

INVESTMENT MANAGEMENT CLIENT ALERT

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EU Asset Management and Investment Funds Alert

By: Dr. Philipp Riedl, Dr. Hilger von Livonius, Susanne Albrecht-Roggenstroh, Dipl.-Kffr., Dr. Martin Berg

ESMA REVISES MAR GUIDELINES ON DELAYING DISCLOSURE OF INSIDE INFORMATION

On 16 October 2026, the European Securities and Markets Authority (ESMA) published its final report on the revised guidelines concerning the delay in the disclosure of inside information in connection with the Market Abuse Regulation (MAR). The background to this is the Listing Act, which has amended the conditions for a delay: instead of a prohibition on misleading information, the rule going forward is that the withheld information must not contradict the issuer's most recent announcement. In a significant change, ESMA has removed from the list of legitimate interests all those cases relating to extended processes, as under the Listing Act such processes will in the future only need to be disclosed upon the occurrence of the final event. Several new categories have been added as legitimate interests: firstly, orders from public authorities—including those from third countries—which legally oblige the issuer to maintain confidentiality, for example on grounds of public order, security, or health. Secondly, the need is recognized to first gather further information following an exceptional event, such as a serious incident or cyber-attack, in order to enable the market to make an accurate assessment. Furthermore, ESMA recognizes a legitimate interest where the disclosure of sensitive business information would jeopardize a specific business opportunity; in the consultation draft, this interest was still limited to public procurement procedures. Following the consultation, ESMA has finally added two further categories: the appointment of a member of the management body or another person in a key position, provided that the person has not yet terminated their previous employment relationship; and the delayed disclosure of the same information by another company within the same group, where a group company has already delayed disclosure and the economic interdependence of the companies would undermine immediate disclosure by the other company. The guidelines are to continue to be interpreted restrictively, as the disclosure obligation under Art. 17(1) of the MAR remains the rule.

EU COUNCIL PROPOSES AMENDMENTS TO THE MARKET INTEGRATION AND SUPERVISION PACKAGE

On 9 October 2026, the Council of the European Union (Council) adopted its negotiating position as part of the Market Integration and Supervision Package. Overall, a comparison with the European Commission's proposal shows that, regarding a key element of enhanced supervisory convergence—the supervision of large, cross-

border asset-management groups—the Council moves away from the Commission's ESMA-centered review model and instead favors a cooperative model based on a “coordination college” led by national supervisory authorities and exercising nonbinding powers.

By contrast, with regard to the delegation of tasks within a group, the Council is broadening the scope of the simplifications by explicitly regulating multitiered chains of sub-delegation within the EU group. As a general approach, the Council text forms the negotiating position for the upcoming trilogue negotiations.

ESMA CLARIFIES POSITION ON NONCOMPLIANT ARTS AND EMTS

On 8 October 2026, ESMA published an opinion clarifying supervisory expectations of crypto-asset services involving asset-referenced tokens (ARTs) and e-money tokens (EMTs)—also known as stablecoins—that do not comply with the requirements of the Markets in Crypto-Assets Regulation (MiCA). ESMA takes the position that crypto-asset service providers (CASPs) should not provide any crypto-asset services in relation to non-MiCA-compliant ARTs or EMTs, on the basis that doing so exposes clients to the unknown risks from the absence of issuer-level safeguards under Titles III and IV of MiCA and creates a presumption that such services are incompatible with the obligation under Art. 66(1) MiCA to act honestly, fairly, and professionally in clients' best interests. ESMA considers that this conclusion applies regardless of whether an individual crypto-asset service in itself constitutes an offer to the public or admission to trading, and that warnings or disclosures to clients would not be sufficient to address the concerns identified. CASPs should not maintain, introduce, or facilitate access to non-MiCA-compliant ARTs or EMTs for EU clients through their services. CASPs should implement appropriate technical, contractual, and organizational controls to prevent the availability of such ARTs or EMTs in the European Union.

National competent authorities may still allow strictly limited, time-bound residual services (such as liquidation, conversion, withdrawal, transfer, or safekeeping of existing holdings) to enable an orderly wind-down, but these must not facilitate new acquisitions or continued market availability, and authorities are expected to require remediation of any legacy exposures no later than three months after publication of the opinion.

AD HOC DISCLOSURE OBLIGATION WHERE A COMPANY FORECAST EXCEEDS MARKET EXPECTATIONS

In a supervisory communication dated 9 October 2026, the German Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht—BaFin) pointed out that business performance reflected in a forecast that is significantly above market expectations may trigger an obligation to publish an ad hoc disclosure without undue delay and that issuing a mere press release is insufficient in this respect. This is based on the provisions of Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (Market Abuse Regulation—MAR), which require issuers of securities and other financial instruments admitted to trading on a regulated market to disclose inside information immediately. BaFin stated that a significant deviation of such an issuer's financial results from market expectations constitutes inside information within the meaning of MAR because, if made public, it would be likely to have a significant effect on the price of the issuer's financial instruments. In BaFin's view, a mere press release is insufficient in such a case

because only an ad hoc disclosure can prevent insiders from using their informational advantage to obtain an improper advantage when trading in the financial instruments of the issuer concerned.

BAFIN: NEW OVERVIEW OF EUROPEAN GUIDELINES TO REPLACE CIRCULARS

Since 1 October 2026, the German Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht – BaFin) has been providing information in a central overview on which guidelines issued by the European Supervisory Authorities (ESAs) and the EU Agency for the Prevention of Money Laundering and Terrorist Financing (AMLA) it adopts into its administrative practice and which it does not. The overview is published on the BaFin website. In addition, the regulator provides information through brief announcements on its website and in its newsletter. Separate circulars, which previously served solely to announce the adoption or nonadoption of European guidelines, will no longer be issued for consultation or published. The overview contains numerous guidelines of direct relevance to capital-management companies and alternative investment fund managers (AIFMs). These include, in particular, the ESMA guidelines on liquidity management tools for undertakings for collective investment in transferable securities (UCITS) and open-ended alternative investment funds (AIFs), on the use of sustainability-related terms in fund names, and on marketing communications in cross-border fund distribution. The guidelines on performance fees and liquidity stress tests are also relevant for ongoing compliance. Asset-management companies and other regulated market participants should integrate the new overview into their existing compliance and regulatory monitoring processes. It should be noted that the fact that BaFin has not adopted a particular guideline does not automatically mean that it is legally irrelevant. Rather, its relevance must be assessed on the basis of the respective legal framework and the specific guideline in question.

KEY CONTACTS



DR. PHILIPP RIEDL
PARTNER

MUNICH
+49.89.321.215.335
PHILIPP.RIEDL@KLGATES.COM



DR. HILGER VON LIVONIUS
PARTNER

MUNICH
+49.89.321.215.330
HILGER.LIVONIUS@KLGATES.COM



**SUSANNE ALBRECHT-
ROGGENSTROH, DIPL.-KFFR.**
PARTNER

BERLIN
+49.30.220.029.326
SUSANNE.ALBRECHT-
ROGGENSTROH@KLGATES.COM



DR. MARTIN BERG
PARTNER

BERLIN
+49.30.220.029.325
MARTIN.BERG@KLGATES.COM

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