

**Key Observations and Sound Practices on Consumer Protection
in respect of Digital Marketing Activities**

(A) Applicability of consumer protection measures

When using digital channels for conducting marketing activities, authorized institutions (“AIs”) are reminded to follow the principles as set out in the Treat Customers Fairly (“TCF”) Charter in respect of providing customers with accurate and understandable promotional materials and information, and to avoid misleading representation or marketing practices. AIs are also reminded to observe the applicable principles and consumer protection measures as set out in the Code of Banking Practice (“CoBP”).

In particular, AIs are reminded to ensure that all advertising and promotional materials are fair and reasonable, do not contain misleading information, and comply with all relevant legislations, codes, rules and regulatory requirements. Where AIs’ marketing activities provide consumers with promotional benefits that are subject to conditions (for example, eligibility criteria), such conditions should be clearly displayed in the advertising materials wherever practicable with reference to the means of obtaining further details. AIs engaging or collaborating with third parties¹ to conduct marketing activities are responsible for ensuring that all marketing activities (including advertising and promotional materials published or shared by these third parties during the term of collaboration or engagement) are fair, reasonable and not misleading as well as comply with relevant laws and regulations.

¹ For the purpose of this circular, “third parties” include but not limited to (i) personal financial service platforms (which help identify and compare products offered by different financial institutions); (ii) influencers / key opinion leaders (“KOLs”); and (iii) online media.

(B) Review of marketing materials

AIs are reminded to have effective controls to ensure that all marketing materials are fair and reasonable and do not contain misleading information. For promotional benefits that are subject to conditions, such conditions should be clearly displayed. Clear and prominent disclosure is important, as consumers can be easily influenced by prominent and conspicuous part(s) of marketing materials (such as the headline and framing) in forming a perception of the marketing offers. Consumers may not pay attention to obscure and inconspicuous part(s) (such as small prints) containing conditions that may affect their eligibility for the marketing offers, and they may feel being cheated when they found out they were not actually eligible for the offers afterwards.

Observations

Some AIs have not established effective mechanisms to ensure the preparation, review and approval of the marketing materials they use are fair and reasonable and do not contain misleading information. This may compromise the extent of consumer protection that should be featured in the marketing materials. By way of some non-exhaustive examples:

- comments on marketing materials from compliance function were not incorporated into all marketing materials published at different channels, thus resulting in inconsistent information provided at different channels, thereby causing confusion to customers;
- headline² in marketing materials regarding rebates to customers was exaggerated as it was subsequently found out that the basis of deriving the rebate percentage shown in the headline was not fair nor transparent;
- disclosure on the major conditions for eligibility of preferential interest rate (e.g. minimum loan amount, specific loan tenor, required account tier and whether it was subject to other relevant factors such as customer credit profile) in loan application was lacking.

² An example was that the percentage of interest rebate stated in the headline in a set of marketing materials of a personal loan product was overstated. The percentage of interest rebate in the headline reflected a rebate of the interest of the first 6 months to customers who applied for a loan with required tenor of 48 months or above, but the percentage of interest rebate stated in the headline was overstated by using one year instead of the required tenor (48 months or above) for calculation without clearly stating the basis in deriving the rebate percentage shown in the headline.

Sound practice 1 – Effective review mechanism of marketing materials

Some AIs have developed detailed internal guidelines and checklists to guide the preparation, review and approval of marketing materials for different types of products and services, with check items addressing various aspects of disclosure and consumer protection issues. Examples include:

- (i) confirming that no exaggerated statement is used;
- (ii) avoiding use of absolute phrase (e.g. the best, the lowest) without substantiation by objective independent sources;
- (iii) ascertaining that conditions of promotion benefits are clearly stated;
- (iv) confirming that applicable risk disclosure and reminder is included;
- (v) ascertaining that Terms & Conditions can be easily located;
- (vi) testing reasonable layout and font size such that the marketing materials are easily readable in different types of electronic devices;
- (vii) confirming proper use of terminology, accuracy and consistency of information disclosed (e.g. translation, spelling and calculations).

(C) Selection of third parties

AIs could face damage on reputation if their engaged third parties are involved in unfair or improper business practices. When engaging or collaborating with third parties to promote banking products or services, AIs are reminded to identify and select third parties in a prudent manner, in order to safeguard consumer interests and the AI's own reputation.

Observations

Some AIs do not have detailed policies and procedures guiding marketing activities with engagement or collaboration with third parties. When selecting third parties for engagement or collaboration, some AIs only gave consideration to business related parameters (e.g. number of followers, true reach, average engagement rate), but had not taken into account factors that are essential to uphold consumer protection.

