RegCORE Client Alert

Financial Services: BaFin issues warning for investment advice and tips using social media or messenger services

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Financial Services

BaFin issues warning for investment advice and tips using social media or messenger services

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Overview

The German Federal Financial Supervisory Authority (**BaFin**) on 1o February 2022 published its consumer protection warning to investors relying on investment tips in social media and investment platforms.[1] The BaFin's rationale for publishing its new warnings stem not only from recent action at the EU-level[2] (see standalone coverage from PwC Legal's EU RegCORE) but specifically in its observations that "many consumers make their investment decisions based on information they find in social media." The increased interest in financial markets grew rapidly during the COVID-19 pandemic. The same is also true in respect of bad actors in traditional but also social-media powered trading activity in traditional financial instruments but equally crypto-assets/currencies.

BaFin's warning (while not explicitly stating so) is not limited to just Germany i.e., its warnings apply to content made available to German domiciled (notably retail) investors regardless of where the author of such content is located.

The aims of BaFin's warning is to provide information on how to deal with risks that arise when relying on investment-related commentary (whether tips or investment advice) available on social networks, forums and messaging services when investing money (including copy trading). Specifically, BaFin sets out a non-exhaustive summary of what alarm bells should go off for investors in light of bad actors as well as inappropriate conduct.

The BaFin's tone is that while there are very much multiple good reasons for investors to consider social media platforms, doing so is not free from risk and thus should not be over-relied upon. Accordingly, the BaFin summarises this as follows:

> "Which financial products should one buy to achieve the highest possible returns? Which start-up will be the new stock market star? Which crypto stocks will see their prices multiply? Which precious

[1] Available here – albeit (at the time of writing) only in German.
[2] In particular publications of activity available here.

metals belong in every portfolio? Various platforms such as YouTube, Facebook, Twitter, Instagram, Telegram, Reddit, TikTok and Pinterest offer contact points for financial topics and quick answers to the questions described. Social networks do offer good information about investing and advice with a serious background. However, there are also countless false or only partially correct representations circulating there. Therefore, investment tips are often not reliable. This is because not all tipsters know enough about financial topics. In addition, the motivation of some of them is dishonest. Those who blindly follow such tips risk capital losses or even total loss."

The BaFin's warning and its recommendation for investors apply to both investments in traditional financial instruments but also those active in respect of crypto-assets/currencies. Consequently, this warning should be read in conjunction with the BaFin's recent revised and comprehensive warning on investments in crypto-assets/currencies (see standalone coverage from PwC Legal's EU RegCORE). The principles that BaFin is concerned with apply in both those areas of financial markets and trading notably as various actors, notably certain nascent brokerage firms and app developers (as well as providers of crypto-assets and trading platforms), but also financial influencers and other self-proclaimed experts, who often spread false promises. In addition, BaFin warns against the often-aggressive marketing of coins and tokens. Equally, BaFin expresses its worries that important information for potential investors is often withheld in posts, videos, etc.

The BaFin's recommendations are therefore very much jurisdiction-agnostic in as much as they are neutral and thus applicable to any type of financial instrument. Crypto-assets/currencies are already regulated under German law, very much ahead of pending EU regulatory changes) as financial instruments

BaFin's recommendations for investors

BaFin has compiled the following recommendations on what to look out for in investment tips in social media. Investors are thus encouraged to:

- **check which social media channels/influencers are being "advised" by and who or what is behind it**. The BaFin notes that there are many self-proclaimed experts in addition to genuine sources of expertise. The BaFin also introduces a concept of financial influencers (in short: FinFluencers), who regularly post information and investment tips with high frequency. BaFin cautions that those who are seriously active in social media on investing usually explain who they are and what their expertise is based on. If the actors are reputable, investors can check their information in many cases against other sources. In summary, the BaFin reminds investors that*: If the identity of the author is not clear from a post and it is also not apparent what background the person has, the information should not be relied upon;*

- **conduct a careful review of the investment advice so that the opportunities and risks can be fully surveyed and understood.** Furthermore, BaFin reminds investors that they should not be "… blinded by (apparently) high approval ratings!". Many followers, many likes and many positive comments are not a seal of quality. They say little or nothing about the seriousness or quality of a presence. Because it is easy to manipulate these values. Seemingly positive comments or references to supposed investment successes can be freely invented and placed on behalf of the author. As a rule, such contributions are not verifiable;

- **get a complete picture of the advertised investment.** All investments offer opportunities and are associated with risks at the same time. BaFin reminds investors to: *weigh both against each other and evaluate them with a view to individual investment goals. It is often difficult to assess whether the opportunities and risks presented in a post are complete and accurate. Therefore, investors should always use several sources to get a complete picture of the advertised investment. Part of the research should also include independent sources, such as consumer advice centres. Investors are reminded of the need to be extremely sceptical if only or mainly prospects of success are presented in social media and no risks.*

