



FinCoNet
INTERNATIONAL FINANCIAL CONSUMER
PROTECTION ORGANISATION

Financial Advertising and Consumer Protection: Supervisory Challenges and Approaches

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FinCoNet Standing Committee 5 is co-chaired by representatives from the Financial Consumer Agency of Canada and the Bank of Russia and consists of representatives from the Financial Sector Conduct Authority (South Africa); Banco de Portugal; Bank of Spain; Australian Securities and Investments Commission; Netherlands Authority for the Financial Markets; The People's Bank of China; and the Financial Conduct Authority (UK).

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Disclaimer

This report is based on information and responses gathered from FinCoNet members between December 14, 2018 and January 31, 2019. While the information was accurate and up-to-date at the time of collection, subsequent changes in circumstances and practices may render some information out-of-date.

The opinions expressed and arguments employed herein do not necessarily reflect the official views of FinCoNet member organisations.

About FinCoNet

In November 2013, FinCoNet was formally established as a new international organisation of financial consumer protection supervisory authorities. FinCoNet is recognised by the Financial Stability Board and the G20.

The goal of FinCoNet is to promote sound market conduct and enhance financial consumer protection through efficient and effective financial market conduct supervision, with a focus on banking and credit.

FinCoNet members see the Organisation as a valuable forum for sharing information on supervisory tools and best practices for consumer protection regulators in financial services. By sharing best practices and by promoting fair and transparent market practices, FinCoNet aims to strengthen consumer confidence and reduce systemic consumer risk.

Table of Contents

Executive summary.....	8
Introduction and purpose of report	9
Methodology	9
1. Legal and regulatory framework	10
1.1. Overview by banking products	10
1.2. Regulatory approaches.....	12
1.3. Regulatory instruments	13
1.4. Legislation for digital financial advertising.....	14
2. Supervisory authority and approach.....	16
2.1. Oversight authorities.....	16
2.2. Ex-ante and ex-post models of legislation, rules, or guidance.....	18
2.3. Compliance monitoring methods	19
2.4. Enforcement and sanctioning tools.....	21
2.5. Enforcement and sanctioning measures	23
2.6. Consumer testing	25
2.7. Whistleblowing as an oversight tool.....	25
3. Challenges in financial advertising oversight	27
3.1. Overview.....	27
3.2. Financial advertising through digital channels and its challenges	34
4. Innovative oversight tools	37
4.1. Innovative approaches to oversight	37
4.2. Insights from behavioural economics	38
5. Conclusions	40
6. Key takeaways	42
7. References	43
8. Appendices	44
Appendix A: List of responding jurisdictions.....	44
Appendix B: Questionnaire	45

Tables

Table 1: Instruments used to regulate financial advertisements, by jurisdiction.....13
Table 2: Oversight authorities responsible for financial advertisements, by jurisdiction16
Table 3: Compliance monitoring methods for financial advertisements, by jurisdiction.....19
Table 4: Enforcement and sanctioning tools for financial advertisements, by jurisdiction.....21
Table 5: Enforcement and sanctioning measures for financial advertisements, by jurisdiction.....23
Table 6: Challenges in financial advertising oversight, by jurisdiction27

Figures

Figure 1: Overview by banking products11
Figure 2: Regulatory approaches to financial advertising12
Figure 3: Does financial advertising through digital channels exacerbate or intensify existing oversight challenges?35
Figure 4: Does financial advertising through digital channels create any unique challenges not previously captured?.....36

Table of acronyms and abbreviations

ACPR	L'Autorité de contrôle prudentiel et de résolution (France)
AFM	Dutch Authority for the Financial Markets
ASIC	Australian Securities and Investments Commission
BaFin	Bundesanstalt für Finanzdienstleistungsaufsicht (Germany)
CSSF	Commission de Surveillance du Secteur Financier (Luxembourg)
FAS	Federal Antimonopoly Service of Russia
FCA	Financial Conduct Authority (United Kingdom)
FCAC	Financial Consumer Agency of Canada
FinCoNet	International Financial Consumer Protection Organisation
FSA	Financial Services Authority (Japan)
FSCA	Financial Sector Conduct Authority (South Africa)
IVASS	The Institute for the Supervision of Insurance (Italy)
NLP	Natural Language Processing
OJK	Indonesia Financial Services Authority
RegTech	Regulatory technology
SupTech	Supervisory technology

Glossary

Term	Definition
Banking products and services	Consumer credit, payment services, and banking deposit products.
Best practice standard	A method or procedure that has been accepted by the supervisory authority to meet regulatory standards. Also known as a “safe harbour” in some jurisdictions.
Consumer	An individual acting for personal, domestic or household purposes, not business or professional purposes.
Consumer credit	Credit that is provided to individuals for personal, domestic or household purposes, and not business or professional purposes. This includes both secured credit (such as mortgage loans) and unsecured credit (such as lines of credit, credit cards, overdraft facilities and payday lending).
Digital channels	Any online, mobile or other technological means through which a financial advertisement can be published or disseminated to consumers.
Educational letters	Official letters from the supervisory authority meant to inform a regulated firm about the applicability of relevant legislation, rules, or guidelines. It explains how the legislation, rules and guidelines should be interpreted or applied in a specific situation, and, depending on the jurisdiction, may be considered strictly informational or also act as an oversight tool.
Ex-ante model	A regulatory approach in which advertisement campaigns must be authorized by the relevant authority before they are launched.
Ex-post model	A regulatory approach in which advertisement campaigns do not need any pre-authorization in order to be launched. The relevant authority can carry out its control functions by requesting credit institutions to have in place internal procedures and controls to mitigate risks to consumers related to financial advertisements. They can also request institutions to modify or to suspend the advertisement campaign that do not comply with regulation.
Financial advertising	The act or practice of attracting public notice and attention to banking products or services. It includes all forms of public announcements that are intended to direct attention to a business or banking product or service.
Guidelines	Instructions issued by a supervisory authority to be adopted by financial institutions according to existing legislation and regulation.
Infringement notice	An official notice from a supervisory authority notifying a regulated firm that they have violated a rule that is under the supervisory authority’s purview and will face enforcement action.

Jurisdiction	The territory over which an organisation's supervisory authority is exercised.
Notices	Binding regulatory instrument issued by the supervisory authority setting out specific rules.
Public warning notices	An information notice issued by the supervisory authority to the general public to alert about credit institutions practices that do not comply with rules in force.
Regulatory letters	Official communications from an authority to address and clarify significant policy and procedural matters and expectations related to the competent authority's regulatory and/or supervisory responsibilities.
Regulatory technology (RegTech)	The application and use of innovative solutions by financial service providers to meet regulatory requirements, address regulatory changes and enhance automatic risk management more effectively and efficiently.
Self-regulation	A regulatory framework created by a financial institution industry body which members may choose to follow (such as industry codes of conduct). Self-regulation frameworks do not prevent the supervisory authority from deploying other regulatory instruments, when appropriate.
Supervisory technology (SupTech)	The application and use of innovative or cutting-edge technology by supervisors to carry out their supervisory and surveillance work more effectively and efficiently.
Warning letter	An official letter from a supervisory authority notifying a firm that they have violated a relevant rule under the supervisory authority's purview and that failure to remedy the violation may lead to enforcement action.

Executive summary

This report from FinCoNet's Standing Committee 5 presents findings on regulatory and supervisory approaches to financial advertising. The report is based on responses collected from 20 participating jurisdictions and provides analysis on how supervisors oversee financial advertising in their respective jurisdictions. The report also explores challenges, trends, emerging issues and innovations through the analysis of results and the use of case studies and examples.

According to the survey results, all jurisdictions have some form of legal and regulatory framework related to financial advertisements. Such legislation, rules or guidance generally pertain to the presentation of financial advertisements to ensure they are clear and easy to understand for consumers, and that all relevant information is adequately disclosed, such as fees, interest rates and term length. The report finds that financial advertising practices vary greatly across the financial industry.

The supervisory approaches, tools, and sanctioning methods used by supervisory authorities in each jurisdiction vary, although there are notable common approaches. Most jurisdictions identified direct/proactive monitoring by the supervisory authority and monitoring consumer complaints related to financial advertising. Many jurisdictions also use a range of enforcement tools such as warning letters, infringement notices, public warning notices, educational letters or other methods as part of their supervisory approaches.

The report also finds that most jurisdictions have implemented general, technology-neutral financial advertising legislation that covers all channels equally. However, these approaches may not be best suited to address innovations in financial advertising practices. Most jurisdictions agree that the growing volume of advertising campaigns and the variety of distribution channels, such as social media and electronic advertising, require additional resources for competent authorities. To keep pace with the rapid development and digitalization of financial advertising practices, tools and frameworks may need to be updated or rethought.

The report concludes that jurisdictions should invest in tools and continued research to improve oversight for financial advertising. Authorities should also consider how they may deploy new supervisory technology to complement traditional tools in an age of rapid digitalisation of financial services. The challenges and best practices related to financial advertisements are shared across many different jurisdictions, making learning through international collaboration especially valuable.

Introduction and purpose of report

This report is an initiative of the International Financial Consumer Protection Organisation (FinCoNet). FinCoNet is an international organisation of supervisory authorities responsible for financial consumer protection. FinCoNet seeks to enhance the protection of consumers and strengthen consumer confidence by promoting robust and effective supervisory standards and practices and by the sharing of best practices among supervisors. It also seeks to promote fair and transparent market practices and clear disclosure to consumers of financial services.

Financial advertising is an important financial consumer protection issue. The potential harm to consumers that misleading, unclear, or false information in financial advertisements may cause is significant. The supervision of financial advertising may become more challenging when there are low levels of financial literacy, which requires supervisors to take a more proactive approach. During the 2017 FinCoNet Annual General Meeting, held in Tokyo, FinCoNet members established Standing Committee 5 (SC5) to work on Financial Advertising.

The purpose of the report is to develop a better understanding of regulatory and supervisory approaches related to financial advertising. This includes information on effective approaches, tools and mechanisms used by supervisors for the oversight of financial advertising. The report also explores financial advertising oversight in the context of challenges jurisdictions are currently facing, trends, emerging issues and innovations, including insights from behavioural economics, and wherever possible through member case studies and examples.

Methodology

This report presents the results of the analysis of responses to the survey “FinCoNet Survey on Financial Advertising”, which was launched on December 14, 2018 and closed on January 31, 2019. The survey was addressed to a large number of jurisdictions and representative bodies, including FinCoNet members and observers. A total of 20 participating jurisdictions provided responses to the survey (see appendix “List of responding jurisdictions” for a full list of respondents and appendix “Questionnaire” for the full text of the survey instrument).

