

FINFLUENCERS AND THE LAW: A TIERED FRAMEWORK FOR PROPORTIONATE REGULATION

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The rise of influencers has exposed a regulatory blind spot in financial markets. While licensed advisers remain governed by established statutes, a growing class of unlicensed actors now dispense investment guidance with reach but without responsibility. This article proposes a Refined Tiered Regulatory Framework comprising four levels: Tier 1 preserves the existing position of licensed advisers; Tiers 2A and 2B impose tailored obligations on influencers who, respectively, guide or influence financial decisions; and Tier 3 exempts casual commentators who steer clear of inducement or compensation. Drawing from a comparative analysis on selected jurisdictions, the article advocates a functional, risk-sensitive model that aligns oversight with actual influence. By combining registration thresholds, platform accountability, and cross-border enforcement, the Framework ensures that those who sway investment behaviour are subject to law, while those who merely opine remain free to do so.

I. INTRODUCTION

The digital age has fundamentally altered the manner in which individuals seek and consume financial advice. Once the preserve of licensed professionals – stock-brokers, investment advisers, and financial planners – financial guidance has now migrated to the sprawling, unregulated frontier of social media. Here, self-styled “influencers” cultivate large audiences and dispense financial wisdom with remarkable reach and influence.¹ These actors span a spectrum: some educate, others promote, many advise – often blurring the distinctions between these categories. This article, however, concerns itself solely with one function: the giving of financial knowledge that purports to guide decision-making.² This is no small matter.

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¹ Tamra Manfredo, “How to make \$1 Million in 30 seconds or less: The need for Regulations on Finfluencers” (2024) 84 2 La L Rev 791 at 796 [Manfredo].

² See also an article that examines how certain behavioural finance factors influence investment decisions, with risk perception acting as a mediating variable: Bashar Almansour *et al*, “Behavioral Finance factors and Investment decisions: A Mediating role of Risk Perception” (2023) 11 2 Cogent Economics & Finance.

Regulatory ambiguity arises when such online content crosses the line into what the law defines as financial advisory services. Current regulatory regimes, shaped for an analogue age, are ill-suited to this reality, leaving retail investors vulnerable to misleading recommendations and unverified financial claims.³

The influence wielded by finfluencers cannot be dismissed as mere digital chatter. Studies increasingly show that Millennials and Gen Z investors now look to social media not just for entertainment, but for financial counsel.⁴ Yet, unlike licensed professionals who are bound by fiduciary duties and operate under regulatory scrutiny, finfluencers often provide investment guidance without licence, oversight, or accountability.⁵ Regulators thus face a delicate balancing act: they must discern when content constitutes genuine advice rather than mere expression of opinion, and then determine how best to uphold appropriate standards. The recent Chocolate Finance affair, in which investors found themselves unable to access their funds despite online assurances of security, illustrates the risks that arise when digital promotion meets regulatory laxity.⁶ Without effective intervention, such gaps threaten not just investor protection but the integrity of financial markets themselves.

The global regulatory response remains, at best, piecemeal. Some jurisdictions have taken the view that financial advisory laws apply regardless of medium – that is, advice given on TikTok or YouTube is no less subject to regulation than advice given across a boardroom table.⁷ This reflects an activity-based, technology-neutral approach, where the nature of the conduct, not its platform, is the touchstone of regulation.⁸ Nonetheless, real-world application reveals substantial ambiguity. At what point does general commentary become regulated advice? When does an opinion morph into a recommendation triggering statutory obligations? In the absence of clearer statutory guidance, many finfluencers continue to operate in regulatory limbo, cloaking their content in the language of personal experience while

³ Mia Stefanou, “Finfluencers in the Wild: A call for Regulation Addressing the Growth of Online Investment Advice” (2022) 88 3 Brook L Rev 959 [Stefanou]; David Krause, “The Impact of Financial Influencers on Crypto Markets: Systemic Risks and Regulatory Challenges” [Krause]; Felix Pflücke, “Rethinking the Regulation of Financial Influencers” (Working Paper Version) in Catalina Goanta *et al*, eds. *Radical Reforms: Bringing Fairness to Social Media Contracts* (Berlin: Verfassungsbooks, 2023).

⁴ Yugandhara Patil & Rajeshree Gokhale, “Investing in the Age of Millennials and Gen-Z: A Comparative Analysis” (2022) 6 2 NLDIMSR Innvision Journal of Management Research 15 at 17. See also Liu Fan, “Who seeks Financial Advice from a Financial Planner?” (2023) 15 7 International Journal of Economics and Finance; Mohd Sedek Jantan, “Analysis on Sales Appropriateness for Finfluencer” *Asian Financial Cooperation Association* <<https://www.afca-asia.org/Portal.do?method=detailView&returnChannelID=3&contentID=1794>> (18 April 2024).

⁵ Catalina Goanta & Sofia Ranchordás, “The Regulation of Social Media Influencers: An Introduction” in Catalina Goanta & Sofia Ranchordás, eds. *The Regulation of Social Media Influencers* (Cheltenham: Edward Elgar Publishing, 2020) 1 at 1-20; Frederic Haase *et al*, “Finfluencers: Opinion Makers or Opinion followers?” *AIS Electronic Library* <https://aisel.aisnet.org/ecis2023_rp/432> (6 January 2023).

⁶ Vanessa Lim, “In Focus: The role of Influencers as more turn to Social Media for Financial Advice” *Channel News Asia* <<https://www.channelnewsasia.com/singapore/finance-influencers-social-media-singapore-money-advice-in-focus-finfluencers-5022046>> (26 March 2025).

⁷ See discussions in Part II of this article.

⁸ Felix Pflücke, “Regulating Finfluencers” (2022) 11 6 Journal of European Consumer and Market Law 212 at Part 3.2 [Pflücke, “Regulating Finfluencers”].

disclaiming any intent to advise.⁹ The issue, therefore, is not whether regulation is necessary – it clearly is – but how best to craft a regime that curbs harm without suffocating genuine discourse or overburdening regulatory bodies.

