

Article Information

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Mirror, mirror on the wall: is copy trading compliant with the law?

Copy trading is becoming an increasingly popular trading strategy, allowing investors to replicate the strategies of other potentially more experienced traders and investors. This practice can be an appealing entry point for novices, as it provides an opportunity to learn from more experienced investors and potentially achieve similar returns (or alternatively, is a convenient way to get exposure to a broader range of investments).

In recent years, ASIC has specifically listed copy trading as one of its priorities for supervision (see ASIC's priorities for [2022](#), [2023](#), and [2024](#)). Accordingly, it is essential for platforms, copy trading strategists and investors to understand how copy trading may be regulated under Australian financial services laws to ensure compliance and protect one's investments.

What is copy trading?

There is no formal definition of copy trading under Australian law. Copy trading is a form of trading whereby an investor (i.e. a copier) automatically replicates the trades of a chosen trader (often referred to as a "signal provider"). This replication can include various financial instruments such as stocks, forex, commodities, derivatives, or crypto-assets.

On a platform that offers copy trading, investors are able to view the well-performing traders that can be copied much like traders could view the well-performing assets on that particular platform. By mirroring the trades of a successful trader, the copier hopes to achieve comparable investment returns without having to actively manage their portfolio.

The platform will typically provide the underlying technology infrastructure to enable copy trading and may earn trading fees or commissions. The trading strategist sets the trading strategy and may earn referral fees or commissions depending on the number of people who opt to copy their strategy.

Regulation of Copy Trading in Australia

In Australia, financial services are primarily regulated by the Australian Securities and Investments Commission (ASIC). The regulatory framework that applies to copy trading will depend on a range of matters, including the applicable terms and conditions, technology implementation, the fee model, the nature of the financial products involved, and social or gamification features. A variety of different models are evident in the market. It is important to note that both the platform provider and the strategist may be carrying on a financial services business and should obtain advice on their obligations under Australian laws.

Australian financial services licensing

If a platform offers copy trading services, it may be required to hold an Australian Financial Services Licence (AFSL) with appropriate authorisations. This licence is mandatory for persons providing financial advice or dealing in financial products. Platforms facilitating copy trading must ensure they comply with the conditions of their AFSL, including the obligation to act efficiently, honestly, and fairly, among others.

Depending on the facts and circumstances, the copy trading strategist may also be carrying on a financial services business by providing financial product advice or potentially dealing in or arranging a financial service, among others.

Financial Advice

Financial advice in Australia is defined in section 766B of the *Corporations Act 2001* (Cth) as a recommendation or statement of opinion intended to influence a person's decision in relation to a financial product. Depending on how the product is operating, both the platform and the individual traders offering their strategies for copying may need to comply with the requirements for the provision of financial advice, including being appropriately licensed (i.e., holding an AFSL that covers the provision of financial advice) and ensuring that advice is suitable for the investors.

Dealing in a financial product

Dealing in a financial product occurs when a person (as principal or agent) issues a financial product, applies for or acquires a financial product, varies a financial product, or disposes of a financial product. The definition of dealing in a financial product also includes the concept of "arranging", which is interpreted broadly and as a general rule, the more active an intermediary is in facilitating a certain transaction between a consumer and a financial product issuer, the more likely their activity would be "arranging" the dealing of a financial product. Both the platform and the trading strategist could be seen as intermediaries in offering copy trading strategies depending on the facts and circumstances.

Managed investment schemes

Copy trading arrangements might also be considered a financial product in the form of an interest in a managed investment scheme. In essence, a managed investment scheme involves the pooling of funds from multiple investors to acquire interests in assets managed by a responsible entity. Retail managed investment schemes are required to be registered and comply with a variety of other compliance obligations under the Corporations Act.

Financial investment

The general financial product definition also includes any arrangement where money is paid or invested into a product/offering for the purposes of gaining a financial return, where the investor has no day-to-day control over the money paid or invested. Copy trading strategies could fall under the purview of this definition depending on how the particular platform and strategy is operated.

Managed discretionary accounts (MDA)

Although not a defined category of financial product under the Corporations Act, a copy trading strategy could also fall under the definition of MDA services. The provision of MDA services is governed by the Corporations Act, [ASIC Regulatory Guide 179: Managed discretionary accounts \(RG 179\)](#), and [ASIC Corporations \(Managed Discretionary Account Services\) Instrument 2016/968](#).

MDA services involve a "client" making contributions that are managed at the discretion of the MDA provider. The provider manages these assets to generate financial returns or other benefits for the client, with agreed limitations. In RG 179, ASIC acknowledges that a wide variety of arrangements can constitute a MDA and that MDAs generally fall within the definition of a managed investment scheme and a facility for making a financial investment.

Disclosure and transparency

Generally speaking, ASIC places a strong emphasis on disclosure and transparency for financial services businesses. Platforms that are offering copy trading strategies should provide clear, accurate, and up-to-date information to their users at all times. This includes details about the risks involved and the costs associated with any copy trading service.

This is also important so as not to breach the misleading or deceptive conduct laws. It is crucial for investors to receive sufficient information to make informed decisions about whether to participate in a copy trading arrangement.

Conclusion

Copy trading offers an intriguing opportunity for both novice and experienced investors to gain exposure to a variety of trading strategies in a potentially low cost way. The growth in copy trading follows broader market trends impacted by the dominance of social media and gamification. However, the regulatory landscape in Australia is complex and requires careful navigation. Platforms and traders must ensure their particular arrangement operates in compliance with Australian financial services laws to protect themselves and investors. Given the complexity of the law in relation to this area, platforms and traders are encouraged to take a look in the mirror and seek professional advice before jumping into the social trading phenomenon.