The original survey was organized into 4 sections which correspond to the following chapters of the report:

- 1. Legal and regulatory framework**, with the purpose to better understand the different legal and regulatory approaches taken by jurisdictions.
- 2. Supervisory authority and approach**, to identify authorities, tools, and enforcement measures available in each jurisdiction.
- 3. Challenges in financial advertising oversight**, for identifying the key challenges jurisdictions are facing in response to legal, market, and technological trends.
- 4. Innovative oversight tools**, with the purpose of documenting how jurisdictions are responding to emerging issues in financial advertising and new tools for improving oversight.

All tables, figures, and case studies below must be read within the context of explanations and caveats contained in this report.

1. Legal and regulatory framework

Key points from survey responses

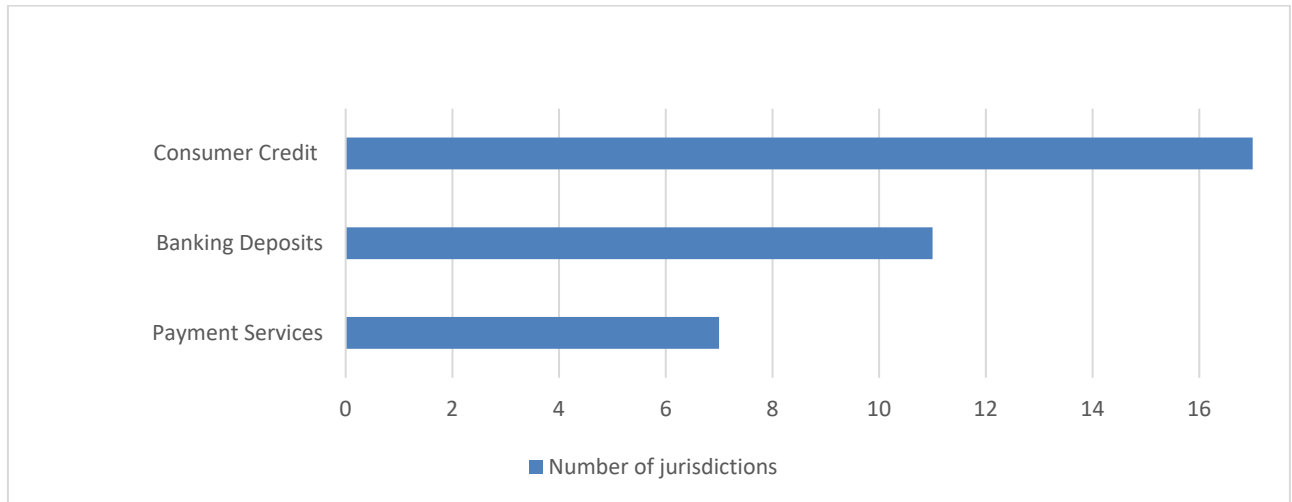
- All jurisdictions surveyed have some form of legislation, rules or guidance related to the advertising of banking products and services. More than half (65%) of the jurisdictions have specific legal or regulatory rules applicable to the advertising for specific banking products or services.
- Regulations related to financial advertisements generally pertain to:
 - Ensuring the advertisement uses clear and easy to understand information.
 - Ensuring all relevant information such as fees, interest rates, and terms are disclosed.
- Most jurisdictions (80%) use regulatory letters and guidance to be adopted by financial institutions.
- Most jurisdictions (95%) have implemented general, technology-neutral financial advertising legislation. However, some jurisdictions have implemented, or are in the process of implementing, specific guidance for certain advertising channels, such as social media.

1.1. Overview by banking products

According to the survey, all jurisdictions indicated they had some form of legislation, rules or guidance governing financial advertising standards for domestic financial institutions. Seven jurisdictions (35%) indicated that general advertisement rules and regulation apply broadly across sectors, including financial services. Lastly, 16 jurisdictions (80%) indicated that their national legislation, rules or guidance in financial advertising apply to foreign providers of banking products or services.

Of the jurisdictions surveyed, nine (45%) are currently considering, or in the process of, implementing additional legislation, rules or guidance related to financial advertising. The legislation currently being considered by jurisdictions aim to improve or clarify existing frameworks. Such action is designed to improve how financial advertisements are presented to consumers and to impose penalties on financial institutions publishing misleading advertisements. For example, some jurisdictions are considering publishing guidance specifically dealing with financial advertisements disseminated through digital or electronic means.

A closer examination of legislation specific to financial product advertisements is provided in Figure 1 below.

Figure 1: Overview by banking products

Consumer credit

Seventeen of the surveyed jurisdictions (85%) indicated having either legislation, rules or guidance in place related to the advertisement of consumer credit products, which in some jurisdictions are separate from “banking” products. For most, rules and regulations governing the advertisement of consumer credit products were directly embedded in their financial consumer protection and/or banking legislation. Legislation related to the advertisement of credit products are generally designed to ensure that consumers have a full understanding of all the relevant information.

Financial institutions are required to disclose in their consumer credit advertisements items such as interest rates, additional charges and fees, credit limits, payment amounts, and the duration of the agreement. Many jurisdictions, such as Canada, France and Portugal, have additional legislation or codes requiring advertisement for credit products to be published in a manner that is clear and easy to understand.

Banking deposits

Among the jurisdictions, 11 (55%) have legislation, rules or guidance specific to the advertisement of deposit products. Most of these are designed to ensure transparency by obligating financial institutions to disclose fees, penalties, terms and conditions associated with deposit products. In addition, many jurisdictions require the disclosure to be made in clear and easy to understand language.

Payment services

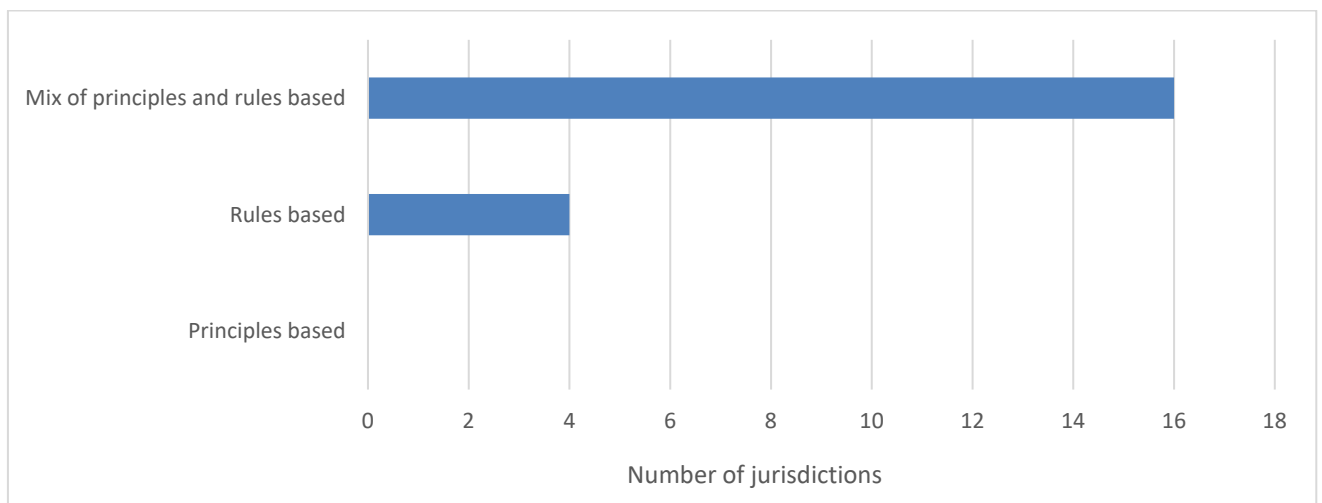
Only seven jurisdictions (35%) have legislation, rules, and guidance specific to the advertisement of payment products. As with credit products, rules and regulations related to payment services generally focus on ensuring transparency, by obligating financial institutions to disclose information such as exchange rates, fees and taxes.

1.2. Regulatory approaches

Regulatory approaches to financial advertisements can be classified as either “rules based” or “principles based.” Rules-based approaches to financial advertising are generally understood to be instances where specific technical or operational requirements are necessary. For example, a supervisor may require a minimum font size for use in advertisements as part of a well-defined disclosure document. Principles-based approaches are more generally used to convey a broader intent of legislation. Rather than providing specific instructions, a series of general guidelines or codes of practice may be provided to the industry and/or published publicly. These positions are meant for information to the financial industry and are not necessarily legally binding on their own. Such guidelines or codes of practice may also be updated and revised from time to time, in order to address areas such as legal or technological changes.

As seen in Figure 2 below, the regulatory approach to financial advertising taken by supervisors may be rules based or a combination of principles- and rules-based regulatory approaches. According to the survey, no jurisdiction indicated their jurisdiction was solely principles based.

Figure 2: Regulatory approaches to financial advertising



Mix of principles- and rules-based regulatory approaches

Sixteen jurisdictions (80%) use a regulatory approach to financial advertising that combines principles and rules. Jurisdictions using this approach may either alternate between a rules-based and principles-based approach, or use one approach to complement the other, depending on which element of financial consumer protection is being legislated upon. For example, the French Financial Advertising Legal Framework is based on both general principles and rules applicable to any advertising, as well as specific requirements applicable to financial advertising. In Canada, recent legislative changes have included a series of high-level principles complemented by more prescriptive rules in regulations, such as those pertaining to disclosure requirements.

Rules-based regulatory approach

According to the survey, four jurisdictions (20%) use a regulatory approach to financial advertising which is primarily rules based. For example, in Ireland, firms must comply with the statutory requirements of the Consumer Protection Code and any other relevant regulatory requirements.

Principles based regulatory approach

According to the survey responses, no jurisdiction utilizes a regulatory approach that is solely principles based.

1.3. Regulatory instruments

Regulatory instruments can be used individually or in combination with each other to regulate financial advertising, in addition to national laws. As seen in Table 1 below, a variety of instruments are used to regulate financial advertisements. Most jurisdictions use regulatory letters and/or guidelines, at least partially, to supervise financial advertising.

Table 1: Instruments used to regulate financial advertisements, by jurisdiction

Jurisdiction¹	Regulatory letters/ notices	Guidelines	Best practice standards²	Self-regulation	Other
Australia	X	X			
Brazil	X	X	X	X	
Canada	X				
China	X	X		X	
France	X	X	X		
Germany	X				
Indonesia	X	X			X
Ireland	X	X			
Italy	X	X	X	X	
Japan	X			X	
Luxembourg				X	
Mauritius	X	X		X	
Netherlands	X	X		X	
Norway	X	X	X		X
Portugal	X	X			
Russia	X				X
South Africa					X
Spain			X	X	
United Kingdom	X	X			X
Total:	16	12	5	8	5

¹ Note: Peru's Superintendency of banking, insurance and Private Pension Funds Administrator indicated that this question is out of its regulatory scope. Peru's row has been removed, though analysis remains out of 20 jurisdictions.