This article considers the regulatory treatment of influencers in a comparative context, focusing on six jurisdictions: the United States, Singapore, Australia, the United Kingdom, the European Union, and Malaysia. Together, these jurisdictions offer a representative cross-section of regulatory approaches, ranging from financial advisory licensing regimes extended to digital mediums, to disclosure-driven models and hybrid systems. The analysis first outlines the existing legal frameworks, then evaluates their effectiveness, including mechanisms such as the Influencer Quality Score (“FinQ-Score”) system.¹⁰ Following this evaluation, the article turns to consider the benefits and risks associated with influencer activity, situating the regulatory discussion within the broader context of market participation, financial literacy, and potential consumer detriment. The article then proposes a Refined Tiered Regulatory Framework, structured around the principle of proportionality, which effectively delineates three discrete levels of regulatory engagement within the broader ecosystem of financial influence:

- (a) Tier 1 reaffirms the existing position of *Licensed Financial Advisers* (“*LFAs*”) – individuals already subject to full licensing, fiduciary duties, and comprehensive oversight under established financial advisory laws. This category is not novel. It is neither invented nor altered by the Framework, but situated within it for clarity of contrast and calibration;
- (b) Tier 2 introduces *Registered Finfluencers* (“*RFs*”) – unlicensed actors whose content, by function and effect, traverses into the realm of investment influence. This category is subdivided into:
 - (i) investment guidance-level *RFs*; and
 - (ii) promotional-level *RFs*;
 each bearing differentiated obligations tailored to their mode of engagement and proximity to consumer harm.
- (c) Tier 3 delineates *Exempted Financial Commentators* (“*EFCs*”) – those whose speech remains squarely within the bounds of literacy, opinion, or commentary, and who neither seek nor receive inducement for influence.

The proposed model aims to align oversight with the actual influence that actors exert in financial markets. It adopts a proportionate approach: imposing registration, transparency, and compliance obligations on those who actively shape investment decisions, while protecting freedom of expression and guarding against regulatory overreach. In its concluding section, the article calls for the development of a multi-layered enforcement mechanism – one that incorporates regulatory audits,

⁹ Niels Rogge & Sinan Vanden Eynde, “The Legal Implications of Disclaimers Used by Finfluencers” in Julia Kerckaert & Simon Geiregat, eds. *Social Media Influencers and the #law* (Leuven: LeA Publishers, 2024) 129 [Rogge & Eynde].

¹⁰ Henning Zülch *et al.*, “Finfluencing Charlatans Beware: Introducing the Influencer Quality Score (FinQ-Score) to Foster Trustworthiness and (Business) Partnerships” (2024) 31 1 *Journal of Financial Services Marketing* [Zülch *et al.*].

platform accountability, AI-based surveillance, and international cooperation. Ultimately, the aim is to strike a sensible balance: protecting investors and upholding market integrity without choking off good-faith digital discourse.

II. THE CURRENT LEGAL LANDSCAPE

The regulation of financial advice has, until recently, been the province of traditional licensing regimes: activity-driven and qualification-based. Most jurisdictions insist that only duly licensed individuals may offer investment recommendations to the public, subject to fiduciary obligations and regulatory oversight. These frameworks, however, are being stress-tested by the rise of social media-based financial commentary.¹¹ Some maintain that existing statutes already capture finfluencers, provided their content meets the legal definition of financial advice. Others argue that enforcement limitations and jurisdictional blind spots have allowed a growing class of unlicensed actors to evade meaningful scrutiny.¹² This section examines the legislative schemes of key jurisdictions to ascertain whether and to what extent finfluencers fall within the current regulatory net.

In the United States, financial advisory services are primarily governed by the Investment Advisers Act of 1940 (“Investment Advisers Act”),¹³ which requires any person offering investment advice “for compensation” to register with either the Securities and Exchange Commission (“SEC”) or state regulatory bodies – a requirement underpinned by the fiduciary principle articulated in *SEC v. Capital Gains Research Bureau, Inc.*¹⁴ The SEC’s stance is clear: finfluencers who receive compensation for promoting securities may well be “investment advisers” within the meaning of the Investment Advisers Act, regardless of self-serving disclaimers that their content is “not financial advice.”¹⁵ Moreover, the Securities Act of 1933 and the Securities Exchange Act of 1934 impose disclosure and anti-fraud obligations on those promoting securities, rendering finfluencers liable for deceptive or misleading representations.¹⁶ In recent years, the SEC has demonstrated its readiness to enforce these rules, taking action against high-profile individuals who failed to disclose compensation received for cryptocurrency promotions.¹⁷

¹¹ Hardik Gupta & Riddhima Gupta, “The Role of Finfluencers in Financial Markets: Manipulation, Risks, and the Need for Regulatory Action” (2024) 35 *Supremo Amicus*.

¹² Stefanou, *supra* note 3.

¹³ Investment Advisers Act of 1940 15 USC (US) § 80b-1 *et seq.*

¹⁴ *SEC v. Capital Gains Research Bureau, Inc.* 306 F.2d 606 (2d Cir, 1962).

¹⁵ Investment Advisers Act of 1940 15 USC (US) § 80b-2(a)(11); Spencer B. Arrowood, “TikTok: Is it time to Regulate “Finfluencer” Investment Advice on Social Media?” (2024) 28 1 North Carolina Banking Institute 429 at 450 [Arrowood].

¹⁶ Securities Act of 1933 15 USC (US) § 77q(a), and Securities Exchange Act of 1934 17 CFR (US) § 240.10b-5 respectively; Timothy M. Barry, “#NotFinancialAdvice: Empowering the Federal Trade Commission to Regulate Cryptocurrency Social Media Influencers” (2022) 16 2 Ohio State Business Law Journal 279 at 309-314 [Barry].

¹⁷ *In the Matter of Kimberly Kardashian*, Securities Act of 1933 Release No. 11116 (2022); *In the Matter of Paul Anthony Pierce*, Securities Act of 1933 Release No. 11157 (2023); *In the Matter of Floyd Mayweather Jr.*, Securities Act of 1933 Release No. 10578 (2018); *In the Matter of Lindsay Dee Lohan*, Securities Act of 1933 Release No. 11173 (2023); Jerry W. Markham, “Securities and Exchange