Sound practice 2 – Prudent selection of third parties

To safeguard consumer interest and the AIs' reputation, some AIs performed stringent screening and due diligence prior to the engagement and collaboration with third parties, in particular, from the perspective of consumer protection. Examples include:

- (i) performing scanning of negative wording published by the third parties to be engaged that the AI needs to avoid;
- (ii) performing adverse media screening related to the third parties to be engaged;
- (iii) assessing the reputation of the third parties to be engaged;
- (iv) assessing the ability and the track record of the third parties to be engaged in complying with applicable laws and regulations;
- (v) checking for any undergoing litigation or potential litigation of the third parties to be engaged.

(D) Editorial controls over marketing materials published by third parties

In some circumstances, marketing materials published by the third parties engaged by the AIs were developed by the third parties themselves to match their own tone and style. AIs are reminded to have sufficient review and controls over the content published by third parties engaged by the AI and take full responsibility over marketing materials published by the third parties engaged by the AI.

Observations

AIs usually have more stringent controls over marketing materials published on their own platforms (e.g. AIs' own public websites, mobile apps). However, some AIs have not established effective controls over marketing materials prepared and published by the third parties engaged by the AI. It was noted that information published by the third parties in some samples was found inaccurate or inconsistent with the AIs' approved content without being identified. Some non-exhaustive examples of disclosure issues noted from marketing materials prepared and published by the third parties are as follows:

- key disclosure or reminders which should be placed in the marketing materials were missing in the social media posts of third parties engaged by the AI;
- incorrect key information (such as interest rate and conditions of promotion benefits) was found in marketing materials published by the third parties being unidentified by the AI;
- marketing article was split by a third party from the part of the marketing content (with key disclosure) posted in the comment section of the third party's social media post. That might hinder the consumer from accessing the full details of the marketing offer.

Sound practice 3 – Clear guidance to third parties and post-publication check

To ensure marketing materials developed by third parties are up to the AIs' standards, some AIs provided their engaged third parties with written guidelines to direct the development of marketing materials, including the key information and required disclosure to customers. The marketing materials prepared would then be subject to AIs' review and approval before publishing.

After publication of marketing materials by third parties, some AIs would perform post-publication check in order to ensure that the published content is consistent with the one approved by them.

(E) Informed decision making by customers

When designing the customer journey starting from different channels, AIs are reminded to ensure that the customers are provided with adequate and accurate information to facilitate the customers to make an informed decision prior to entering into any contract or agreement.

Observations

In general, due to the limitation of certain marketing channels or means (e.g. limited space or words of online banners or dark posts³) and thus limited marketing information to be displayed in those channels, customers are usually provided with a hyperlink which can bring them to the AI's promotion or product landing page where further details of the marketing campaigns and the promoted product are made available. However, we noted that some of the AIs' digital marketing channels (such as online advertising banners, dark posts on social media and posts / articles / blogs published by third parties engaged), which contained only limited information about the promotion and product, would bring the customer directly to the AI's mobile app for immediate application for products or services. Such practice may prevent customers from getting access to and understanding necessary information before submitting an application.

Sound practice 4 – Landing page of marketing materials

In respect of marketing materials that may reach customers via non-bank platforms (e.g. social media, online banners, blog or article in third party platforms), some AIs had the design that hyperlink(s) provided to customers would bring the customers to the appropriate location (such as the promotion or product page of the AI's website) with adequate information and disclosure to facilitate customers to make an informed decision.

³ A dark post is essentially a sponsored post. It may not appear on the advertiser's timeline or feed. Instead, it is an advertisement that only shows up on the timeline of the reader that the post is targeting at.

(F) Influencer marketing

Consumers' decision could be influenced by influencers. When promoting products and services through influencer marketing, AIs are reminded that the overall responsibility for all aspects of marketing activities of the influencer engaged by the AI (including the means of influencer marketing or the marketing content) rests with the AIs. AIs are also reminded to ensure that the influencers engaged by them would not misrepresent themselves as independent influencer by hiding their true commercial purpose (as being engaged by the AIs for carrying out marketing activities).

Observations

Some articles published by influencers engaged by AIs appeared to be pure and independent editorial content, and the commercial purpose of marketing was not clear as there was no explicit disclosure of their commercial relationship with the AIs. Such lack of transparency may mislead the consumers by giving them the impression that the influencers' recommendations were purely based on their personal experiences or preferences, rather than being driven by the commercial relationship with and the financial incentives of the AIs.

Sound practice 5 – Disclosure in influencer marketing

Some non-exhaustive examples of disclosing the commercial intent by influencers are to use simple and clear language such as label or hashtags at the beginning of marketing materials #sponsored or #paid partnership. Such disclosure appears instantly and hence the commercial purpose is transparent and customers could easily identify a marketing communication as opposed to pure and independent editorial content.

Some AIs established specific procedures in upholding consumer protection in respect of influencer marketing which included but not limited to requiring the influencers engaged by the AIs to reveal their relationship with the AI.

A few AIs also required that, if an influencer mentioned that he / she has applied for the products / services and enjoyed such benefits, the AI should confirm with the influencer whether he / she has already used that product / service to avoid any misleading statement.