² Also known as "safe harbours" in some jurisdictions.

Regulatory letters/notices

Regulatory letters/notices are used as part of a regulatory approach to financial advertising. Sixteen of the surveyed jurisdictions (80%) indicate use of regulatory letters/notices as a regulatory instrument.

For some jurisdictions, regulatory letters are informal and may not be considered an enforcement or sanctioning tool. Based on these letters, financial institutions who may eventually be found in violation of the law can decide to amend or discontinue their advertisement campaign without the need for formal legal action.

Guidelines

Guidelines are the second most common instrument used to issue regulation on financial advertising, with 12 jurisdictions (60%) employing this instrument.

Self-regulation

Self-regulation is not commonly used when applicable to financial advertisement regulation standards, with eight (40%) jurisdictions employing this instrument. Financial institution representative bodies in certain jurisdictions can create codes of conduct that members voluntarily choose to follow. Codes of conduct are generally not legally binding, but may also be administered by supervisory authorities. Furthermore, adherence to a self-regulated code does not prevent the competent authority from deploying other regulatory instruments, where appropriate.

Best practices

Best practices are employed by five jurisdictions to regulate financial advertisements (25%). Best practices are generally used to provide financial institutions with examples of how they can create and publish financial advertisements that meet regulatory standards. Such an approach is taken in order to ensure that financial institutions understand and follow the intent of legislation.

Other

In five jurisdictions (25%), financial advertisements can be regulated using instruments which were not directly captured by survey options. For example, in the U.K., case studies have been published to highlight concerns with firms' advertising practices and make note of relevant rules for consideration. In Indonesia, an advertising monitoring system is regularly used to directly notify or warn financial service providers who violate regulations.

1.4. Legislation for digital financial advertising

According to the survey responses, 19 jurisdictions (95%) have legislation, rules or guidance for financial advertisements which are technologically neutral. These standards may apply to all forms of financial advertisements, regardless of the channel through which they were disseminated.

The growing importance of digital marketing, and the rapid innovation by firms in this field, has created new challenges for supervisors and led to innovation. At the time of this survey, 18 jurisdictions (90%) indicated that no legislation, rules, or guidance existed

specifically for digital channels. In most cases, advertisements through digital channels would be covered by broad, technology-neutral rules and regulations that cover all financial advertisements. China and the United Kingdom indicated specific guidance on financial advertising through digital channels, for the purposes of helping financial institutions apply general financial advertisement legislation to their social media advertising. In Portugal, the Central Bank established a set of recommendations to be adopted by institutions when selling banking products and services through digital channels, which are also applicable to financial advertising.

Five jurisdictions (25%) are considering or have developed new measures specifically covering the financial advertisements spread through digital means. For example, new legislation in Brazil, Canada, the Netherlands and Spain is broadly similar to financial advertisement legislation for traditional advertisement channels but include updated provisions that are specific to digital channels. For example, these changes require advertisements with moving images to be presented in a manner that allows viewers to read all the necessary information.

2. Supervisory authority and approach

Key points from survey responses

- In most jurisdictions (75%), oversight of financial advertisements is administered by multiple authorities. When supervised by multiple authorities, the oversight framework varies.
- Direct/proactive oversight of financial advertisements and the complaints handling are the most common method used by 80% of jurisdictions to monitor compliance with their existing legal and regulatory framework.
- Enforcement tools such as warning letters, infringement notices, public warning notices, educational letters, or other methods are used for supervisory programs.
- Jurisdictions use a range of sanctioning methods, with the most common requiring modifications to the advertisement to bring it into compliance, followed by monetary penalties.

2.1. Oversight authorities

According to the survey, most jurisdictions (75%) identify that oversight of financial advertisements is administered within a jurisdiction by several supervisory authorities, bodies, and organizations. As seen in Table 2 below, jurisdictions have unique combinations of oversight authorities. The precise mandate of each authority, body, and organization may also vary by jurisdiction. Some jurisdictions with multiple authorities have clearly separate and distinguished mandates and functions, while others have oversight mandates which are shared between different bodies.

Table 2: Oversight authorities responsible for financial advertisements, by jurisdiction

Jurisdiction	Financial services market conduct authority	Financial services self-regulatory organization	Dedicated advertising standards body	Oversight shared between different bodies	Other
Australia	X		X	X	
Brazil				X	
Canada	X		X		
China				X	
France				X	
Germany	X	X		X	X
Indonesia	X				
Ireland				X	
Italy				X	
Japan	X	X	X		
Luxembourg	X				
Mauritius					X
Netherlands	X	X	X		

Jurisdiction	Financial services market conduct authority	Financial services self-regulatory organization	Dedicated advertising standards body	Oversight shared between different bodies	Other
Norway	X		X		
Peru					X
Portugal	X				
Russia					X
South Africa	X		X	X	
Spain		X		X	
United Kingdom				X	
Total:	10	4	6	10	4

Financial services market conduct authority

Ten jurisdictions (50%) indicated that responsibility for financial advertisement regulation is carried out, at least in part, by that jurisdiction's financial services market conduct authority. The precise scope of financial services market conduct authorities varies between jurisdictions.

In some jurisdictions such as Japan, financial regulators are integrated into a single agency with a broad mandate that includes overseeing banking, securities, and insurance companies. Yet in Japan, a combination of self-regulatory organizations, non-profit organizations, and dedicated advertisements standards bodies contribute in their own way within the financial advertising framework as well. By comparison, in Portugal, Banco de Portugal has a central role over retail banking products and services advertising. In this system, Banco de Portugal is the single body which carries out oversight authority of banking advertising.

Financial services self-regulatory organization

Financial services self-regulatory organizations are mentioned by four jurisdictions (20%) with the purpose of guiding advertisers to meet best practices. For example, in Germany, the Wettbewerbszentrale is a self-regulatory institution with a mandate of protecting competition in the public interest, including within financial advertising practices. In Spain there is only one self-regulatory body, called Autocontrol which is a self-regulated entity and is limited to reviewing advertisement material before publication by members. Such self-regulatory bodies do not have any regulatory power, and Banco de España can require supervised entities for the modification or suspension of advertisements even if Autocontrol has revised and verified them.

Dedicated advertising standards body

In six jurisdictions (30%) the oversight power is carried out by a jurisdiction's advertising standards body. For example, in Japan, Norway, Canada, and South Africa, regulations on financial advertisements are administered, at least in part, by a specialized industry body dedicated to maintaining advertising standards and best practices. The advertising standard body may provide a voluntary code of conduct to advertisers or have authority to enforce advertisement standards directly for a broad range of consumer products, including financial services.

No jurisdiction with a dedicated advertising standards body indicated this was the sole authority responsible for financial advertisements. Such bodies always appear in combination with financial services market conduct authorities, and at times with other authorities as well.

Oversight shared between different bodies

In 10 jurisdictions (50%) oversight power of financial advertising concerning banking products and services is shared between different bodies, for example by a central bank, the competition authority, a dedicated securities and investment regulator, and a combination of local or state authorities.

For example, in Ireland, there is shared authority across the system. The Central Bank of Ireland has primary and statutory responsibility for the regulation of advertising for Financial Services and Products. The Competition and Consumer Protection Commission is an independent statutory body with a dual mandate to enforce competition and consumer protection law in Ireland. The Advertising Standards Authority for Ireland is the independent self-regulatory body led by the advertising industry to promote standards on advertising. Therefore, the Central Bank of Ireland, the Competition and Consumer Protection Commission and the Advertising Standards Authority share authority. A similar approach is exercised in Italy, where oversight on financial advertising concerning banking products is a shared responsibility between the Bank of Italy, which is responsible for enforcing sectoral provisions, and the Italian Competition Authority that is responsible for the enforcement of the legislation on Unfair Commercial Practice implementing EU provisions; furthermore, the Italian Competition Authority has been granted since 1992 the power to repress misleading advertising.

Other bodies

In 4 jurisdictions (20%), oversight of the financial advertisements may be carried out in ways not captured by the survey options, such as through a central bank, enforced by the court system, or within the oversight of a Commission. Although courts may intervene at some stage in all jurisdictions, their role becomes more relevant in jurisdictions with no specialized supervisory authorities for financial advertising.

2.2. Ex-ante and ex-post models of legislation, rules, or guidance

Simply defined, an ex-post model for financial advertising means campaigns do not need pre-authorization by supervisors in order to be published. Most jurisdictions (90%) reported an ex-post model as the sole approach that their legislation, rules, or guidance operated within.

Only two jurisdictions (10%), Japan and Mauritius, reported that their legislation operates with a combination of ex-post and ex-ante basis, meaning at least some elements of financial advertising campaigns requiring a degree of authorization to be published for consumers. Therefore, all 20 jurisdictions (100%) reported that their legislation operated, at least in part, on an ex-post basis, and no jurisdiction reported a model that was entirely an ex-ante model.

2.3. Compliance monitoring methods

According to the survey, 19 jurisdictions (95%) monitor compliance with applicable legislation, rules or guidance relating to financial advertising. As seen in Table 3 below, jurisdictions reported a range of methods and tools as part of their compliance monitoring.

Table 3: Compliance monitoring methods for financial advertisements, by jurisdiction

Jurisdiction ³	Direct/proactive monitoring by oversight authority	Monitoring consumer complaints by oversight authority	Self-reported non-compliance by financial entities	Referrals from market participants	Third-party monitoring on behalf of oversight authority	Self-regulatory body	Other
Australia	X	X	X	X			
Brazil	X	X					
Canada	X	X	X	X	X		
China	X	X	X		X	X	
France	X	X		X			
Germany	X					X	
Indonesia	X	X					
Ireland							X
Italy		X					
Japan	X	X	X	X		X	X
Luxembourg		X		X			
Mauritius	X	X					
Netherlands	X	X		X	X		
Norway	X	X					
Portugal	X	X		X	X		
Russia	X	X		X			X
South Africa	X	X	X	X			
Spain	X					X	
United Kingdom	X	X	X	X			
Total:	16	16	6	10	4	4	3

Monitoring consumer complaints by oversight authority

Sixteen jurisdictions (80%) reported monitoring consumer complaints as a compliance monitoring method. Eleven of these jurisdictions (55%) specifically indicated that the oversight authority could conduct further investigations in response to consumer complaints. For example, in Canada, the Financial Consumer Agency of Canada (FCAC) receives consumer complaints directly through a call centre or the submission of an online form. All regulated entities must also report consumer complaints in aggregate to FCAC.

³ Note: Peru's Superintendency of banking, insurance and Private Pension Funds Administrator indicated that this question is out of its regulatory scope. Peru's row has been removed, though analysis remains out of 20 jurisdictions.