Singapore regulates financial advisory services under the Financial Advisers Act 2001 (“Financial Advisers Act”).¹⁸ The Financial Advisers Act applies to individuals and entities offering advice on investment products, insurance, and securities. Section 6 mandates that any person carrying on a business of providing such services must either hold a Financial Adviser’s Licence or fall within an exempt category. The Monetary Authority of Singapore (“MAS”) has affirmed that the Act is medium-neutral: advice rendered via social media falls squarely within its ambit where it occurs in the course of business.¹⁹ Beyond the licensing requirement, financial advisers in Singapore are subject to substantive standards of conduct. The Guidelines on Provision of Financial Advisory Services,²⁰ read together with section 35 of the Financial Advisers Act and the Notice on Information to Clients and Product Information Disclosure,²¹ make plain that advisers must eschew misleading statements and are duty-bound to disclose any conflicts of interest. Separately, the Advertising Standards Authority of Singapore (“ASAS”) enforces the Singapore Code of Advertising Practice,²² which mandates that promotional content carry sponsorship disclosures and be “legal, decent, honest and truthful.” Until recently, MAS had received fewer than five complaints per year against finfluencers over the past five years.²³ This year, however, there has been a discernible uptick, with eight complaints lodged as at the April 2025 Parliamentary sitting.²⁴ That uptick has since prompted MAS to move to active intervention. In September 2025, MAS issued Guidelines on Standards of Conduct for Digital Advertising Activities, which from 25 March 2026 will require financial institutions to build in safeguards when using digital media and to supervise closely the “digital marketers” they engage, with boards and senior management held accountable for digital advertising activities.²⁵ In parallel, MAS and ASAS released a Guide on Responsible Financial Content Creation and a seven-point checklist that explains when a licence is required, underscores that “not financial advice” disclaimers have no talismanic effect, and reiterates the need for sponsorship disclosures and basic prudence when making

Commission vs. Kim Kardashian, Cryptocurrencies and the “Major Questions Doctrine” (2023) 14 3 William & Mary Business Law Review 515.

¹⁸ Financial Advisers Act 2001 (2020 Rev Ed).

¹⁹ *Singapore Parliamentary Debates, Official Report* (13 November 2024) vol 95 at col 18 <<https://sprs.parl.gov.sg/search/#/sprs3topic?reportid=oral-answer-3742>> (Alvin Tan, Minister of State for Culture, Community and Youth and Trade and Industry) [Alvin Tan]; Monetary Authority of Singapore, “Oral reply to Parliamentary Question on complaints against online finfluencers” <<https://www.mas.gov.sg/news/parliamentary-replies/2024/pq-on-complaints-against-online-finfluencers>> (13 November 2024).

²⁰ MAS, *Guidelines on Provision of Financial Advisory Service* <<https://www.mas.gov.sg/regulation/guidelines/guidelines-on-provision-of-financial-advisory-service>> (10 July 2019).

²¹ MAS, *Notice No. FAA-N03 Information to Clients and Product Information Disclosure* <<https://www.mas.gov.sg/regulation/notices/notice-faa-n03>> (5 October 2018).

²² ASAS, *Singapore Code of Advertising Practice (3rd Edition)* <https://asas.org.sg/Portals/0/SCAP%202008_1.pdf> (February 2008).

²³ Alvin Tan, *supra* note 19.

²⁴ *Ibid.*

²⁵ MAS, *Guidelines on Standards of Conduct for Digital Advertising Activities* <<https://www.mas.gov.sg/regulation/guidelines/guidelines-on-standards-of-conduct-for-digital-advertising-activities>> (25 September 2025).

statements about financial products.²⁶ Also, for the first time, MAS has issued advisory letters to five content creators who may have contravened section 6 of the Financial Advisers Act, signalling that future cases of unlicensed financial advice are no longer likely to be mere “polite reminders.”²⁷

In Australia, the giving of financial advice is regulated under the Corporations Act 2001.²⁸ This statute requires persons offering personal financial advice to be licensed under an Australian Financial Services Licence or to operate as authorised representatives.²⁹ The Australian Securities and Investments Commission (“ASIC”) has adopted an activity-based approach, asserting that licensing requirements apply equally to advice delivered online or in person.³⁰ Responding to a proliferation of unlicensed financial promotions, ASIC issued Information Sheet 269 (“INFO 269”) in 2022.³¹ It cautions that disclaimers alone do not suffice. If the content amounts to a financial product recommendation, the legal obligations apply.³² ASIC has also commenced enforcement actions against influencers who dispense investment tips or trading strategies without holding the requisite licence.³³

The United Kingdom regulates investment advice and financial promotions under the Financial Services and Markets Act 2000.³⁴ Section 21 of the Financial Services and Markets Act prohibits any person from communicating an invitation or inducement to engage in investment activity unless authorised by the Financial Conduct Authority (“FCA”) or unless the content is approved by an authorised entity. The FCA Handbook (particularly PERG 8)³⁵ elaborates that those offering personalised investment recommendations must be properly licensed. Acknowledging the rise

²⁶ MAS, *Guide on Responsible Financial Content Creation* <<https://www.mas.gov.sg/publications/monographs-or-information-paper/2025/guide-on-responsible-financial-content-creation>> (25 September 2025).

²⁷ Timothy Goh, “MAS to warn 5 content creators in S’pore who may have given financial advice without a licence” *The Straits Times* <<https://www.straitstimes.com/business/companies-markets/mas-to-warn-5-content-creators-in-spore-who-may-have-given-financial-advice-without-a-licence>> (26 September 2025).

²⁸ Corporations Act 2001 (Cth).

²⁹ *Ibid*, s 911A; Shruti Tejwani, “Navigating the Digital Currents: Unmasking the Mirage of Financial Influencers” (2023) 6 5 International Journal of Law Management and Humanities 1008 at 1010-1013 [Tejwani].

³⁰ ASIC, *Regulatory Guide 36 Licensing: Financial product advice and dealing* <<https://download.asic.gov.au/media/wdnk4aja/rg36-published-8-june-2016-20220328.pdf>> (June 2016); ASIC, *Regulatory Guide 244 Giving information, general advice and scaled advice* <<https://download.asic.gov.au/media/tkqi11il/rg244-published-13-december-2012-20211208.pdf>> (December 2012).

³¹ ASIC, “INFO 269 Discussing financial products and services online” <<https://asic.gov.au/regulatory-resources/financial-services/giving-financial-product-advice/discussing-financial-products-and-services-online/>> (March 2022).

³² See also ASIC, *Regulatory Guide 234 Advertising financial products and services (including credit): Good practice guidance* <<https://download.asic.gov.au/media/cvcjdp5/rg234-published-09-june-2026.pdf>> (9 June 2026) at RG 234.36.

³³ ASIC, “Federal Court makes findings against social media ‘influencer’ Tyson Scholz” <<https://www.asic.gov.au/about-asic/news-centre/find-a-media-release/2023-releases/23-096mr-permanent-injunctions-ordered-against-social-media-influencer-tyson-scholz/>> (20 December 2022); *ASIC v Scholz (No 2)* (2022) 167 ACSR 67 (FCA, Cth).

³⁴ Financial Services and Markets Act 2000 (c 8) (UK) [Financial Services and Market Act].