- **not be put under time pressure**. Investment tips on social media platforms may often be formulated aggressively and give the impression that investors have(t)o react quickly. The BaFin concludes that: *This is intended to exploit investors' fear of missing out on profits (fear of missing out - FOMO) and push them into an ill-considered investment decision. Investors should not allow themselves to be pushed and should check whether they have a complete overview of the opportunities and risks and also understand them;*

- **consider the financial motives of the tipster**. Investment tips on social networks are usually free of charge. This means that players like FinFluencers finance themselves from other sources. As a rule, they receive a referral commission from the company whose investment products they report on. The BaFin cautions that: *investors trigger this by clicking on certain text and image areas and* *are taken directly to other websites. The problem: For prospective investors as a user, this is often not readily apparent. Therefore, investors should keep in mind that there are such remuneration models that can be a strong motivation for the tipster.*

- **adopt caution in that very high profit promises mean that applying scepticism is advisable**. The BaFin reminds investors that: *There is no such thing as "safe, quick money". Are investors promised extraordinary profits? Then they can be sure that the risk is also extraordinarily high. Such tips usually conceal highly speculative investment products where investors lose a lot - or even all - of their capital. Often there is even fraud behind it. Social media make it easy to spread false information and thus also attract criminals*;
- **consider that time and again, dishonest actors in the social media influence courses and prices of financial instruments such as shares.** They try to create or increase demand for shares, for example through false or misleading investment tips, without disclosing that they hold these investment products themselves and therefore profit greatly from price gains themselves. BaFin summarises this in stating that such actors: *spread these dubious investment tips with the intention of profitably selling their investment again after the price increase caused by them. As a result, the price usually falls again and all other investors lose money*;
- **when switching to private messenger services for investment tips, caution is important**. The BaFin cautions investors that: *This will expose private contact information. This is because you are giving away your private contact details. After that, you are likely to receive some unsolicited, unauthorised calls offering you investment products and, in many cases, callers also creating a lot of pressure to act; and*
- **in advance of relying on any investment advice those providing it should be due diligenced for indications of potential scams using social media**. The BaFin provides the stark warning that: *Criminals try to lure investors to dubious, unlicensed online platforms, for example, by offering investment tips or contacting them in social media. It is not always about investing money right from the start. Investors are often contacted, for example, via enquiries in chat boxes and dating platforms or via friend request and only later directed to dubious online platforms. There, they are led to believe - often through technical tricks - that the money they deposit there will be invested and generate profits. In reality, however, no profits are possible, because the transferred amounts do not flow into a capital investment. This often affects investments in crypto assets such as Bitcoin or Ether, but also transactions with financial contracts for difference (CFDs).*

BaFin concludes its recommendations by also reminding investors that in the event of scams and fraud its may be very difficult for investors (and or law enforcement or other authorities) to rapidly identify and pursue those responsible. Such bad actors often steal an identity and hide behind it. On the platforms of providers often based outside the EU, the fraudsters often pretend to have the authorisation of a supervisory authority. Sometimes these authorities exist, sometimes they are invented. They also often pretend to be connected to companies with well-known brand names or pretend that the platform works for public authorities such as ministries and the police.

Outlook

While BaFin's warning does not (and equally nor does the activity at the EU level) seek to limit social-media driven trading, the risks it does highlight will probably trigger further revisions to existing warnings and ultimately rules. Regulated firms (employing social media advertising but also operating or participating in social media trading, messaging boards and similar forums) but also social media platforms will want to consider whether they need to revise their rules on appropriate conduct in use of such platforms or in the alternative how to translate aims and outcomes of regulatory warnings (such as that of BaFin) into their own client-facing and other forms of public risks warnings.

Financial services firms operating into or from Germany may also want to consider stepping up their preparatory measures including their horizon risk management for further rulemaking in this area along with sanctions on individual regulated firms but more importantly bad actors who contravene rules and supervisory expectations. This might help firms in forward-planning the impact but also differences between the BaFin's rules as well as those supervisory expectations set by the EU-level authorities across the EEA, in particular on MiFIR/MiFID II suitability and appropriateness.[3]

While some of these rules and expectations may be overlapping, and some may stem from common EU principles or rulemaking, there are still a number of jurisdiction-specific requirements but also unintended conceptual divergences that firms are nevertheless expected to comply with, irrespective of EU-level aims of improving supervisory convergence of both the body of rulemaking, including in its Single Rulebook for financial services across the EU's Single Market but also the supervisory culture across relevant authorities.

About us

PwC Legal is assisting a number of financial services firms and market participants in forward planning for changes stemming from these proposals.

If you would like to discuss any of the developments mentioned above, or how they may affect your business more generally, please contact any of our key contacts or PwC Legal's RegCORE Team via de_regcore@pwc.com or our website.

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[3] For further details of PwC Legal's dedicated client-centric online services to help with horizon scanning, risk mapping (including with data lakes) and compliance framework documentation please contact PwC Legal's EU RegCORE.