Complaints, including those related to financial advertising, are reviewed according to FCAC's supervision framework and supervisory action may be taken when appropriate.

Among responding jurisdictions, five (25%) received complaints of misleading financial information, such as misrepresented promotions and unclear conditions of the product or service. Four jurisdictions (20%) received complaints in which required disclosures or information (e.g. interest rates and amount limits) were not included. Two jurisdictions (10%) reported complaints that consumers had not received a benefit or promotional offer as had been advertised. Other examples of financial advertising complaints provided by jurisdictions include:

- Headline claims for the product that are inconsistent with the fine print;
- Inadequate supply or provision of information regarding products and services;
- Information pertaining to rates associated with products advertising containing information that is not clear, simple or misleading;
- The type of credit card that consumers receive is not suitable;
- Promotion promises that are not received when credit cards are activated (cash back, vouchers);
- Imposition annual fees,
- Rejection of credit life insurance claims,
- Prominence of key information including certain key risks,
- Accelerated repayment penalty fees, interest and principal on inappropriate credit facilities,
- Lack of a statement confirming the firm is a broker not a lender, and
- Changes in accelerated repayment penalty fees, interest and principal on credit facilities.

Direct/Proactive monitoring by oversight authority

Sixteen jurisdictions (80%) reported using direct/proactive monitoring. Amongst these jurisdictions, 10 referred to active monitoring of advertisements that had been released to the public. For example, in France and Portugal, the authority carries out daily monitoring of advertisements according to identified priorities. In Japan, on-site inspections and fact-finding questionnaire surveys may be utilized. Other jurisdictions may also utilize third-party monitoring on behalf of the oversight authority.

Referrals from market participants

Ten jurisdictions (50%) reported that the oversight authority received referrals from market participants. Generally, referrals from market participants were treated in a similar way to consumer complaints by facilitating further investigation by the oversight authority.

Self-reported non-compliance by financial entities

Six jurisdictions (30%) reported that the oversight authority received self-reports of non-compliance by financial entities which can be provided regularly or on an ad hoc basis. For

example, in Canada, all federally regulated financial entities must provide quarterly reportable compliance issues to the Financial Consumer Agency of Canada, which may include issues with financial advertising rules and regulations. These issues are investigated further, as appropriate.

Self-regulatory body

Four jurisdictions (20%) reported a self-regulatory body as a method for monitoring compliance. For example, Germany reported “a self-regulatory institution enforcing rights against unfair competition”, to whom competitors can complain about other institutions, but consumers cannot. In Spain, a self-regulatory body issues prior opinions on the advertising campaigns submitted by the member institutions. Japan reported that information provided by self-regulatory bodies can be used to monitor financial advertising compliance.

Third-party monitoring on behalf of oversight authority

Four jurisdictions (20%) reported that they used third parties to collect information in order to facilitate oversight. For example, the Netherlands and Portugal have a subscription service with a third party that provides them with financial advertisements that are published. After advertisements are reported, supervisors must verify if these advertisements comply with regulation.

Other

Three jurisdictions (15%) stated that they used other additional monitoring methods. These include ad hoc desk based reviews, which is the case of Canada. It also includes carrying out analysis based on information from different sources, such as reports from financial institutions, opinions from market jurisdictions, and media reports, as reported by Japan. Russia has also reported a different method of monitoring advertising, which consists of the possibility for several public bodies to report violations of the rules in advertising to financial products that are analysed by the competent authority.

2.4. Enforcement and sanctioning tools

Jurisdictions reported using a diverse range of different methods and tools for enforcement and sanctioning. As seen in Table 4 below, these may complement and overlap with each other, depending on each jurisdiction.

Table 4: Enforcement and sanctioning tools for financial advertisements, by jurisdiction

Jurisdiction	Infringement notices	Public warning notices	Warning letters	Educational letters	Other tools
Australia	X	X	X	X	X
Brazil					X
Canada			X		
China	X	X	X	X	X
France	X	X	X	X	
Germany	X	X	X	X	
Indonesia					X

Jurisdiction	Infringement notices	Public warning notices	Warning letters	Educational letters	Other tools
Ireland					X
Italy	X	X	X	X	
Japan	X	X	X		X
Luxembourg	X		X		
Mauritius	X		X	X	X
Netherlands			X	X	
Norway	X	X			
Peru					X
Portugal	X	X	X		
Russia					X
South Africa	X	X	X	X	X
Spain			X		
United Kingdom	X	X	X	X	
Total:	12	10	14	9	10

While a variety of enforcement and sanctioning tools deployed by jurisdiction can be observed, more information is needed to assess the effectiveness of enforcement tools used to monitor and track compliance with applicable legislation relating to financial advertising. For example, it is not yet possible to comment on the frequency of enforcement action or, for those jurisdictions where multiple enforcement tools are used, the relative effectiveness of more punitive tools (e.g. infringement notices) versus less punitive tools (e.g. educational letters).

Warning letters

Fourteen jurisdictions (70%) reported having the power to issue warning letters. Among these Australia, France, the Netherlands, and South Africa reported using warning letters frequently and that they are highly effective, not only in relation to financial advertising. Germany described warning letters as a “first step” to stop unlawful practices.

Infringement notices

Twelve jurisdictions (60%) reported the use of infringement notices. For example, Australia reports that infringement notices were used and were an effective tool in addressing contraventions of applicable laws, rules, or guidelines relating to financial advertising. South Africa and Germany note that while this tool is effectively used when a violation of banking law is discovered, it has not been used with frequency specifically in relation to financial advertising requirements. In Portugal, Banco de Portugal issues infringement notices whenever an advertisement does not comply with the regulation in force.

Public warning notices

Ten jurisdictions (50%) reported having the power to issue public warning notices. Generally, this tool was used infrequently in relation to financial advertising violations. Japan, Norway and Portugal all reported that warning notices were used mainly in relation to entities that are not authorized by the responsible authority.

Educational letters

Nine jurisdictions (45%) reported the use of educational letters. This is a proactive measure to inform financial institutions of their regulatory obligations. For example, the supervisory authority in the Netherlands wrote to 40 financial institutions about a new European Regulation requiring that information given by investment firms must be accurate, fair, and give prominent indication of any relevant risks when referencing any potential benefits of an investment service or financial instrument.

Other tools

Ten jurisdictions (50%) reported the use of various “other” enforcement or sanctioning methods. Three jurisdictions indicated that a supervising authority may refer issues with financial advertising to the court system. For example, in South Africa, the FSCA may issue interpretation rulings regarding the interpretation or application of a specified provision of law. It remains effective until such time it is repealed or overturned by a court of law. In Brazil, the most common remedy granted by the courts or by the Brazilian Advertising Self-Regulation Council as it relates to financial products is an injunction to immediately suspend an advertising campaign. In Australia, some advertising breaches attract civil or criminal penalties. ASIC is able to commence court proceedings seeking such penalties. While court proceedings are rarely used in practice for financial advertising breaches, the possibility of taking such matters to court is likely to have a deterrent effect.

2.5. Enforcement and sanctioning measures

According to survey results, jurisdictions have a range of enforcement and sanctioning measures to impose in their oversight of financial advertisements. As seen below in Table 5, such measures may complement each other, depending on each jurisdiction. As is explained further, the precise application of these measures varies by jurisdiction.

Table 5: Enforcement and sanctioning measures for financial advertisements, by jurisdiction

Jurisdiction	Require modifications to advertisement in violation and bring into compliance	Monetary penalty	Suspension of the advertisement campaign	Prohibit the activity	Licence revocation	Other
Australia	X	X		X	X	
Brazil						X
Canada	X	X				
China	X	X	X	X	X	X
France		X				
Germany	X			X		
Indonesia	X	X	X	X	X	
Ireland	X		X	X		
Italy	X	X	X	X		
Japan						X
Luxembourg	X	X		X		
Mauritius	X	X	X	X		
Netherlands	X	X	X			X
Norway	X			X	X	
Peru						X

Jurisdiction	Require modifications to advertisement in violation and bring into compliance	Monetary penalty	Suspension of the advertisement campaign	Prohibit the activity	Licence revocation	Other
Portugal	X	X	X			
Russia	X	X	X			
South Africa	X	X	X	X	X	X
Spain	X	X	X			X
United Kingdom	X	X	X	X	X	X
Total:	16	14	11	11	6	8

Require modifications to the advertisement in violation to bring it into compliance

Sixteen jurisdictions (80%) indicated having the ability to require modifications to advertisements found to be in violation. Supervisors use this approach with varying degrees of frequency. For example, Portugal, the Netherlands, and Spain often require modifications when misleading advertisements are identified. Germany, however, uses this tool with less frequency and indicates this as a milder remedy than prohibiting an advertisement.

Monetary penalty

Fourteen jurisdictions (70%) reported the ability to use monetary penalties. In Canada for instance, penalties from the Financial Consumer Agency of Canada have recently been changed to a maximum of \$10 million, per violation. In Spain, although the supervisor has the power to impose monetary penalties on supervised entities that do not comply with legislation, this tool has never been used for breaches in financial advertising.

In Italy, penalties can range between 30,000 euros to a maximum of 10% of total revenues, capped at 5 million euros for certain financial institutions, such as payment institutions and e-money institutions. Materiality is assessed according to criteria set by a regulation from the Bank of Italy. In Russia, although the FAS does not collect separate statistics on the number of penalties for violations in advertising financial services, penalties totalling 103,496,300 rubles were issued in 2017 and about 16% of those penalties related to financial services advertising.

Suspension of the advertising campaign

Eleven jurisdictions (55%) indicated that enforcement and sanctioning methods could include suspension of the advertising campaign if aspects of it are found to be in violation. For example, in Ireland and Portugal, firms can be requested to withdraw/amend all formats of a non-compliant advertisement.

In Portugal, if a suspension is required, the campaigns cannot be resumed without prior approval from the authority. In both the U.K and Spain, firms with non-compliant promotions or advertisements may be contacted regarding misalignments with legislation. The entity may be required to modify or suspend a marketing campaign, which is a measure that is used regularly and is highly effective.

Prohibit the activity

According to the survey, 11 jurisdictions (55%) indicated that enforcement and sanctioning methods could include prohibiting an activity due to advertising practices. For example, in the U.K., FCA can suspend the advertisement of a promotion when needed, but can also then prohibit the financial promotion from continuing. This is used infrequently as firms tend to amend non-compliant advertisements following an initial contact without the need to use this power. In South Africa, such a measure has been effectively used by the FSCA in respect to contraventions in financial industries other than banks. However, given the new dedicated focus of the FSCA on the market conduct of banks, the usage frequency of the tool may increase.