³⁵ FCA, *The Perimeter Guidance Manual* <<https://handbook.fca.org.uk/handbook/perg8>> (June 2026) at PERG 8.1.1-8.37.15.

of social media-based promotions, the FCA has issued warnings that misleading financial content may amount to a criminal offence under the Act.³⁶ In 2023, the FCA introduced specific guidance directed at finfluencers, reminding them that promotional posts must be “fair, clear, and not misleading” and must include risk disclosures appropriate to the product promoted.³⁷

Within the European Union, the regulation of financial services falls under the Markets in Financial Instruments Directive II (“MiFID II”).³⁸ This regime imposes licensing and conduct obligations on investment firms and advisers, though it does not specifically address finfluencers. Instead, it is left to member states to determine how national laws apply. Additionally, the Unfair Commercial Practices Directive (“UCPD”) mandates transparency in commercial activities, requiring influencers to disclose paid promotions and avoid misleading endorsements.³⁹ Meanwhile, the EU Market Abuse Regulation⁴⁰ prohibits the spread of misleading financial information, including through social media, where such dissemination may amount to market manipulation.⁴¹ Further, the Digital Services Act,⁴² effective from 2024, obliges online platforms to ensure that recipients can clearly identify advertisements – including through prominent labelling – and the parties behind them.⁴³ The European Securities and Markets Authority (“ESMA”) has reiterated that disclaimers do not

³⁶ Financial Services and Market Act, *supra* note 34 at s 25; Julia Kollwe, “UK watchdog interviews 20 social media ‘finfluencers’ under caution” *The Guardian* <<https://www.theguardian.com/business/2024/oct/22/uk-watchdog-interviews-20-social-media-finfluencers-under-caution>> (22 October 2024).

³⁷ FCA, *Conduct of Business Sourcebook* <<https://handbook.fca.org.uk/handbook/cobs4/cobs4s2>> (October 2025) at COBS 4.2; FCA, *Finalised Guidance FG24/1: Finalised Guidance on Financial Promotions on Social Media* <<https://www.fca.org.uk/publication/finalised-guidance/fg24-1.pdf>> (March 2024) [Finalised Guidance].

³⁸ Directive (EU) 2014/65 of the European Parliament and of the Council of 15 May 2014 On Markets in Financial Instruments and Amending Directive 2002/92/EC and Directive 2011/61/EU [2014] OJ L 173/349, <<https://eur-lex.europa.eu/eli/dir/2014/65/oj/eng>> (accessed 9 July 2026).

³⁹ Directive (EU) 2005/29 of the European Parliament and of the Council of 11 May 2005 Concerning Unfair Business-to-consumer Commercial Practices in the Internal Market and Amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council (‘Unfair Commercial Practices Directive’) Art 7(2), [2005] OJ L 149/22, <<https://eur-lex.europa.eu/eli/dir/2014/65/oj/eng>> (accessed 9 July 2026); European Commission, “Influencer Legal Hub” <https://commission.europa.eu/live-work-travel-eu/consumer-rights-and-complaints/influencer-legal-hub_en>.

⁴⁰ Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on Market Abuse (Market Abuse Regulation) and Repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC Art 12, [2014] OJ L 173/1, <<https://eur-lex.europa.eu/eli/reg/2014/596/oj/eng>> (accessed 9 July 2026).

⁴¹ *Ibid*, s 1(c).

⁴² Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and Amending Directive 2000/31/EC (Digital Services Act) Art 26, [2022] OJ L 277/1, <<https://eur-lex.europa.eu/eli/reg/2022/2065/oj/eng>> (accessed 9 July 2026) [Digital Services Act].

⁴³ *Ibid* at Art 26; Christine Riefa & Laura Clausen, “Towards Fairness in Digital Influencers’ Marketing Practices” (2019) 8 2 *Journal of European Consumer and Market Law* 64 at 2.1.3 [Riefa & Clausen]; Caroline Cauffman & Catalina Goanta, “A New Order: The Digital Services Act and Consumer Protection” (2021) 12 4 *European Journal of Risk Regulation* 758.

shield content creators from liability if their statements amount to financial product recommendations.⁴⁴

There are, however, emerging discussions in Europe regarding alternative modes of regulation. One such proposal is the FinQ-Score⁴⁵ – a voluntary, non-legislative framework designed to evaluate the reliability of financial content creators. The score would be based on qualifications, compliance history, content accuracy, and engagement metrics.⁴⁶ High scores are awarded to those influencers who demonstrate transparency, comply with applicable laws, and maintain professional standards. Low scores serve as red flags. While still in its nascent stage, the model signals a growing interest in market-driven mechanisms and self-regulation as complements to formal licensing regimes.

In Malaysia, financial advisory activities fall within the scope of the Capital Markets and Services Act 2007.⁴⁷ This statute mandates that individuals offering investment advice or financial planning services must hold a Capital Markets Services Licence issued by the Securities Commission Malaysia (“SCM”).⁴⁸ The Guidelines on Conduct for Capital Market Intermediaries⁴⁹ further stipulate that financial promotions must be fair, balanced, and not misleading.⁵⁰ Under the revised Guidelines on Advertising for Capital Market Products and Related Services⁵¹ (effective 1 November 2025), advertisers remain responsible for all promotional content, including those that are disseminated by third parties such as social media promoters. They must maintain effective oversight of such third-party providers, ensure accuracy, avoid exaggerated claims, and disclose any compensation or conflicts of interest.⁵² The SCM has also issued public statements warning that influencers who promote investment schemes, particularly while receiving compensation, may be engaging in unlicensed advisory activities.⁵³

Having traversed the statutory terrain of the key jurisdictions, the analysis now turns to a comparative assessment of these regimes. The objective is to evaluate whether existing models provide viable and sustainable regulatory responses to the rise of influencers. This is not a pure academic exercise, but to assess whether these frameworks meaningfully mitigate the risks associated with influencers,

⁴⁴ ESMA, *Guidelines on Risk Factors under the Prospectus Regulation* <https://www.esma.europa.eu/sites/default/files/library/esma31-62-1293_guidelines_on_risk_factors_under_the_prospectus_regulation.pdf> (1 October 2019) at [22] and [23].

⁴⁵ Zülch *et al*, *supra* note 10.

⁴⁶ *Ibid* at 18–19.

⁴⁷ Capital Markets and Services Act 2007 (No 671 of 2007) (M’sia).

⁴⁸ *Ibid*, s 58(1).

⁴⁹ Securities Commission Malaysia, *Guidelines on Conduct for Capital market Intermediaries* <<https://www.sc.com.my/api/documentms/download.ashx?id=692160e2-6951-452f-9a97-f6aad57ce312>> (29 March 2024).

