TOPIC:

When Persuasion Misleads: False Advertising, Conduct Risk and Financial Crime Exposure in Southern Africa — Real-World Regulatory Case Studies

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Opening

“Before I begin, I would like to ask a quick question to fellow compliance professionals in the room…

Why do compliance officers read advertisements more carefully than consumers?

Because we know the real story is usually hidden somewhere between the headline… and the disclaimer in size 6 font.”

“And today’s discussion is really about what happens when that gap between headline and reality becomes too wide.”

“Ladies and gentlemen, the most dangerous fraud in financial markets rarely begins with theft.

It begins with persuasion.

Not crude deception. Not forged signatures. Not obvious fraud.

It begins with language.

With tone.

With framing.

With selective emphasis.

With optimism presented as inevitability.

In modern financial markets, communication does not merely describe reality — it shapes it. And when communication distorts perception, even in a subtle way, conduct risk begins long before regulators arrive.

Southern Africa has learnt this lesson repeatedly — sometimes painfully, sometimes catastrophically.

And yet, we still underestimate the power of narrative risk.

False advertising is often treated as a: Marketing compliance issue. A misworded brochure. An exaggerated claim. A missing disclaimer.

But that is a dangerously narrow view ***ladies and gentlemen.***

When communication misleads in financial services, **three consequences converge: consumer prejudice, market distortion, and financial crime exposure.**

And that convergence is where today’s regulatory landscape is moving with unmistakable clarity.

Good afternoon distinguished colleagues, regulators, compliance leaders, and guardians of market integrity

This session unpacks the real-world impact of misleading financial communication on clients, on institutions, and on market trust.

Let us first and foremost consider the evolution of persuasion in the digital era through the case of Banxso (Pty) Ltd.

The regulatory scrutiny surrounding **Banxso** did not arise in a vacuum. It was anchored in the foundational obligation contained in **section 3(1)(a) of the FAIS General Code of Conduct** that financial services must be rendered honestly, fairly, with due skill, care and diligence, and in the interests of clients and the integrity of the financial services industry.

That phrase "in the interests of clients and the integrity of the financial services industry" is not ornamental ***Ladies and Gentlemen***. It is the **constitutional backbone of conduct** supervision.

Section 6(1) of the General Code further prohibits any statement that is false, misleading or likely to mislead. But what becomes critical in the digital persuasion context is that this prohibition extends beyond factual falsity. It captures statements that create misleading impressions.

And impression is precisely where digital marketing now operates.

But the implications go deeper ***Distinguished delegates***.

If aggressive digital marketing persuades a client into a transaction**, Sections 8 and 9 of the General Code are immediately engaged**. **Section 8 requires that advice be appropriate**, based on a proper analysis of the client's financial situation, needs and objectives. **Section 9 requires that a Record of Advice** be maintained, setting out the basis on which the recommendation was made.

Here lies the structural risk ***Ladies and Gentlemen***:
If persuasion precedes suitability, compliance becomes retrospective justification.

If marketing creates demand before needs analysis occurs, the suitability obligation becomes vulnerable. The Record of Advice then risks becoming a defensive document rather than a reflective one.

And that is not what the statute envisioned ***Compliance Leaders.***

The FAIS Act deepens this accountability in **Section 13, which makes the FSP responsible** for ensuring that its representatives comply with the Act and the Code.

This means digital marketing, affiliate networks, influencer partnerships, automated funnels, none of these dilute accountabilities.

Responsibility cannot be outsourced.

The representative may speak.
The influencer may post.
The algorithm may target.

But the FSP remains legally accountable ***Learned Colleagues***.

Now let us widen the lens ***Guardians of Market Conduct.***

Under **Section 7 of the Financial Sector Regulation Act**, the FSCA's mandate includes promoting fair treatment of financial customers and protecting the integrity of financial markets.

Section 58 of the same Act empowers the Authority to issue conduct standards precisely to give effect to those objectives.

This is not reactive supervision. It is purposive supervision.

The regulator is not merely enforcing technical breaches.
It is enforcing market integrity through conduct.

And if we move further into the architecture, **FICA introduces another dimension entirely**.

Under Section 21 of FICA, accountable institutions must conduct proper client due diligence. If marketing representations distort the true nature of a product or its risk profile, or if misrepresentation is used to attract funds under false pretences, this can create exposure not only **under conduct law but under anti-money laundering frameworks.**

Misrepresentation may obscure source-of-funds risk.
It may distort transactional purpose.
It may facilitate illicit flows under the guise of legitimacy.