License revocation

Six jurisdictions (30%) reported being able to revoke licensure for non-compliant advertising practices. This is seen as a severe measure, as licence revocation would have the effect of not only stopping non-compliant advertising but also ceasing the financial institution's business activities. For example, in the U.K., authorisation of firms who do not comply with conduct rules concerning advertising can be cancelled. While infrequently deployed, this measure is seen as highly effective. In Australia, an appropriate Delegate could ban or cancel a financial services licence in instances where there is a need to protect investors and consumers, to deter misconduct, or where conduct of the licensee may result in investor or consumer detriment. Whether administrative action is taken depends on the facts of each matter. In Norway, licence revocation is applicable if needed, but has not been used in practice for financial advertising infringements, although such a measure is available if needed.

Other

According to the survey, eight jurisdictions (40%) reported the ability to use enforcement and sanctioning measures which were not captured by the survey. For example, in Japan, not limited to matters related to advertising, the Financial Services Agency can urge business operators under the jurisdiction of the Agency to exercise self-regulation through industry organizations, conduct hearings on them, and (when violations of relevant laws and regulations redetected) issue administrative dispositions.

2.6. Consumer testing

One jurisdiction (5%), the United Kingdom, reported that its relevant authorities had some power to require that providers test financial advertisements with customers. The power to require testing is not specified, however general powers allow the supervisors to require a firm do so if deemed necessary.

2.7. Whistleblowing as an oversight tool

The survey indicated nine jurisdictions (45%) currently have or will have whistleblowing procedures as part of their oversight framework, which directly or indirectly capture issues with financial advertising. For example, Banco de Portugal provides a specific online form where anyone can report possibly non-compliant situations, including violations of advertising rules. In the U.K., whistleblowers can report non-compliant promotions

through a specific channel which is actioned in accordance with internal procedures. In South Africa, the FSCA receives complaints from various individuals, including whistleblowers, in order to monitor supervisory and enforcement practices. The FSCA also has a Tip-offs Anonymous functionality that provides for an anonymous and confidential reporting channel.

In Canada, FCAC indicated that a whistleblower regime is being created as part of an updated legislative framework. Under the new whistleblower regime, whistleblowers (defined as employees of federally regulated financial institutions) will be able to report non-compliance with applicable provisions, including those related to financial advertising. FCAC will be able to receive reports of non-compliance with provisions under FCAC's mandate, including those related to financial advertising. Other financial sector regulators will be able to receive reports of non-compliance with specific provisions under their respective mandates.

3. Challenges in financial advertising oversight

Key points from survey responses

- According to survey results, the most challenging issues for financial supervisors are those connected with the following:
 - Misconduct of supervised institutions by promoting misleading financial advertisements (identified by 70% of jurisdictions),
 - Relatively low monitoring capacity compared to the large volume of promotion campaigns involving a variety of diffusion channels (identified by 55% of jurisdictions),
 - Keeping pace with rapid development of novel or changing advertising methods and channels (identified by 45% of jurisdictions).
- 65% of jurisdictions indicated that financial advertising through digital channels intensify existing challenges for supervisors.

3.1. Overview

Jurisdictions reported that challenges experienced with oversight over financial advertising vary. Challenges may also intensify existing issues. As seen in Table 6, there are wide ranging challenges faced by jurisdictions in financial advertising oversight. These challenges are explored further below, including with the use of two case studies from Banco de Portugal.

Table 6: Challenges in financial advertising oversight, by jurisdiction

Jurisdiction	Volume of advertisements and lack of monitoring capacity	Aggressive marketing tactics	Misleading financial advertisements	Unclear mandate for financial advertising oversight	Lack of enforcement powers	Lack of rules specific to financial advertisements	Novel or changing advertising methods and channels	Other
Australia	X	X	X			X		
Brazil							X	
Canada	X		X			X		
China					X	X		X
France			X					
Germany	X	X	X		X		X	
Indonesia	X	X	X					X
Ireland	X						X	
Italy	X	X	X	X			X	
Japan								
Luxembourg		X	X					

Jurisdiction	Volume of advertisements and lack of monitoring capacity	Aggressive marketing tactics	Misleading financial advertisements	Unclear mandate for financial advertising oversight	Lack of enforcement powers	Lack of rules specific to financial advertisements	Novel or changing advertising methods and channels	Other
Mauritius								
Netherlands		X	X				X	
Norway	X	X	X					
Peru			X					
Portugal	X		X				X	X
Russia	X		X					
South Africa	X	X	X				X	
Spain	X						X	X
United Kingdom			X				X	
Total:	11	8	14	1	2	3	9	4

Misleading financial advertisements

According to survey results, misleading financial advertisements were specifically reported in 14 jurisdictions (70%) as a particular challenge faced by supervisory authorities. Most jurisdictions agree that frequent infringements usually relate to poor transparency and inaccurate information provided to customers. These infringements may evolve or vary over time, contributing to new obstacles for supervisors. Such practices may include a combination of limited or inaccurate disclosures, unclear terms and conditions, incomplete descriptions of total costs, poorly described conditions for promotions, exaggerated benefits or returns, mislabelling an investment as a deposit account, among others.

For example, Canada and France point out that misleading financial advertisements are the most common financial advertisement issue they face. In Indonesia, firms attempt to shift customers' attention to rewards rather than to the suitability of a product and its risks. In the Netherlands, misleading advertising practices may be more prevalent across different products, such as in advertisements for investments. These products have higher risks but are often not presented that way, at times being described as similar alternatives for saving accounts. In Portugal, misleading information may take the form of inconsistent wording or the concealment/omission of access conditions and restrictions.

In Case Study 1 below, Banco de Portugal illustrates the importance of supervision over financial advertising, in order to avoid misleading statements to consumers and misconduct of supervised institutions.

Case Study 1: Banco de Portugal - Deposit ad

The initial advertisement highlighted the gross annual nominal rate of 13%, included in the deposit's designation "Depo ABC 13%", and presented, without any prominence the following information: "Increasing gross annual rate until 13%," "interest payment for 12 months" and "monthly interest payment".

The main characteristics of the deposit:

Maturity: 1 year

Interest payment frequency: monthly

Gross annual nominal rate from 1st to 11th month: increasing, from 3% to 5%

Gross annual nominal rate on the 12th month: 13%

Average gross annual rate: 4.75%

Minimum subscription amount: EUR 1,000

Considering the deposit characteristics, Banco de Portugal issued an infringement notice, requiring the credit institution to modify the ad, ensuring that:

- The deposit denomination shall not include an interest rate which is not applicable to the full period (13% is only applicable to the last month, so it cannot be included in the deposit's designation)
- The following information must be presented with a similar prominence to the highlighted:
 - gross annual nominal rate
 - average gross annual nominal rate
 - minimum subscription amount (access condition)
 - maturity of the deposit

Initial advertisement

The initial advertisement features a dark green background. At the top left, "DEPO ABC 13%" is written in large white font. Below it, three bullet points are listed: "Rising gross annual rate up to 13%", "Maturity: 12 months", and "Monthly interest payments". On the right side, there is a logo for "Bank XYZ" and a dark green button with the website "www.bankxyz.pt" and phone number "700500500". At the bottom, a small line of text reads: "This information does not replace the pre-contractual information. Average gross annual interest rate: 4,75%. Minimum subscription amount: EUR 1,000."

Modified advertisement

The modified advertisement features a dark green background. At the top left, "DEPO ABC" is written in large white font. Below it, five bullet points are listed: "Rising gross annual rate up to 13% in the last month", "Average gross annual nominal rate: 4.75%", "Maturity 12 months", "Monthly interest payments", and "Minimum subscription amount: 1,000 EUR". At the bottom center, there is a dark green button with the website "www.bankxyz.pt" and phone number "700500500". On the right side, there is a logo for "Bank XYZ".

Volume of advertisements and lack of monitoring capacity

A growing variety of advertising campaigns and distribution channels has increased the volume of advertisements and may relate to a greater shortage of monitoring capacity. According to the survey, 11 jurisdictions (55%) indicated that a relatively low level of monitoring resources is available to address the large number of promotion campaigns from a variety of channels.

Monitoring conducted by some authorities indicates that the number of financial advertisements is trending differently in various jurisdictions. For example, Portugal reviewed 9,501 advertisements in 2017, which compares with 8,572 in 2016 – an increase of 11%. Some authorities also report that the number of misleading financial advertisements is increasing. In Indonesia, OJK determined that 48% of financial advertisements issued in the first quarter of 2018 violated legal requirements, and this figure increased to 61% in the following quarter. To address this challenge, supervisory authorities have adapted available tools and utilized new techniques. For example, FSCA in South Africa has set up a specific department within the organization to review the disclosure, advertising and marketing strategies of specific financial institutions, and to support thematic reviews in this area. This department will also carry out ongoing scanning of media, and ongoing monitoring of new advertising and marketing approaches. Demonstrating another approach to the issue, the Banco de España has signed an agreement with an external company to carry out the collection of advertisements and to support the monitoring activity.

Moreover, in order to acquire an accurate view of total activity within the sector, the Banco de España developed a thematic off-site surveillance to cover all financial entities subject to banking advertising regulation. The analysis covered the firms' policies, procedures, internal registers and the advertisements they produced for a period of six months. Such oversight of advertising campaigns will continue with assistance from an external company for data collection.

Novel or changing advertising methods and channels

According to the survey, nine jurisdictions (45%) regard the increasing prevalence of new and changing advertising methods as a significant challenge in financial advertising oversight.

Rapid digitalization of sales and interaction channels accompanied by a new and complex business environment needs to be correctly understood by regulators and supervisors. The growth of online and mobile advertisements brings advantages to consumers and new challenges to financial supervisors, who are forced to adapt existing monitoring techniques to the new environment of the digital age. Product distribution and advertising channels have undergone rapid transformation and this trend is expected to continue over the years to come. In line with this, traditional tools must be adapted or new tools created to address differences between digital and traditional advertisements and diffusion channels. Some oversight tools are general and may be applied in different ways depending on the technique and the purpose.

The Dutch Authority for the Financial Markets (AFM) attach considerable importance to mobile websites, mobile banners and product apps. Mobile banners and advertisements on social media might link directly to product apps, which may prevent consumers from reading relevant information on the website before entering into the contract. In addition,

advertisements are becoming increasingly personalized and regulators may find it difficult to have a good overview of who gets targeted for a specific financial product.

Portugal suggests that supervision of new advertising methods and channels demands greater insights into behavioural economics. Advertising through digital channels may be presented to customers in a more intrusive way and has the potential to cause a significant impact on customer decision making. In case study 2 below, Banco de Portugal provides an example to illustrate new challenges in financial advertising practices as a result of digital innovations.