⁵⁰ *Ibid* at [6.02(c)]; see similarly Securities Commission Malaysia, *Guidance Note on Provision of Investment Advice* <<https://www.sc.com.my/api/documentms/download.ashx?id=d22c8909-06e8-40bfa8da-4fc31b4606c0>> (30 December 2020).

⁵¹ Securities Commission Malaysia, *Guidance on Advertising for Capital Market Products and Related Services* <<https://www.sc.com.my/api/documentms/download.ashx?id=eed9034a-03f2-4df3-8b9c-64261bcba687>> (27 March 2025).

⁵² *Ibid* at [5.01(b)], [5.02], [7.01], [7.02], [8.05]–[8.07].

⁵³ Securities Commission Malaysia, “SC Issues Guidance for Finfluencers” <<https://www.sc.com.my/resources/media/media-release/sc-issues-guidance-for-finfluencers>> (18 July 2024).

while isolating structural gaps that call for reform. In so doing, the analysis aims to provide the scaffolding for a coherent, forward-looking regulatory model tailored to the digital financial advice ecosystem.

A. Comparative Analysis of Regulatory Approaches

The first – and most commonly deployed – regulatory approach is exemplified by jurisdictions such as the US, UK, Singapore, Australia, and Malaysia. These regimes do not follow a monolithic model, but may broadly be grouped into three subtypes: those anchored in business – or activity –based licensing (Singapore, Malaysia, Australia), those triggered by compensation and fiduciary duties (US), and those centred on promotional communications (UK). What binds them, loosely, is a shared willingness to extend traditional financial regulatory frameworks to finfluencers – regardless of medium. The underlying premise is deceptively simple: financial advice remains financial advice, whether it is dispensed across a mahogany desk or uploaded onto a TikTok reel. This reflects a broadly shared commitment to functional equivalence, though the legal mechanisms differ. Singapore adopts a business-purpose threshold; Australia uses an activity-based licensing trigger buttressed by proactive enforcement; Malaysia follows a similar structure to Singapore. The US hinges regulation on whether advice is given for compensation, thereby invoking fiduciary obligations. The UK, for its part, draws a distinction between investment advice and financial promotions, with regulation triggered by the nature of the communication rather than the advisory relationship. What emerges is not a uniform model but a family resemblance – distinct in anatomy but related by function.

The principal strength of this family of approaches lies in their doctrinal continuity. Legal obligations apply to all who offer financial advice, irrespective of the delivery channel. There is no need to reinvent the statutory wheel or create bespoke regimes for social media-based actors. A influencer recommending stocks on YouTube is treated, in principle, no differently from a licensed adviser doing so in a client meeting. Such uniform application of laws promotes legal clarity and minimises regulatory arbitrage. Yet, theory and practice diverge. In implementation, jurisdictions sharing this template have adopted markedly different enforcement styles. Singapore has opted for a measured, advisory-led strategy; Australia has relied on headline-grabbing public enforcement to make examples of egregious conduct; the UK has issued granular guidance under its financial promotions regime to pre-empt abuse. The US, while assertive in enforcement, remains tethered to the compensation test, which can be both under- and over-inclusive. This means that the central vulnerability of this approach is in enforcement. Regulators are, in practice, driven towards *ex post facto*, fact-sensitive inquiries – scrutinising TikTok captions and Instagram reels to ascertain whether a particular post has crossed the threshold into regulated activity.⁵⁴ This becomes an endless regulatory cat-and-mouse scenario. Some finfluencers even characterise their output as “financial

⁵⁴ Pflücke, “Regulating Finfluencers”, *supra* note 8 at Parts 2 and 3.2.

education,” embellish their posts with emojis,⁵⁵ or append boilerplate disclaimers such as “not financial advice”⁵⁶ as if such formulations will insulate them from regulation. Labels and emojis, however, do not change the legal analysis: where content is designed to shape investment behaviour, its substantive character will generally be apparent notwithstanding the chosen label or disclaimer. The difficulty lies not in articulating that principle, but in applying it at scale and in real time. The result is a regulatory landscape marked by conceptual breadth but operational fragility – where enforcement chases shadows rather than setting clear lines.⁵⁷

The second model, adopted at the European Union level, centres on disclosure – but only as a facet of broader consumer protection law. Finfluencers are not formally classified as financial advisers under MiFID II and no bespoke regime governs them across the bloc. Instead, obligations arise indirectly: the UCPD prohibits misleading omissions, while the Market Abuse Regulation addresses manipulative dissemination. The Digital Services Act supplements this by tasking online platforms with oversight duties. The assumption appears to be that a sufficiently informed consumer will be capable of identifying risks and making rational decisions, thereby reducing the need for heavy-handed regulatory intervention.

This approach’s virtue lies in its restraint. Rather than imposing blanket licensing requirements, it relies on transparency and influencers must disclose compensation schemes and affiliations. In theory, this enables consumers to exercise discernment without choking the free flow of financial discourse. If risks are clearly flagged and commercial intent disclosed as the UCPD demands, then consumers bear responsibility for their own choices. However, the practical shortcomings of this model are considerable. Disclosure, absent proactive enforcement, risks degenerating into a purely formal exercise, observed sporadically rather than as a matter of course. Although the Digital Services Act attempts to impose the burden of monitoring on platforms, including algorithmic transparency for larger services, these intermediaries – functioning as private gatekeepers with evolving policies and uneven vigilance,⁵⁸ are institutionally ill-suited to function as primary regulators. In practice, the results have been uneven at best.⁵⁹ The sheer volume of digital financial content renders effective oversight elusive; attempting to police it without a robust enforcement mechanism is akin to catching rain in a sieve. Transparency alone, without active intervention against misleading financial promotions, offers little protection to retail investors who remain vulnerable to exaggerated claims, undisclosed conflicts of interest, and outright fraud.

A third approach, still largely at the conceptual stage, has gained some traction within European regulatory circles. This model inches toward self-regulatory

⁵⁵ Adam S. Hayes & Ambreen T. Ben-Shmuel, “Under the Finfluence: Financial influencers, Economic meaning-making and the Financialization of digital life” (2024) 53 3 *Economy and Society* 478 [Hayes & Ben-Shmuel].

⁵⁶ Barry, *supra* note at 16.

⁵⁷ Joseph Pacelli, “Crypto influencers give poor investment advice and SEC taking notice” *Oxford Business Law Blog* <<https://blogs.law.ox.ac.uk/oblb/blog-post/2023/11/crypto-influencers-give-poor-investment-advice-and-sec-taking-notice>> (22 November 2023).