In other words, misleading communication is not merely a consumer protection issue. It is potentially a financial crime exposure gateway.

And now, enter COFI.

The draft **COFI Bill represents** the culmination of this trajectory. It shifts the industry decisively toward outcomes-based regulation. Instead of asking whether a rule was technically complied with, it asks whether fair customer outcomes were achieved.

Under COFI's philosophy, the question will not be:

"Did you include the disclaimer?"

It will be:

"What was the customer's actual experience?"

Did the communication enable informed decision-making?
Did governance structures detect misleading tone?
Did oversight prevent imbalance between persuasion and suitability?

COFI collapses the distance between culture and compliance.

It effectively says: if your systems, controls, marketing strategies, and oversight structures produce unfair outcomes, then the institution has failed, regardless of formal adherence to checklists.

And this is where the Banxso lesson becomes far more significant than one enforcement case.

Because when marketing becomes **algorithmic**, **behavioural and psychologically engineered** — and when that marketing intersects with statutory duties of **suitability (Section 8), record-keeping (Section 9), institutional accountability (Section 13), supervisory mandates (FSRA Sections 7 and 58)**, **anti-money laundering exposure (FICA), and outcome-based fairness under COFI** communication ceases to be a marketing function.

It becomes a governance function.

It becomes a board-level risk.

And when marketing evolves faster than supervisory adaptation within institutions themselves, communication transforms into systemic risk.

Not because it is illegal in its design.
But because it is optimised for conversion rather than comprehension.

Ladies and gentlemen, persuasion is no longer a peripheral compliance issue.

It is the front line of regulatory evolution.

And persuasion is not the only form of narrative distortion.

There is another form more subtle, more intellectual, and arguably more dangerous

Let us now turn to the collapse of Steinhoff International — one of the most devastating corporate failures in Southern Africa's financial history.

While accounting irregularities and governance failures were central, there is a deeper layer that deserves our attention ***Ladies and Gentlemen.***

Steinhoff did not present itself as fraudulent, ***Distinguished Delegates***. It presented itself as complex.

Financial statements were issued in terms of the **Companies Act 71 of 2008**, which requires under **section 29** that annual financial statements must not be false or misleading in any material respect and must fairly present the state of affairs of the company.

Audit processes were followed in accordance with statutory requirements. Disclosures were made under **the JSE Listings Requirements**, which demand full, accurate and timeous disclosure of information material to investors.

On the surface, the language of compliance was present.

Yet the overall narrative the impression of stability, growth, global expansion and control masked structural vulnerabilities that were not easily decipherable by ordinary investors.

This is where the **Financial Markets Act 19 of 2012** becomes intellectually relevant ***Learned Colleagues***. **Section 81 prohibits false, misleading or deceptive statements in respect of securities listed on a regulated market.**

But the complexity exposed by Steinhoff forces a deeper question ***Compliance Leaders***:

Can a statement avoid literal falsity yet still distort investor understanding through framing, sequencing, and structural opacity?

The Financial Sector Regulation Act, under section 7, mandates the FSCA to protect financial customers and promote the integrity and stability of financial markets. Integrity is not merely the absence of falsehood. It is the presence of clarity.

And this is the uncomfortable lesson ***Compliance Leaders and Regulators***. Communication can comply technically while misleading interpretively.

The Companies Act speaks of financial statements not being "misleading in any material respect." Yet materiality itself can be obscured by complexity.

When transactions are layered across jurisdictions, when related-party arrangements are technically disclosed but practically indecipherable, the statutory requirement may be satisfied formally while transparency erodes substantively. Complexity can become camouflage.

King IV on Corporate Governance emphasises ethical leadership, transparency and effective control as foundational governance outcomes. But governance is not achieved through disclosure volume. It is achieved through intelligibility.

When financial reporting becomes so layered that only forensic specialists can decode true risk exposure, transparency begins to erode — even if disclosure exists.

And that is the intellectual fracture Steinhoff revealed ***Distinguished Delegates***.

In such cases, the distortion does not lie in what is said. It lies in how it is framed, sequenced, emphasised — and, crucially, contextualised.

The Companies Act demands fair presentation.
The Financial Markets Act prohibits misleading conduct.
The JSE requires full disclosure.
King IV demands transparency and ethical leadership.
The FSRA mandates market integrity.

Yet Steinhoff exposed the gap between compliance form and communicative substance.

It forced us to confront a sobering truth:

Disclosure is not the same as understanding.