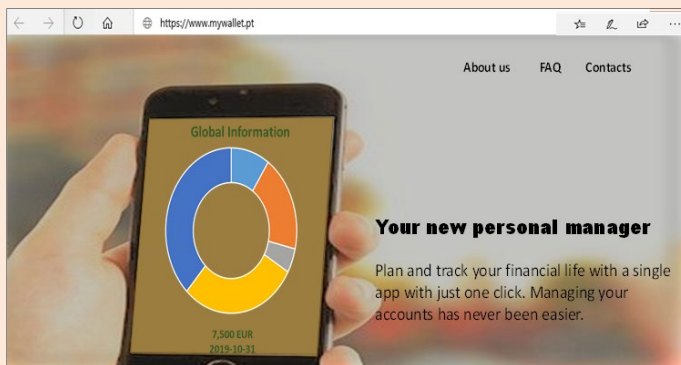
Case Study 2: Banco de Portugal - Account Information Service

Credit institutions are launching new brands and specific platforms to market products through digital channels which are dissociated from the institution's brand. New products and services are offered without a clear identification of their nature or purpose.

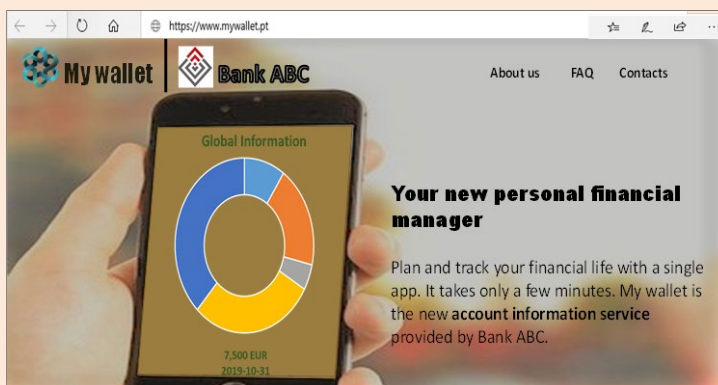
Credit institutions highlight the simplicity and the speed of the process, using expressions such as "immediate", "simple", "in just one click". Banco de Portugal issued infringement notices to credit institutions in order to:

- Present the credit institution brand with similar prominence to the product brand and add a disclaimer such as "X is a brand that belongs to Bank Y"
- Clearly present the service that is being provided "Account Information Service"
- When presented online, information must be available on the first screen, to be seen by consumers without the need to scroll down the page to find the information
- Avoid using expressions that do not entirely correspond to the truth

Initial version



Modified version



Aggressive marketing tactics

According to the survey, eight jurisdictions (40%) indicated that aggressive marketing tactics were a challenge in the oversight of financial advertising. Some jurisdictions illustrated how digitalization can exacerbate aggressive marketing practices and complicate

supervision. For example, in Indonesia, digital marketing channels can be specifically designed to mislead consumers, making some users pay more attention to the offered rewards, rather than the suitability of the products, needs, benefits, and risks of the products they will use. Norway reported that the use of social media as part of financial advertising has made the supervision of such marketing more difficult.

Two jurisdictions, Italy and the Netherlands, indicated that financially vulnerable consumers are particularly at risk of aggressive marketing tactics. Such risks include misstating the true costs of loans, pressure to renew agreements, and pressuring consumers to subscribe to an insurance product as a condition of applying for a loan.

In Italy, the issue of aggressive marketing has been addressed jointly by the Bank of Italy and the Italian Insurance Supervisor (IVASS). For example, guidelines are sent to insurance firms and financial entities that distribute PPIs (payment protection insurance contracts). The Italian Competition Authority has also addressed mis-selling of PPIs when enforcing legislation on Unfair Commercial Practices. In South Africa, specific requirements have been put in place to prevent aggressive marketing tactics, such as ensuring that advertisements are not designed to exaggerate the need for consumers to make urgent decisions.

Lack of rules specific to financial advertisements

According to the survey, three jurisdictions (15%) reported that a lack of rules specific to financial advertisements poses a challenge. For example, China has not yet introduced laws, rules, and guidelines specifically for financial advertising. In Canada, the scope of older legislation did not specifically address financial advertising, although recently implemented rules and regulations will greatly increase the powers and reach of supervisors in this area.

Lack of enforcement powers

Two jurisdictions (10%) identified that the lack of enforcement powers may pose challenges to the supervision of financial advertising.

Unclear mandate for financial advertising oversight

One jurisdiction, Italy, reported that a potential overlap exists as both the Bank of Italy and the Italian Competition Authority are responsible for supervising unfair financial advertising. A Memorandum of Understanding has been entered into by both parties, based on mutual disclosure of relevant information. This framework is designed to overcome the challenges of an unclear mandate and ensure that consumer protection does not result in overburdening supervised entities.

Other challenges

Four jurisdictions (20%) reported on challenges that were not captured in the questionnaire options. For example, the supervision of financial advertising may become more challenging when there are low levels of financial literacy, which requires supervisors to take a more proactive approach. In Indonesia, less than 30% of the total financial service users have a clear idea about the financial products and services they use.

The prevalence of intermediaries may also pose unique challenges. For example, in Spain, some advertisements are published by credit intermediaries, not directly by supervised financial entities. While the supervised entity is ultimately responsible for the compliance of advertising of its intermediaries, this relationship poses some unique challenges. In Portugal, Banco de Portugal recently started supervising consumer credit intermediaries. One difficulty is discerning who is the creator and releaser of advertisements for credit products. It is challenging to establish accountability between the institution responsible for the financial product and the credit intermediary. For example, in many situations advertising needs to be previously approved by the responsible institution for the announced product. If the campaign was approved and is not compliant, the credit institution is considered accountable. However, if the credit intermediary did not obtain approval, the non-compliance falls under their responsibility.

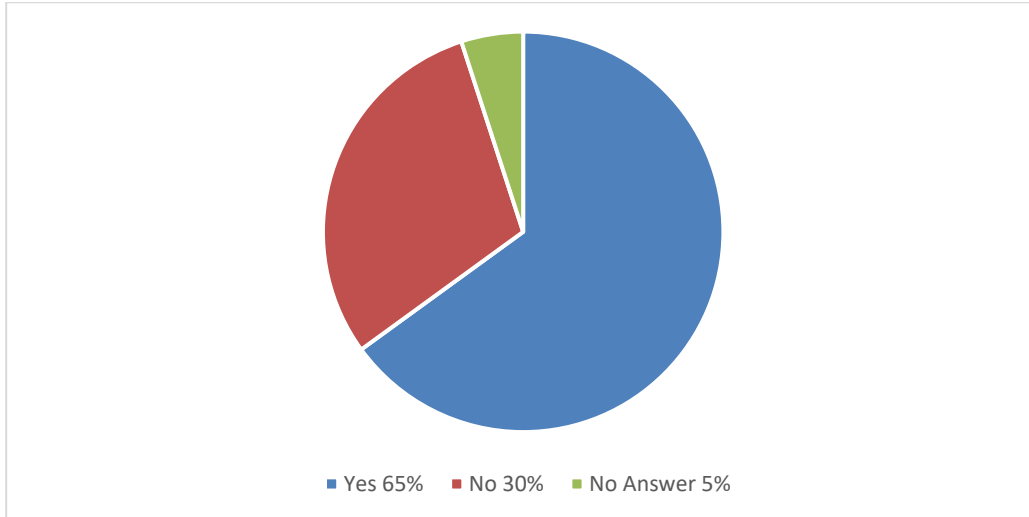
3.2. Financial advertising through digital channels and its challenges

The digitalization of banking products and services has contributed to changing distribution channels of financial advertisements. Some reported advantages of digitalization include greater access to financial services and more personal communication between financial services providers and their customers. However, as noted below, digitalization of financial advertising may intensify existing challenges for supervisory authorities and contribute to new ones.

Intensification of existing challenges

Survey results suggest that technological changes in financial advertising are similar across jurisdictions. Supervisors may be faced with intensified challenges as technology advances. For example, the use of platforms like social media as a means of reaching consumers has changed the way institutions interact with consumers. Such changes may add to existing oversight challenges. In Figure 3 below, 13 jurisdictions (65%) indicated that financial advertising through digital channels exacerbates or intensifies oversight challenges previously listed in Table 6.

Figure 3: Does financial advertising through digital channels exacerbate or intensify existing oversight challenges?



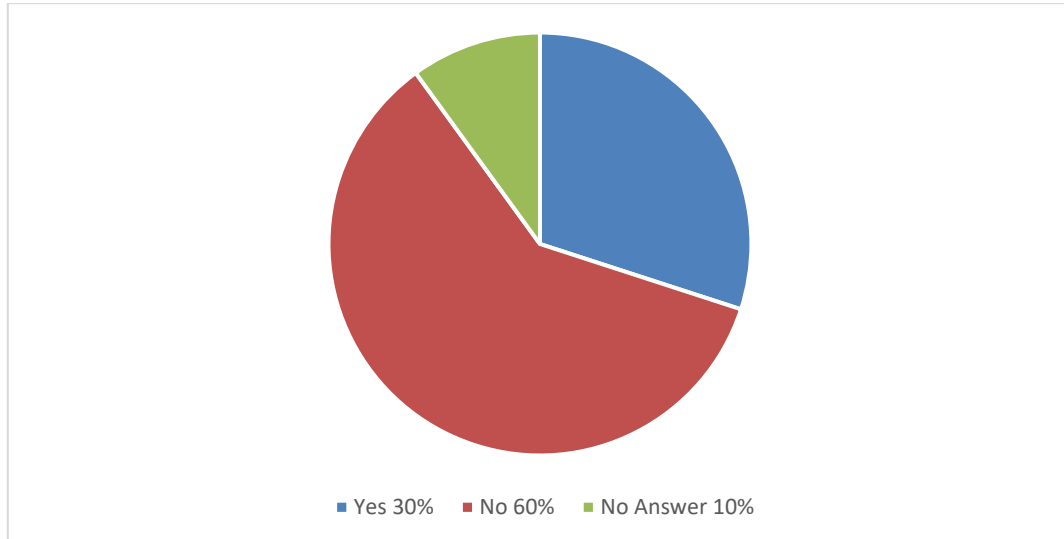
Some supervisory authorities pointed out that digital promotions could include advertisements that are not compliant with regulations, and are harder to find and track. For example, OJK in Indonesia considers the rise in digital marketing and advertising to be related to the rampant availability of illegal or unauthorized products that seek to deceive consumers.

In Portugal, the current framework does not provide for obligation of credit institutions to report campaigns in social media, which poses additional challenges because they are still under supervision. For example, the digital nature of campaigns may be customized for a specific audience, be available for a short period of time, or only available in restricted areas. These factors can make campaigns difficult to identify and effectively supervise.

Unique challenges through digital channels not captured in questionnaire options

In Figure 4 below, six jurisdictions (30%) report that financial advertising through digital channels creates unique oversight challenges not fully captured above. These unique technological challenges named by jurisdictions primarily relate to information technology management and expertise.