⁵⁸ Pflücke, “Regulating Finfluencers”, *supra* note 8 at Part 3.3.

⁵⁹ Stephan Mündges & Kirsty Park, “But did They Really? Platforms’ Compliance With the Code of Practice on Disinformation in Review” (2024) 13 3 *Internet Policy Review*.

tools – chief among them, an influencer scoring system. It seeks to strike a middle ground between state oversight and market autonomy, offering a softer form of compliance that relies on reputational incentives rather than legal compulsion. The most prominent of these proposals is the FinQ-Score.⁶⁰ It evaluates content creators across five dimensions: compliance, communication, credibility, profile structure, and engagement.⁶¹ The goal is twofold: to help consumers identify trustworthy finfluencers and to provide firms with a screening tool for credible partners. At its core, the system seeks to promote voluntary compliance, thus sidestepping the regulatory burdens associated with full licensing. Metrics such as Key Performance Indexes are employed to reduce arbitrariness and lend the system a veneer of objectivity.⁶² Still, its chief weakness is structural: participation is voluntary. Compliance is grounded not in legal compulsion but in self-selection. Those who derive the greatest benefit from aggressive or misleading practices will have the weakest incentive to participate, and the least scrupulous finfluencers – the very cohort that generates the highest regulatory risk – can simply remain outside the system. While proponents argue that such systems can still exert reputational “pressure,”⁶³ the absence of legal teeth remains an enduring problem. Further, although the scoring rubric aspires to objectivity, it is vulnerable to subjectivity in execution. Assigning scores based on perceived credibility or engagement necessarily involves evaluative judgment, and ratings may therefore vary significantly across platforms and jurisdictions. The FinQ-Score, for all its promise, is legally inert. Without legislative anchoring, it operates as a soft-law indicator rather than a source of binding obligation, and those who intend to exploit regulatory gaps are unlikely to regard it as a meaningful constraint. That said, its appeal lies in its light regulatory touch. It avoids licensing bottlenecks and offers an avenue for casual financial content creators to operate without undue restriction. But its deterrent value is modest: it cannot compel compliance, nor can it adequately restrain those operating at the margins of legality.

A comparative assessment of the three prevailing regulatory models – (a) functional equivalence model, (b) disclosure-oriented oversight premised on consumer protection and platform accountability, and (c) alternative compliance mechanisms – discloses no universal solution. Each approach presents distinct advantages, yet each is encumbered by structural limitations. Licensing brings legal certainty, but its rigidity invites overreach. Disclosure sounds attractive in theory, yet in practice often proves too pliant when left to voluntary hands. What is missing is a framework that weds discipline to discernment – one that captures those who genuinely influence investment decisions while sparing mere commentators.

Before prescribing such a framework, however, it is perhaps beneficial to appreciate why policymakers are divided in their treatment of finfluencers. The divergence cannot be dismissed as mere regulatory caprice because much depends on whether one sees finfluencers as educators or as salesmen, as instruments of enlightenment or as agents of distortion. Perhaps, these influencers may be perceived as financial commentators who advance the cause of financial literacy, but they can

⁶⁰ Zülch *et al.*, *supra* note 10.

⁶¹ *Ibid* at 17–21.

⁶² *Ibid* at 12, 21, 26.

⁶³ *Ibid* at 34.

be simultaneously liken to merchants of persuasion and unregulated touts peddling illusion for profit. To assess these competing intuitions, it is thus necessary to weigh their benefits and risks with a clear head and a steady hand. Regulation, after all, must be rooted in a sober appreciation of both promise and peril.

B. Benefits and Risks of Finfluencers

The rise of finfluencers has undoubtedly broadened public engagement with financial topics. They have done what regulators and educators have long struggled to achieve – make finance interesting.⁶⁴ Their conversational tone and use of anecdotes humanise a field that once seemed forbidding to the layman.⁶⁵ By simplifying complex concepts and weaving them into relatable narratives, they cultivate financial literacy among audiences otherwise indifferent to the subject. This is not trivial: a young person who begins by following a finfluencer explaining how to budget a first salary may, in time, learn the difference between a unit trust and a blue-chip stock.⁶⁶

The influence of such figures has also been empirically measurable. In some jurisdictions, a notable proportion of young adults – as high as two-thirds of those who follow finfluencers – report changing at least one financial behaviour because of them.⁶⁷ That influence, when aligned with sound advice, may nudge inexperienced investors toward prudence: budgeting, diversification, or long-term investing rather than speculation.⁶⁸ In that sense, finfluencers serve as intermediaries between the expert and the novice, democratising knowledge once monopolised by licensed advisers and institutional gatekeepers.⁶⁹ Their ability to reach vast and varied audiences makes them potent tools of public education, particularly for a generation lived and raised on digital content.⁷⁰

Beyond that, some finfluencers have proven valuable as instruments of public education. By warning against scams and disseminating regulatory alerts in partnership with authorities, they perform a quasi-public service function.⁷¹ This pre-emptive form of investor education cultivates a civic virtue in financial markets, fostering a culture of responsibility and ethical awareness among investors and market participants. The result, then, is a paradox of modern pedagogy: the very

⁶⁴ Ravinyaa Ravimalar, “Cover Story: Rise of the Finfluencer” *The Edge Malaysia* <<https://theedge.malaysia.com/node/724870>> (3 September 2024) [Ravimalar]; World Economic Forum, *The Future of Financial Advice White Paper* <https://www3.weforum.org/docs/WEF_The_Future_of_Financial_Advice_2024.pdf> (July 2024) at 4 [World Economic Forum].

⁶⁵ *World Economic Forum*, *supra* note 64 at 21; The Board of the International Organization of Securities Commissions (“IOSCO”), *Finfluencers–Final Report* (May 2025) at 4 [IOSCO, “Finfluencers–Final Report”].

⁶⁶ Patricia Lui, “Time to Regulate Influencers Who Tell You Where to Put Your Money: Opinion” *The Straits Times* <<https://www.straitstimes.com/opinion/time-to-regulate-influencers-who-tell-you-where-to-put-your-money>> (28 November 2023) [Lui]; Francis Kan, “The Rise of the Finfluencer” *Business Times* <<https://www.businesstimes.com.sg/international/rise-finfluencer>> (18 October 2023) [Kan].

⁶⁷ IOSCO, “Finfluencers–Final Report”, *supra* note 65 at 12.

⁶⁸ *Ibid.*

⁶⁹ Lui, *supra* note 66; World Economic Forum, *supra* note 64 at 25.