And if market participants including advisers governed by **Section 8 of the FAIS General Code** (suitability) rely on financial statements that are technically compliant but interpretively opaque, the risk cascades across the ecosystem.

Because when narrative complexity obscures economic reality, misallocation of capital follows.

Ladies and Gentlemen, the lesson of Steinhoff is not merely about accounting failure.

It is about interpretive governance.

It is about whether our regulatory architecture is robust enough to address communication that satisfies the letter of the law while frustrating its spirit.

And that is a far more sophisticated challenge than detecting fraud

Let us now shift our attention to what I call the Deepfake Frontier, Ladies and Gentlemen — when technology manufactures trust.

If misleading tone is dangerous, technological deception is existential.

Afrimarkets Capital had its FSP licence revoked in 2025 following investigations into deceptive marketing practices, including the use of deepfake advertisements. That action did not occur in isolation. It was grounded in the statutory architecture that governs honesty, authenticity, and market integrity in South Africa's financial system.

Section 2 of the FAIS Act requires financial services providers to maintain honesty and integrity.

Section 6(1) of the FAIS General Code of Conduct prohibits any statement that is false, misleading or likely to mislead.

Section 13 makes the FSP accountable for the conduct of its representatives and in the digital era, "representative" cannot be interpreted narrowly when marketing functions are outsourced, automated, or technologically enhanced.

Let us pause and reflect on that ***Guardians of Market Conduct.***

We are no longer dealing only with exaggerated claims.

We are dealing with synthetic credibility.

Artificially generated endorsements.
Manipulated likenesses.
Fabricated authority.

In this context, the **Financial Sector Regulation Act** becomes profoundly relevant.

Section 7 mandates the FSCA to protect financial customers and promote the integrity of financial markets. **Section 106 empowers** the Authority to impose administrative penalties where conduct undermines these objectives.

When a deepfake advertisement fabricates authority, it does more than mislead. It corrodes market integrity.

The Financial Markets Act 19 of 2012, particularly its prohibitions against false, misleading or deceptive statements in connection with financial products, was drafted in an era before synthetic media became commercially accessible.

Yet its principles now confront a radically different technological landscape , one where falsity can be visually convincing, emotionally persuasive, and digitally scalable.

The regulatory challenge is therefore no longer confined to reviewing scripts for accuracy.

It is confronting digital identity manipulation.

The Electronic Communications and Transactions Act recognise the legal significance of authenticity and integrity in electronic communications. But deepfakes undermine both. They create a representation of consent, endorsement or authority where none exists.

And where fabricated identity is used to induce financial transactions, another statute quietly enters the room — **FICA.**

Under **Section 21 of FICA**, accountable institutions must conduct customer due diligence and verify identity.

But what happens when identity itself is technologically manipulated?

What happens when marketing representations distort who is speaking, endorsing or authorising?

Misrepresentation at that level is not merely a conduct breach.
It becomes potential financial crime exposure.

And then **there is POPIA.**

The unauthorised manipulation of a person's likeness, image, or biometric identifiers raises profound data protection concerns. Trust is not merely a branding issue; it is a data integrity issue. When likeness is artificially constructed to create endorsement, personal information is weaponised.

Compliance frameworks built for document review are insufficient in an age where trust can be algorithmically manufactured.

The deeper issue is not that deepfakes exist.

It is that persuasion has detached from authenticity.

Financial regulation has always assumed a link between speaker and statement, between identity and accountability.

Deepfake technology fractures that link.

And when authenticity erodes, the very premise of conduct supervision that a regulated person can be identified, supervised, and held accountable becomes technologically strained.

This is why the **Afrimarkets licence revocation** is not merely an enforcement outcome.

It is a warning.

It tells us that technological innovation without governance evolution will outpace statutory interpretation.

It tells us that compliance must now develop technological literacy alongside legal literacy.

Because in a world where authority can be synthetically generated, the regulator's mandate under **Section 7 of the FSRA** to protect customers and preserve market integrity requires more than traditional oversight.

It requires technological vigilance.

Ladies and Gentlemen, the frontier has shifted.

Misleading communication is no longer just about what is said.

It is about who appears to be saying it.

And if we fail to adapt our governance frameworks accordingly, authenticity the foundation upon which financial trust rests become programmable.

And once trust becomes programmable,

It becomes hackable.

Let us now turn to what I describe as Misrepresentation at Scale — the criminalisation of narrative.

In 2025, **N-e-FG Fund Management** became a landmark case in enforcement severity. Key individuals were fined R68 million collectively and debarred for up to 30 years.