Figure 4: Does financial advertising through digital channels create any unique challenges not previously captured?



For example, the supervisory authorities of Russia and Indonesia state that developing the technology for an advanced monitoring system and selecting a good team of IT experts is quite challenging. The Central Bank of Brazil concludes that in addition to the existing legislation, there is a need for specific legislation that would regulate the collection and treatment of databases of digital channels.

4. Innovative oversight tools

Key points from survey responses

- 30% of jurisdictions have developed innovative tools for oversight of financial advertisement, while an additional 15% are in the process of developing such innovative tools.
- 20% of the jurisdictions reported having carried out research on behavioural economics and its potential application in the field of advertising regulations.
- Going forward, technologies falling under supervisory technology or regulatory technology will become increasingly important due to the large volume of data that jurisdictions need to process.

4.1. Innovative approaches to oversight

From the jurisdictions surveyed, six (30%) have developed and three (15%) are in the process of developing innovative tools specifically related to financial advertising. The tools vary widely in scope and are designed to address a broad range of issues such as: improving advertisement clarity, monitoring of financial advertisements, helping consumers understand financial advertisements, etc.

For example, Indonesia pointed to the use of a market intelligence reporting information system to monitor advertisements. France and Spain are using an external entity to identify and flag relevant financial advertisements for analysis by the supervisory authority. The Netherlands has a team focused on consumer behaviour and uses experimental methods to test the effects of advertisements. It also has a consumer panel, where consumers can share their experiences and opinion about financial advertisement.

In Australia, ASIC has explored the potential to use Natural Language Processing (NLP) in monitoring financial advertising on a trial basis only. While ASIC continues to explore the potential application of NLP in monitoring financial advertisements, ASIC has not yet deployed NLP technology for operational use.

Among jurisdictions in the process of developing innovative tools, Portugal is working on a machine learning tool that can be used in the future for the supervision of advertising of banking products and services. South Africa is in the process of setting up appropriate technological tools to monitor and scan the various advertising channels. The United Kingdom is currently in the process of developing a “web-scraping tool” that will help in the identification of non-compliant advertisements using key words and search terms.

Moving forward, technologies falling under supervisory technology (SupTech) or regulatory technology (RegTech) may become increasingly important due to the large volume of data that needs to be processed.

4.2. Insights from behavioural economics

According to the survey, four jurisdictions (20%) reported having carried out research on behavioural economics and its potential application in the field of advertising regulations. Indonesia,⁴ Ireland,⁵ the Netherlands,⁶ and the United Kingdom⁷ have all carried out some degree of research on consumer behaviour. Key findings from their research papers are outlined below:

- Consumer mistakes are common, and the quality of decision-making is often questionable.
- Products with multiple key attributes (for example loans) are particularly difficult for consumers to understand.
- Specific errors are related to the context in which they are made, so whoever determines the decision-making context (usually the seller) can influence the outcome of consumer decisions.
- Full disclosure of information is unlikely to ensure that consumers fully understand the product they are purchasing.
- Consumer judgments of the value of products against prices can be consistently inaccurate.
- Consumers are influenced by the way numbers are presented. Monetary amounts are more easily evaluated by consumers than percentages and they make systematic mistakes when interpreting percentages, so consumers are more sensitive to interest rates when the cost is expressed in cash terms. Absolute numbers are more easily understood and could potentially present an alternative to percentages in advertisements.
- Consumers are highly influenced by framing and headlines, even after discovering that they might not be correct, so headlines with poorly designed risk warnings (such as a large block of highly-technical sentences in small print) may lead consumers to ignore important messages.

The AFM in the Netherlands elaborates on its own research on financial advertising using insights from behavioural economics. Case Study 3 below shows the limited impact of a warning in the advertisement to consumer credit products.

⁴ OJK, *Consumer Protection Aspects in Digital Marketing of Financial Services and Products*, 2017.

⁵ Lunn, et al., *An Investigation of Consumers' Capabilities with Complex Products*, 2016; Lunn, et al., *Do some financial product features negatively affect consumer decisions? a review of evidence*, 2018.

⁶ AFM, *Caution! Borrowing money costs money; A study of the effectiveness of a warning in credit advertisements*, 2016.

⁷ Adams and Smart, *From advert to action: behavioural insights into the advertising of financial products*, 2017.

Case Study 3: Netherlands Authority for the Financial Markets – Research on Behavioural Economics

In 2009, the Netherlands Authority for the Financial Markets (AFM) imposed the following credit warning: “Borrowing money costs money”.

Half a year later, consumer research showed that 80% to 90% of consumers knew what the warning was about, so at the beginning the measure was initially considered a great success. However, in 2016, a Randomized Controlled Trial (RCT) on the website of a large credit provider was conducted. The RCT consisted of an A/B test where the credit warning was shown to a group of people, but not to a second group to whom the warning did not appear.

The conclusion was that the credit warning has not produced an immediate effect, as it did not change the way people borrowed money, meaning that there were no statistically significant differences on what the trial measured: number of pages watched, percentage of visitors that applied for a loan, etc.

Thus, the result was that the warning was not able to achieve its goal, pushing the regulator to search for different interventions to battle over-indebtedness.

The findings of these research projects suggest that supervisory authorities should explore the application of behavioural economics, and its limitations, in understanding how consumers receive and respond to financial advertisements and how firms present such information. Supervisory authorities should continue to research consumer behaviour and decision-making processes. However, priority should still be given to develop effective mechanisms to supervise financial advertisements, enforce rules and sanction violations.

5. Conclusions

The conclusions arising from the analysis of the findings in this report are set out below.

1. All surveyed jurisdictions have some form of legislation, rules or guidance related to financial advertisements. More than half of jurisdictions have additional advertising regulations for specific banking products.
2. Regulations related to financial advertisements generally pertain to:
 - Ensuring the advertisement uses clear, easy to understand information.
 - Ensuring all relevant information such as fees, interest rates, and terms are disclosed.
3. Most jurisdictions have implemented general, technology-neutral financial advertising legislation that covers all channels equally. However, specific guidance on the use of social media advertising is becoming more prevalent. In the future, specific guidance may become necessary for digital channels.
4. In most jurisdictions, oversight of financial advertisements is administered by multiple authorities. Some authorities have mandates which overlap with each other, while other authorities have a distinct scope which is clearly separated from one another.
5. When monitoring compliance of financial advertisements, the most common method is direct/proactive monitoring executed by the oversight authority as well as monitoring consumer complaints related to financial advertising.
6. Enforcement tools and sanctioning methods used by different jurisdictions vary. The most common enforcement tools used by surveyed jurisdictions are warning letters and infringement notices. The most common sanctioning methods include required modifications to advertisements and monetary penalties.
7. Most jurisdictions do not pre-authorize advertising campaigns of credit institutions (ex-post model), however, some jurisdictions operate with a combination of ex-post and ex-ante models.
8. Whistleblowing is considered part of financial advertising oversight by a number of jurisdictions. These jurisdictions may have a dedicated channel, such as an online form, where anyone can report possibly non-compliant situations.
9. A variety of oversight challenges were identified by supervisors, including misleading financial campaigns, a lack of monitoring capacity to address advertisement volume, the availability of novel advertising methods or channels, and aggressive tactics.
10. For most jurisdictions, the digitalization of financial advertising was noted to exacerbate or intensify existing oversight challenges. To keep pace with technological changes, some noted greater emphasis is needed on information technology management and expertise.

11. Almost half of the jurisdictions have developed, or are in the process of developing, innovative tools for financial advertising oversight falling under supervisory technology (SupTech). Some jurisdictions also reported behavioural economics research and its potential application for financial advertising.

6. Key takeaways

The next steps for consideration by FinCoNet Members and other interested stakeholders arising from the analysis and conclusions in this report are as follows.

1. Supervisory authorities should continue developing effective supervision of financial advertisements to enforce established rules and sanction in cases of non-compliance. Authorities should also develop and utilize new supervisory tools as part of their oversight of financial advertising and complement traditional tools such as complaints monitoring.
2. In order to monitor financial advertisements and to develop a solid understanding of threats and advantages of digitalization to consumers and institutions, authorities should continuously conduct research and develop new approaches, to keep pace with evolving market practices.
3. The digitalization of financial advertisements in different jurisdictions share many similarities (such as personalization of financial advertisements, new distribution channels, one-click agreements, etc.). This makes learning from international best practices and cross-border exchange of experiences especially important.
4. Going forward, technologies falling under supervisory technology (SupTech) will become increasingly important due to the large volume of data that needs to be processed. Jurisdictions should consider how they monitor and supervise financial advertisements in this context.
5. The application of behavioural economics research requires further investigation to understand its potential within the supervision of financial advertisements. Evidence suggests that consumer mistakes are common and even well-designed disclosure of information would not ensure consumers fully understand the product they are purchasing. Competent authorities should continue to research consumer behaviour while developing frameworks that compel financial institutions to release clear and transparent financial advertising campaigns.

7. References

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8. Appendices

Appendix A: List of responding jurisdictions

Jurisdiction	Organisation
Australia	Australian Securities and Investments Commission (ASIC)
Brazil	Central Bank of Brazil
Canada	Financial Consumer Agency of Canada (FCAC)
China	People's Bank of China
France	L'Autorité de contrôle prudentiel et de résolution (ACPR)
Germany	Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin)
Indonesia	Indonesia Financial Services Authority (OJK)
Ireland	Central Bank of Ireland
Italy	Banca d'Italia
Japan	Financial Services Authority (FSA)
Luxembourg	Commission de Surveillance du Secteur Financier (CSSF)
Mauritius	Bank of Mauritius
Netherlands	Dutch Authority for the Financial Markets (AFM)
Norway	Finanstilsynet - The Financial Supervisory Authority of Norway
Peru	Superintendency of banking, insurance and Private Pension Funds Administrator
Portugal	Banco de Portugal
Russia	Bank of Russia, Federal Antimonopoly Service of the Russian Federation (FAS of Russia)
South Africa	Financial Sector Conduct Authority (FSCA)
Spain	Banco de España
United Kingdom	Financial Conduct Authority (FCA)

Appendix B: Questionnaire

FinCoNet Survey on financial advertising

Introduction/background

This Survey on “Financial Advertising” (the Survey) is an initiative of the International Financial Consumer Protection Organisation (FinCoNet). FinCoNet is an international organisation of supervisory authorities responsible for financial consumer protection. FinCoNet seeks to enhance the protection of consumers and strengthen consumer confidence by promoting robust and effective supervisory standards and practices and by the sharing of best practices among supervisors. It also seeks to promote fair and transparent market practices and clear disclosure to consumers of financial services. FinCoNet’s focus is on banking and credit consumer issues.