⁷⁰ IOSCO, “Finfluencers–Final Report”, *supra* note 65 at 11.

⁷¹ *Ibid* at 12.

medium that has the potential to breed misinformation can also serve as a conduit for discernment and public enlightenment. Equally significant is the sense of community that develops around such content: online circles of mutual learning⁷² that democratise not merely access to information but also the very habit of inquiry. The self-taught investor who can test ideas against peers rather than preyed upon by promoters becomes a healthier and more resilient participant in the marketplace of ideas.

But with influence comes mischief. The very qualities that make influencers effective educators – charisma, accessibility, and narrative flair – also make them dangerous purveyors of misinformation. Many operate outside the perimeter of regulatory oversight; they may present themselves as credible sources⁷³ while lacking either qualifications or accountability.⁷⁴ To the untrained follower, it is often impossible to distinguish between sound analysis and self-serving puffery.

These risks are not merely theoretical; they are amplified when such influencers are compensated to promote particular products.⁷⁵ Paid partnerships, undisclosed sponsorships, and conflicts of interest may subtly distort, if not altogether corrupt, the integrity of the message.⁷⁶ What appears as a neutral guidance may, in substance, be nothing more than advertising masquerading as education. Worse still, the familiar vocabulary of “quick profits” and “guaranteed returns”⁷⁷ – the lingua franca of charlatans – finds ready audience in these online ecosystems. Retail investors, armed with half-understood concepts and misplaced confidence, may be induced to trade in leveraged or complex instruments, or to participate in unregistered schemes involving crypto-assets and derivatives.⁷⁸

There is, in fact, a deeper danger: social media may also foster a sense of emotional proximity between influencer and follower. That perceived closeness is dangerous because the follower may begin to conflate staged performance with genuine relationship, and promotional messaging with personalised advice.⁷⁹ Such phenomena is very unfavourable in a financial ecosystem as it erodes the discipline of scepticism that ought to anchor sound investment decision-making. When emotion supplants judgment, financial harm becomes not merely possible but highly probable.

The other subtler problem is not so much of deliberate fraud but the issue of “misperception” where persuasive communication is being mistaken as professional judgment. Many finfluencers cloak themselves⁸⁰ in the trappings of expertise,

⁷² See Kan, *supra* note 66. See also World Economic Forum, *supra* note 64 at 31; IOSCO, “Finfluencers–Final Report”, *supra* note 65 at 13.

⁷³ IOSCO, “Finfluencers–Final Report”, *supra* note 65 at 4.

⁷⁴ *Ibid* at 15–16.

⁷⁵ Ong Pei Ching, “Commentary: Influencer Marketing’s Growth Continues, But the Law is Still Playing Catch-Up in Many Areas” *Channel News Asia* <<https://www.channelnewsasia.com/today/voices/commentary-influencer-marketings-growth-continues-law-still-playing-catch-up-in-many-areas-4632126>> (7 December 2023); IOSCO, “Finfluencers–Final Report”, *supra* note 65 at 4, 18–20.

⁷⁶ World Economic Forum, *supra* note 64 at 11, 32; IOSCO, “Finfluencers–Final Report”, *supra* note 65 at 6.

⁷⁷ Ravimalar, *supra* note 64.

⁷⁸ IOSCO, “Finfluencers–Final Report”, *supra* note 65 at 22.

⁷⁹ *Ibid* at 11.

⁸⁰ See also World Economic Forum, *supra* note 64 at 23.

offering “training courses,” “mentorships,” or “paid access to online forums” that mimic professionalism while evading its obligations.⁸¹ These are not acts of education but of imposture – the unlicensed posing as the licensed, converting borrowed credibility into profit. The peril deepens further when such finfluencers collaborate, overtly or covertly, with unregistered brokers or trading platforms.⁸² What emerges then is a symbiosis of deceit: the influencer lends trust, the platform monetises it, and the investor pays the price.

Therefore, finfluencers actually embody a paradox of modern finance. They democratise information but also democratise error. They expand access to investment discourse, though frequently at the expense of rigour and regulation. Their influence, like the market itself, is neither inherently good nor bad – it depends on who wields it and to what end. The prudent response, therefore, is not to suppress them but to civilise them: to impose standards of disclosure, transparency, and accountability without extinguishing the spontaneity that makes them effective. For if financial literacy is to thrive in the digital agora, it must be guided not by charisma alone but by conscience and comprehension.

III. A FUNCTIONAL APPROACH TO FINFLUENCER REGULATION

Taken together, the foregoing survey paints an uncomfortable picture: the law has not so much tamed finfluencers as learnt to live uneasily with them. If finfluencers are here to stay, the question is no longer whether they should be regulated, but how. The enforcement landscape is, at present, more patchwork than principled. It bears all the hallmarks of *ad hoc* reaction rather than coherent design. The prevailing binary approach – treating content creators as either licensed professionals or entirely unregulated – is, to borrow a phrase, a false dichotomy that obscures more than it clarifies. Not all finfluencers are born equal. Some dabble in casual commentary; others are in the business of steering, nudging and, at times, herding public investment behaviour.⁸³ A monolithic licensing regime catches too many in its net; a laissez-faire approach leaves the gate open to abuse – and between these two caricatures, real-world misconduct slips through with disconcerting ease. What is needed, therefore, is gradation – a functional, tiered regulatory model capable of distinguishing between the idle musings of an enthusiast and the targeted exhortations of a financial promoter, and of matching regulatory burden to the degree of risk each category poses to retail investors.

A. Regulatory Characterisation and Scope

The difficulty in regulating financial content online lies not in drafting rules, but in ensuring they reflect how influence actually operates. Traditional distinctions

⁸¹ IOSCO, “Finfluencers–Final Report”, *supra* note 65 at 17.

⁸² *Ibid* at 15–16.

⁸³ Sue S. Guan, “The Rise of the Finfluencer” (2023) 19 3 New York University Journal of Law & Business 489 at 522–530 [Guan].

between fact and opinion are less useful in the social media context because hyperbolic or casual language can shape investor behaviour. A post that exclaims “I love XYZ stock – it’s going to the moon!” may appear innocuous, but if made by someone perceived as financially savvy, it may function as an inducement in substantive terms, notwithstanding its ostensibly informal form. A communication need not expressly say “Buy this stock” to be caught under the regulatory net. If a reasonable investor, particularly a retail one, would be nudged toward a course of investment action, the communication is not mere chatter – it is functional advice.