That outcome did not arise merely because of operational failure.

It arose because statutory obligations embedded in our regulatory framework were systematically violated.

Section 2 of the FAIS Act requires that financial services providers meet fit and proper requirements, including honesty and integrity.

Section 3(1)(a) of the General Code obliges providers to act honestly, fairly, with due skill, care and diligence, and in the interests of clients and the integrity of the financial services industry.

But more pointedly, **Section 8 of the General Code** requires that advice be appropriate and based on a proper needs analysis.

Section 9 requires that a Record of Advice reflect the basis of the recommendation.

And **Section 13 of the FAIS Act** makes the FSP accountable for ensuring that its representatives comply with these obligations.

When funds are deployed without mandate, when client money is invested outside agreed parameters, when representations do not reflect reality, these are not merely operational lapses. They are statutory breaches.

And when misconduct reaches the level that necessitates debarment, **Section 14 of the FAIS Act** becomes operative removing individuals from the industry to protect the public and preserve market integrity.

Their misconduct was not merely operational.

It was communicative.

Investors were misled.
Funds were deployed without mandate.
Representations did not reflect reality.

And when misrepresentation induces financial flows, another statutory layer activates.

Under the Financial Markets Act, false, misleading or deceptive statements in relation to financial products constitute prohibited conduct.

Under **Section 21 of FICA**, accountable institutions must conduct proper client due diligence, and **under Section 29**, suspicious or unusual transactions must be reported. Where misappropriation is concealed through narrative distortion, **anti-money laundering exposure** becomes intertwined with conduct breaches.

If funds are channelled through structures that do not reflect the client's mandate, and narrative is used to justify those movements, the conduct potentially intersects with broader financial crime legislation including the **Prevention of Organised Crime Act** where unlawful proceeds are involved.

This is why the R68 million fine was not simply punitive. It was doctrinal.

It was imposed under **the FSRA's enforcement powers** — **particularly Section 106** — which empowers the regulator to levy administrative penalties where conduct undermines customer protection and market integrity.

And this case forces us to confront an uncomfortable truth, ***Compliance Leaders:***

Misleading communication is often the precondition to misappropriation.

Before funds are misallocated, trust must be manufactured.
Before mandates are exceeded, confidence must be cultivated.
Before capital is redirected, narrative must be constructed.

You cannot misallocate funds at scale without first persuading clients at scale.

That is why narrative abuse is not a peripheral compliance issue. It is the gateway to financial crime.

The debarments of up to 30 years signal something profound. The regulator is no longer viewing misleading communication as a marketing irregularity.

It is viewing it as a systemic threat.

Because when representation detaches from reality, fiduciary duty collapses. When fiduciary duty collapses, capital protection fails. And when capital protection fails, market trust erodes.

The R68 million fine was not just punishment.

It was a declaration. A declaration that in the modern regulatory era, narrative distortion is not merely unethical.

It is actionable.

It is sanctionable.

And when sufficiently severe It is criminal.

Let us now confront Identity Fraud as Conduct Risk — the illusion of legitimacy.

SPO Trading Ltd was targeted for falsely posing as a legitimate financial institution, using fabricated FSP credentials to solicit investments from unsuspecting members of the public.

At first glance, this appears to be straightforward fraud.

But in regulatory terms, it is something more precise and more revealing.

It is impersonation as persuasion.

Section 7 of the FAIS Act makes it clear that no person may act as a financial services provider without authorisation. **Licensing is not administrative formality; it is the legal gateway to public trust**. When an entity falsely claims FSP status, it is not merely misrepresenting itself it is unlawfully appropriating regulatory credibility.

Section 6(1) of the FAIS General Code prohibits any statement that is false, misleading, or likely to mislead. Fabricated FSP numbers, falsified regulatory registration, and impersonated institutional branding fall squarely within that prohibition.

And because **Section 13 of the FAIS Act** makes the authorised FSP accountable for its representatives, legitimate institutions must also remain vigilant against brand cloning and identity misuse that could expose clients and reputations alike.

In parallel, the **FSCA issued repeated public warnings in 2025 against crypto-asset impersonators operating via Facebook and WhatsApp** entities promising “guaranteed returns,” circulating fabricated testimonials, and engineering urgency through digital intimacy.

Under the **Financial Markets Act**, false or misleading statements in connection with financial products constitute prohibited conduct. Under **Section 7 of the Financial Sector Regulation Act**, the FSCA is mandated to protect financial customers and promote the integrity of financial markets.

