Can a post on Facebook be a market manipulation?

Recently, the European Securities and Markets Authority (ESMA) drew the public's attention to the fact that investment-related opinions, analyses and assessments published on social media may also be seen as a recommendation for investment.

Investment recommendation is defined in the EU Market Abuse Regulation and means proposing or recommending an investment strategy to the public. Such an offer or recommendation may include an opinion on the current or future value or price of a financial instrument. Financial instruments include, for example, stocks, fund units, and bonds. According to the current approach, most crypto-assets are not financial instruments. Shares traded in the Funderbeam environment are also considered financial instruments.

Disclosure means sharing information in traditional media (print media, online publications) and social media. In light of the ESMA's announcement, it is necessary to consider whether investor Toomas' articles or recommendations shared on the podcast could be investment recommendations? Or the analyses shared in Facebook's Financial Freedom Group? The answer to both questions is "maybe". If an opinion on the value of a financial instrument is publicly shared, then the reader can gather from the reading either the recommendation to sell or buy the instrument. In this case, it may be an investment recommendation.

Sent to the gallows now?

Sharing an investment recommendation is not something that is only allowed for banks or investment firms. However, when giving investment recommendations, everyone must keep in mind the accompanying rules:

1) Make it clear who made the investment recommendation. If the disclosure of the investment recommendation is related to your work, also identify who your employer is.

2) If you work for a credit institution or investment firm, disclose that contractual relationship. Even if you work as an IT specialist in a bank, for example, but as a hobby, you analyse and discuss securities on social media, you still need to point out the connection with the bank as a credit institution.

3) Refer to reliable sources (if the source is suspicious, say so), indicate all sources of substantive importance clearly and visibly. Also distinguish between circumstances (facts) and opinions, estimates or forecasts.

4) Disclose your personal interest and potential conflicts of interest. If you share an investment recommendation in relation to companies in which you have invested yourself, you need to point it out. It must also be disclosed if you have just sold the securities before the investment recommendation was made public. The obligation also extends to people closely related to you – for example, if your very good friend is on the board of a stock exchange company, then in case of recommendations related to the stock exchange company, this should also be noted. Conflicts of interest in relation to the company must also be highlighted when you share someone else's investment recommendation.

5) Indicate the date and time of the initial distribution of the investment recommendation. In the event of the first distribution of a Facebook post, the date and time of publication of the post will be known. However, this should be clarified if the recommendation is subsequently distributed elsewhere. If you share someone else's recommendation, indicate the date and time of the author's initial distribution.

6) When reviewing or summarising someone else's investment recommendation, clearly indicate that it is a summary or extract and refer to the original recommendation.

Tougher rules for experts

The Market Abuse Regulation distinguishes between experts and so-called ordinary advisors. An expert is someone who repeatedly makes investment recommendations, who claims to have competence or experience in the financial field, or who makes a recommendation in a way that gives others a reason to believe that he or she has such competence or experience. ESMA also points out that recommendations must be directed to a large readership. In this context, it is possible that the most popular financial bloggers may be classified as an expert in the Estonian investment community, and consistently post and share various investment recommendations.

Experts must fulfill all the obligations listed above when making investment recommendations, but need to be even more thorough: explain, for example, the methodology or models of the recommendations, draw attention to the risks associated with the investment, etc. Experts must also refer to their previous recommendations made public in relation to these financial assets. In connection with conflicts of interest, it is also necessary to be more detailed and, for example, to disclose whether the size of the position exceeds 0.5% of the share capital of the issuer of the financial instrument, as well as whether the position exceeds 5% of the share capital.

Could I go to jail?

If you have written on Facebook after a couple of beers that Tesla's share price should still be significantly lower, then in this case it will not go to jail, because it is probably not an investment recommendation. However, if the analysis still involves an investment strategy, then it should be considered that it may be an investment recommendation. A fine of up to 1,200 euros is provided for in the Securities Markets Act if the distributed investment recommendation has violated the requirements for disclosure, such as the requirement to indicate a conflict of interest. It will be worse if you act maliciously and try to influence the market with your recommendations (for example, knowingly selling off shares, giving off shares with a highly negative investment recommendation to sell off in order to buy back the shares at a cheaper price, and then give a new purchase recommendation). This is market manipulation. If such an act brings significant benefits, causes significant harm to someone or you do it together with friends, then you can even end up in prison. For a maximum of four years.

Summary

Investment has recently become so popular that Eesti Pank issued a warning that share prices may not always move up but may also come down[1]. In the context of strong investment interest, those interested need to be careful when extracting information from social media, because those who share wisdom may not always disclose their real interests.

Investors who actively speak on social media must bear in mind that their opinions may also be investment recommendations in certain circumstances. Just in case, the link to the recommended financial instrument and the sources on which the opinion is based should be stated.

[1] Estonian Bank Warns small investors: Prices Is so quickly Risen that Be Considered Falling Risk Economy (Postimees.ee)

(Author: Jaanus Sildam)

-
-
-

VIRGI NAEL
HEAD OF BANKING AND FINANCE

(+372) 524 1668
VIRGI.NAEL@NJORDLAW.EE