Finfluencers beware – Australian investors have a new social media sheriff

written by Stephen Lautens | May 18, 2022

It will come as no surprise that there are people who try to take advantage of investors and the market in creative and sometimes illegal ways. Some are as old as co-ordinated “pump and dump” market manipulation campaigns that have been around since the earliest days of the Vanderbilts. Others are new, like predatory short selling.

One of the newest has attracted the attention of the Australian Securities and Investments Commission (ASIC). In 2021 the ASIC announced that its was [undertaking a review]() of the growing number of online financial influencers to understand how they operated and how the financial services law applies to them. These “finfluencers” rose to prominence in 2020 when a group used the Reddit platform to deliberately drive up the price of GameStop to punish hedge funds that had shorted the company stock. These finfluencers have also proliferated on social media and other discussion board platforms, touting “hot stocks” and quick buck promises to the new generation of young investors who can effortlessly buy and sell shares online in their self-serve brokerage accounts.

In its review, the Australian Securities and Investments Commission found that apps like TikTok, Telegram and Twitter are increasingly being used by social media influencers who are being compensated for online buy recommendations directly by the companies they promote in cash or stock. Others engage in “dealing by arranging”, where finfluencers promote a link for their followers to access an Australian financial services (AFS) licensee's trading platform to trade financial products. The finfluencer then receives a payment from the licensee for each click-through when buying the products through the link that accompanies a glowing buy recommendation.

As a result of their review of this increasing problem, this March the Australian Securities and Investments Commission published an information sheet (INFO 269) for social media influencers who discuss financial products and services online setting out how financial services laws apply them. It concluded that these types of online activities violate Australian securities laws, and violators can face stiff penalties including hefty fines and up to five years in jail.

Some of these finfluencers have brazenly flouted their wealth and luxurious lifestyles from their unlicensed online advice-giving, making them prime targets for the ASIC, which warns that it "monitors select online financial discussion by influencers who feature or promote financial products for any misleading or deceptive representations or unlicensed financial services." The new guidelines published in the ASIC's information sheet make it clear it also applies to Australian financial services (AFS) licensees who use an influencer, who may also be liable for any misconduct by the influencer.

How big a chill this will place on the vast world of social media influencers is unclear, as is how deeply the rules will apply to other providers of financial information. Australia's example seems to make a distinction between the providers of financial commentary and those recommending or touting stocks. As the ASIC explains:

"You can share factual information that describes the features or terms and conditions of a financial product (or a class of financial products) without giving financial product advice.

However, if you present factual information in a way that conveys a recommendation that someone should (or should not) invest in that product or class of products, you could breach the law by providing unlicensed financial product advice."

Where does this leave legitimate reporters and other financial sector commentators? While the new ASIC interpretation bulletin casts a seemingly wide net, writers and publications who do not give investment advice, recommendations, or receive compensation for positive reviews or driving clicks to a trading site, do not appear to be the ASIC's intended target. Analysis and reporting on corporate news (provided that it is not misleading) is an important part of educating investors so they can make their own informed investment decisions. The ASIC's purpose is to protect investors and promote market integrity by controlling online influencers who profit from featuring or promoting financial products using aggressive, misleading or deceptive representations. The result will be that you may see fewer breathless "It's a buy!" quotes in financial reporting.

Australia is not the only jurisdiction concerned about the problem posed by social media tipsters, promoters, pumpers and finfluencers who have a direct financial interest in driving stock activity, commissions, or manipulating the market. Other security commissions are looking at the issue and making efforts to educate and curb the wild west of social media stock promoters, especially in the hot and overly-hyped areas of crypto and cannabis, and it may not be long before they too start to take a harder stance along the lines of Australia.

The web is a big place with lots of dark corners and bad actors, and has provided fast buck artists with the opportunity to reinvent and use old pump and dump or other market manipulation tricks on a whole new generation of young or gullible investors. It is overdue for a clean-up that separates financial information from naked and self-serving promotion by the so-called finfluencers.