Impersonation strikes directly at that mandate because it weaponises the appearance of legitimacy.

Notice the pattern here ***Compliance Leaders***.

The language of certainty.
The promise of “guarantee.”
The urgency of limited opportunity.

These tactics are not new. What is new is scale, velocity, and digital proximity. Messaging platforms collapse distance. They simulate personal connection. They create trust environments where regulatory verification rarely occurs before funds are transferred.

And once funds are solicited under false regulatory identity, additional statutory layers activate.

Under **Section 21 of FICA**, accountable institutions must conduct proper customer due diligence. But impersonators deliberately exploit the public's assumption that due diligence has already been done — because they present themselves as regulated.

Where illicit proceeds are generated through such deception, exposure may extend to financial crime legislation, including the **Prevention of Organised Crime Act.**

Moreover, the **Cybercrimes Act** criminalises unlawful and intentional misrepresentation through electronic communications. In the digital era, impersonation is not merely unethical it is prosecutable.

When misleading communication migrates into private messaging platforms, supervision becomes reactive rather than preventative. Regulators rely on public warnings, enforcement sweeps, and post-incident intervention. By the time detection occurs, the persuasive narrative has already done its work.

And once again, it is language that opens the door before funds ever move.

Before there is misappropriation, there is assurance.
Before there is loss, there is "guarantee."
Before there is enforcement, there is fabricated legitimacy.

Identity fraud in the financial sector is therefore not only a criminal offence.

It is conduct risk at its most distilled form.

Because it exploits the single most powerful asset in financial markets Regulatory trust.

And when regulatory trust can be cloned, imitated, or digitally forged, the challenge before us is no longer simply compliance oversight.

It is the preservation of authenticity in a programmable world.

The Optimism Problem: African Bank Then and Now

The **R700,000 administrative penalty imposed on African Bank in April 2025** may appear modest when compared to the R68 million sanctions imposed in the **N-e-FG Fund Management** matter, or the licence revocations seen in **Afrimarkets Capital**. But the size of the fine is not the story ***Compliance Leaders!***

The language is.

The December 2023 #KeFestive campaign framed a personal loan with the slogan:

"It's not a skoloto chomi! Ke investment."

In ordinary commercial language, that might seem playful. Aspirational. Culturally resonant.

In regulatory language, it is explosive ***Distinguished Delegates***

A loan is a liability.
An investment implies asset accumulation.

This was not exaggeration about returns.
It was a categorical reframing of financial reality.

That is why **the FSCA** anchored its finding in **sections 6(1), 6(3)(a), and 6(3)(b) of Conduct Standard 3 of 2020 — the requirement that financial advertisements be clear, fair, and not misleading**.

But here is the deeper point that few have articulated ***My Learned Colleagues***:

This was not merely misdescription.
It was behavioural engineering.

In behavioural finance, framing effects alter decision-making pathways. When debt is framed as opportunity, risk perception decreases. The cognitive weight of repayment obligation is psychologically softened.

The regulator understood this.

The penalty structure itself tells a story. R500,000 payable immediately. R200,000 suspended for two years, conditional on compliance.

This was corrective discipline not punishment alone.

It was a message to the market: Tone is now enforceable.

In Conclusion *Ladies and gentlemen*,

For decades, financial regulation assumed that misconduct began when rules were broken.

But the cases we have examined today tell a different story.

Misconduct often begins **long before the rule is breached.**

It begins when language subtly reshapes perception.

When tone softens risk.

When complexity obscures truth.

When technology manufactures credibility.

And when narrative persuades capital to move where it otherwise would not.

The most dangerous distortions in modern financial markets are no longer the obvious ones.

They are the persuasive ones.

The ones that technically comply, yet psychologically mislead.

The ones that do not fabricate facts, but **manipulate interpretation**.

And this is why communication can no longer be treated as a marketing function.

It is a **governance function.** It is a **conduct risk function.** It is increasingly a **financial crime risk function.**

Because in the architecture of financial markets, **trust is the operating system.**

And communication is the code that writes it.

If that code becomes distorted through exaggeration, complexity, technological manipulation, or fabricated authority then the system itself becomes unstable.

The task before regulators, compliance leaders, and institutions is therefore no longer merely enforcing rules. It is **protecting reality itself.**

Because once narrative becomes detached from truth, Markets stop allocating capital. They start allocating illusion. And when markets begin allocating illusion, Integrity collapses.

I Thank you.