by global firms do not bypass obligations under MiCAR.

It calls for a case-by-case assessment of applicants, outlining the specific requirements that should be met regarding a range of obligations including best execution, conflicts of interest, the obligation to act honestly, fairly and professionally in the best interests of clients and obligation relating to the custody and administration of client crypto-assets.

How Clerkin Lynch Can Help

Clerkin Lynch’s financial services team can assist with authorisation applications with the Central Bank as well as advising on compliance issued generally. Contact us for more information.



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