Financial advertising is an important financial consumer protection issue. The potential harm to consumers that misleading, unclear, or false information in financial advertisements may cause is significant. During the 2017 FinCoNet Annual General Meeting, held in Tokyo, FinCoNet members established Standing Committee 5 (SC5) to work on Financial Advertising.

Purpose of the survey

This survey is designed to gather information and data from members to better understand existing oversight frameworks and different regulatory and supervisory approaches relating to financial advertising. This Survey also seeks to gather information on effective approaches, tools and mechanisms used by supervisors for the oversight of financial advertising. It will also explore financial advertising oversight in the context of challenges jurisdictions are currently facing, trends, emerging issues and innovations, including insights from behavioural economics, and, wherever possible through member case studies and examples.

This survey is being circulated to members of FinCoNet and a comprehensive analysis of the information and data gathered through the Survey will be published in a report by FinCoNet, drafted by SC5.

Scope of the survey

This research will focus on financial advertising specific to credit and banking products and will cover all advertising channels, with a particular focus on financial advertising through digital channels. The survey contains five sections, including:

Section A: Legal and regulatory framework

Section B: Oversight authority/authorities

Section C: Supervisory approaches and tools including compliance and enforcement

Section D: Challenges in financial advertising oversight

Section E: Innovative oversight tools

Please note that certain questions may be more relevant to other agencies or authorities in your jurisdiction. Please see instructions for responding to this survey below for more information.

Instructions for Responding to this Survey

- Please answer each question by reference to your own jurisdiction.
- If your answer to one of the questions is the same as an answer you have already provided earlier in the survey, please respond with “answer as above in Question #”
- Where questions are more applicable to another agency/authority in your jurisdiction, we would appreciate if respondents could coordinate with the relevant agency/authority to acquire a suitable response and/or provide a link to publicly available information in respect of that other agency’s/authority’s work, where possible.
- Please provide examples, references, links to sources and statistical data wherever possible.
- You can save the questionnaire and return to it. You can also share the link to a partially completed questionnaire in order that multiple people can provide responses.
- When you have completed the questionnaire, please click Finish.
- Should you require any further information or guidance in order to complete the Survey, please contact the FinCoNet Secretariat (sally.day-hanotiaux@oecd.org, peter.gillich@oecd.org).

Section A. Legal and regulatory framework in your jurisdiction

1. Does your jurisdiction have legislation, rules or guidance that is applicable to financial advertising?

- Yes (if “Yes”, please proceed with the following questions)
- No (if “No”, please proceed to question 4)

Is the legislation, rules or guidance on financial advertising applicable to foreign providers of banking products in your jurisdiction?

- Yes
- No
- There is specific legislation, rules or guidance that is applicable to foreign providers of banking products.

Please explain

2. Is the legislation, rules or guidance specific to banking products?

- Yes
- No, the legislation, rules and guidance is applicable broadly across sectors including financial services.

3. Is the legislation, rules or guidance specific to particular banking products? (e.g. credit cards, payday loans etc.)?

Consumer credit products:

- Yes
- No

If “Yes”, please explain and indicate which is mandatory and which is non-binding.

Payment products:

- Yes
- No

If “Yes”, please explain and indicate which is mandatory and which is non-binding.

Banking deposit products:

- Yes
- No

If “Yes”, please explain and indicate which is mandatory and which is non-binding.

4. Is legislation, rules or guidance relating to financial advertising under consideration in your jurisdiction?

- Yes
- No

If “Yes” to question 4, please briefly describe the legislation, rules or guidance that is under consideration

5. From the options below, please identify the applicable regulatory approach to financial advertising in your jurisdiction

- Principles based

- Rules based
- Mix of principles and rules based
- Other

Please briefly explain

6. What regulatory instruments does/do the competent authority/authorities in your jurisdiction currently have in force relating to financial advertising? (check all that apply)

- Regulatory letters/notices

Please provide additional detail about how frequently the instrument is used and its effectiveness:

- Guidelines

Please provide additional detail about how frequently the instrument is used and its effectiveness:

- Best practices

Please provide additional detail about how frequently the instrument is used and its effectiveness:

- Self-regulation

Please provide additional detail about how frequently the instrument is used and its effectiveness:

- Other (please explain)

Please explain

7. Is legislation, rules or guidance relating to financial advertising in your jurisdiction considered technologically neutral and apply to all advertising channels?

- Yes
- No

If “No” to question 7, please indicate whether there is specific legislation, rules or guidance that apply to specific advertising channels (e.g. broadcast advertising, digital advertising, print-based advertising, outdoor advertising). Please provide as much detail as possible.

8. In your jurisdiction, is there legislation, rules or guidance relating specifically to financial advertising through digital channels?

Yes

No

No, but relevant existing legislation, rules or guidance apply to financial advertising through digital channels

If “Yes” to question 8, please briefly explain:

9. Is there legislation, rules or guidance relating specifically to financial advertising through digital channels under consideration?

Yes

No

If “Yes” to question 9, please briefly explain:

Section B. Oversight authority/authorities

10. Please use the options below to indicate which body has oversight authority over legislation, rules or guidance relating to financial advertising in your jurisdiction.

Financial services market conduct authority

Please provide the name of the organization and briefly describe their mandate as it relates to financial advertising

Financial services self-regulatory organization

Please provide the name of the organization and briefly describe their mandate as it relates to financial advertising

Dedicated advertising standards body

Please provide the name of the organization and briefly describe their mandate as it relates to financial advertising

Authority shared between different bodies

Please provide the names of the organisations and please briefly describe the role and mandate of each entity and the nature of the cooperative relationship, e.g. formal/informal, memorandum of understanding, delegation of authority etc.

Other (please explain)

Please explain

Section C. Supervisory approaches and tools including compliance and enforcement

11. Does your jurisdiction monitor compliance with applicable legislation, rules or guidance relating to financial advertising?

Yes

No (if “No”, proceed to question 14)

12. If “Yes” to question 11, please use the options below to identify the manner in which the oversight authority/authorities in your jurisdiction monitor(s) and track(s) compliance with applicable legislation, rules or guidance relating to financial advertising? (select all that apply)

Direct/proactive monitoring by oversight authority

Please describe in as much detail as possible, how this is done in practice

Monitoring consumer complaints relating to financial advertising (oversight authority)

Please describe in as much detail as possible, how this is done in practice

Self-reported non-compliance by financial entities

Please describe in as much detail as possible, how this is done in practice

Referrals from market participants

Please describe in as much detail as possible, how this is done in practice

Third-party monitoring on behalf of oversight authority

Please describe in as much detail as possible, how this is done in practice

- Self-regulatory body

Please describe in as much detail as possible, how this is done in practice

- Other (please explain)

Please explain

13. Please describe the most common consumer complaints relating to financial advertising (specific to banking products) in your jurisdiction

14. Please use the options below to indicate what enforcement/sanctioning tools are available in your jurisdiction in the event of a violation of a law, rule or guideline relating to financial advertising. (Select all that apply).

- Infringement notices

Please provide additional detail, specifically how frequently this tool is used and its effectiveness

- Public warning notes

Please provide additional detail, specifically how frequently this tool is used and its effectiveness

- Warning letters

Please provide additional detail, specifically how frequently this tool is used and its effectiveness

- Educational letters

Please provide additional detail, specifically how frequently this tool is used and its effectiveness

- Other (please explain)

Please explain

15. Please use the options below to indicate what enforcement/sanctioning measures your jurisdiction can impose in the oversight of financial advertising. (Select all that apply).

- Prohibit the activity

Please provide additional detail, specifically how frequently this measure is used and its effectiveness

- Licence revocation

Please provide additional detail, specifically how frequently this measure is used and its effectiveness

- Monetary penalty

Please provide additional detail, specifically how frequently this measure is used and its effectiveness

- Require modifications to the advertisement in violation to bring it into compliance

Please provide additional detail, specifically how frequently this measure is used and its effectiveness

- Suspension of the advertisement campaign

Please provide additional detail, specifically how frequently this measure is used and its effectiveness

- Other (please explain)

Please explain

16. In your jurisdiction, do legislation, rules or guidance relating to financial advertising follow an Ex-ante or an Ex-post control scheme?

- Ex-ante

- Ex-post

17. Does/do the relevant authority/authorities have the power to require that providers test financial advertisements with consumers (e.g. through focus groups)?

- Yes

- No

If “Yes”, please briefly explain

18. In your jurisdiction, is whistleblowing used in the oversight of financial advertising?

- Yes

- No

Please explain

Section D. Challenges in financial advertising oversight

19. Please use the options below to select the most relevant challenges your jurisdiction is facing relating to the oversight of financial advertising. (Select and describe all that apply).

- Volume of advertisements and lack of monitoring capacity

Please use this space to provide as much detail as possible (specific examples from your jurisdiction are welcome and encouraged)

- Aggressive marketing tactics

Please use this space to provide as much detail as possible (if applicable please provide a case study from your jurisdiction).

- Misleading financial advertisements

Please use this space to provide as much detail as possible (if applicable please provide a case study from your jurisdiction).

- Unclear mandate for financial advertising oversight

Please use this space to provide as much detail as possible (specific examples from your jurisdiction are welcome and encouraged)

- Lack of enforcement powers

Please use this space to provide as much detail as possible (specific examples from your jurisdiction are welcome and encouraged)

- Lack of rules specific to financial advertisements

Please use this space to provide as much detail as possible (specific examples from your jurisdiction are welcome and encouraged)

- Novel or changing advertising methods and channels

Please use this space to provide as much detail as possible (specific examples from your jurisdiction are welcome and encouraged)

- Other (please explain)

Please use this space to provide as much detail as possible (specific examples from your jurisdiction are welcome and encouraged)

20. In your jurisdiction, does financial advertising through digital channels exacerbate or intensify any of the challenges you identified in Question 19?

Yes

No

Please explain:

21. In your jurisdiction, does financial advertising through digital channels create any unique challenges related to the oversight of financial advertising that were not captured in Question 19?

Yes

No

If “Yes”, please explain:

Section E. Innovative oversight tools

22. Please describe any innovative approaches to financial advertising oversight that have emerged in your jurisdiction (if applicable, please provide a case study for your jurisdiction (including the use of SupTech solutions, if any))

23. Has your jurisdiction undertaken any research into the potential impact behavioural insights may have on oversight frameworks?

Yes

No

If “Yes”, please briefly describe the research conducted and highlight any key findings below.

24. Does/do the relevant oversight authority/authorities in your jurisdiction integrate or consider behavioural insights into their oversight of financial advertising?

Yes

No

If “Yes”, please describe how the relevant oversight authority is integrating behavioural insights into their oversight of financial advertising.

25. If there is any other relevant information you wish to share from your jurisdiction please provide details in the space below.

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Thank you for completing the survey.



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