Accordingly, the model proposed in this paper – the Refined Tiered Regulatory Framework – proceeds from the premise that, in the digital sphere, the line between personal opinion and public inducement is frequently blurred. The persona cultivated by a finfluencer – whether as a credible analyst or mere entertainer – shapes how audiences understand the communication, and in turn, its regulatory implications. While disclaimers may have a signalling role, they cannot displace an assessment grounded in the overall substance, tone, and context of the communication. This realism undergirds the Framework’s tiered approach and the guiding principle is this: if one talks like an adviser, is listened to like an adviser, and shapes – above all – retail investor behaviour like an adviser, then regulatory intervention is both warranted and proportionate.

But regulators, like generals, are sometimes tempted to believe that more firepower means greater success. In truth, the art of regulation lies in knowing when to hold one’s fire. The true test of authority lies not in how far it can reach, but in how wisely it chooses to stop. To craft any framework worth its name, one must first grasp the principle that keeps regulation honest – the doctrine of proportionality. It is the plain rule that the cure must not be worse than the disease: measures must be fit for purpose, no more than necessary, and balanced against the harm they avert. This is the discipline that gives regulation its moral centre, and it is this spirit that the ensuing Framework seeks to embody. Accordingly, before we examine how the Framework gives that principle practical form, it is worth pausing to trace the doctrine’s theoretical lineage and the philosophical challenges inherent in its application, and only then turning to its practical operation in the modern regulatory state. After all, the regulator’s task is not to chase every shadow of risk but to address the mischief with measure and sense; to regulate not out of anxiety, but from reasoned conviction.

B. Proportionality as a Principle of Good Governance

Proportionality, though often hailed as a hallmark of modern public law, is in truth an ancient principle wearing new clothes. The idea that punishment or restraint must be proportionate to the offence or risk it addresses runs deep in legal history – from the retributive codes of Hammurabi⁸⁴ to the injunctions of the English Bill of Rights

⁸⁴ The Archaeologist, “The Legacy of Hammurabi: The World’s First Legal Code” <<https://www.the-archaeologist.org/blog/the-legacy-of-hammurabi-the-worlds-first-legal-code>> (8 February 2025).

(1689).⁸⁵ Yet, its modern articulation as a legal doctrine matured not in Westminster but in nineteenth-century Prussia, where the *Oberverwaltungsgericht* sought to tether administrative discretion to reason.⁸⁶ The famous *Kreuzberg* decision⁸⁷ in 1882 distilled this ethos: the State may restrict liberty only to avert genuine danger, not to impose aesthetic or ideological preferences. From these practical origins, proportionality gradually assumed a constitutional role in Europe. In Art 5(4) of the Treaty on European Union,⁸⁸ it states that “the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties.” That modest, competence-limiting rule has been developed in the case law of the Court of Justice into the now-familiar tripartite test:⁸⁹

- (a) Suitability – the measure must be capable of achieving its intended aim;
- (b) Necessity – where alternative means exist, the least onerous should be chosen, for one “must not use a steam hammer to crack a nut, if a nutcracker would do”;⁹⁰ and
- (c) Proportionality in the strict sense – a balancing between the benefit sought and the burden imposed.

It is in this final act of balancing that the principle’s elegance becomes its own undoing. Critics such as Tsakyrakis⁹¹ and Webber⁹² argue that this “balancing” often degenerates into judicial intuition masquerading as logic, revealing more about a judge’s moral instincts than about legal reasoning. The deeper malaise lies in the philosophical impossibility of weighing incommensurables: how does one compare liberty to fiscal efficiency, or human dignity to administrative convenience?⁹³

⁸⁵ See also Department of Justice (HK), “The Principle of Proportionality and the Concept of Margin of Appreciation in Human Rights Law” *Basic Law Bulletin* (December 2013) at 2–10.

⁸⁶ Dieter Grimm, “Proportionality in Canadian and German Constitutional Jurisprudence” (2007) 572 UTLJ 383 at 384; Moshe Cohen-Eliya and Iddo Porat, “American Balancing and German Proportionality: The Historical Origins” (2010) 82 NYU Intl J Cont L 263.

⁸⁷ *Kreuzberg* (1882) 9 ProVG 353.

⁸⁸ Consolidated Version of the Treaty on European Union Art 5(4), [2008] OJ L 115/1, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.C_.2008.115.01.0001.01.ENG&toc=OJ%3AC%3A2008%3A115%3ATOC#C_2008115EN.01001301> (accessed 9 July 2026); European Union, “Principle of Proportionality” *EUR-Lex* <<https://eur-lex.europa.eu/EN/legal-content/glossary/principle-of-proportionality.html>>; Benedikt Pirker, *Proportionality Analysis and Models of Judicial Review* (Groningen: Europa Law Publishing, 2013).

⁸⁹ *The Queen v Minister of Agriculture, Fisheries and Food and Secretary of State for Health, ex parte: Fedesa and others* Case C-331/88 [1990] ECR I-04023 <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:61988CJ0331>> (accessed 9 July 2026); *Maizena Gesellschaft mbH and others v Bundesanstalt für landwirtschaftliche Marktordnung (BALM)* Case 137/85 [1987] ECR-04587 <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:61985CJ0137>> (accessed 9 July 2026).

⁹⁰ *R v Goldstein* [1983] 1 WLR 151 at 155 (HL, UK).

⁹¹ Stavros Tsakyrakis, “Proportionality: An Assault on Human Rights?” (2009) 73 NYU Intl J Cont L 468 at 474.

⁹² Grégoire C.N. Webber, *The Negotiable Constitution: On the Limitation of Rights* (Cambridge: Cambridge University Press, 2009) at 90.

⁹³ Timothy Endicott, “Proportionality and Incommensurability” in Grant Huscroft *et al.*, eds. *Proportionality and the Rule of Law: Rights, Justification, Reasoning* (Cambridge: Cambridge University Press, 2014) at 311–342.

For all its procedural elegance, proportionality assumes the existence of a common metric – yet no rational scale exists; there is neither an ordinal nor a cardinal measure by which such values can be aligned.⁹⁴ What purports to be structured reasoning thus risks dissolving into subjective preference cloaked in analytical form. Proportionality's promise of rational adjudication is thus shadowed by its inherent epistemic limits: it cannot fully escape the judge's own moral priors.⁹⁵

But the defenders of the doctrine seek to answer this allegation by insisting that proportionality can be disciplined rather than freewheeling. Barak, for example, treats the test as a structured sequence – proper purpose, rational connection, necessity and proportionality *stricto sensu* – intended to confine judicial choice within a reason-giving framework.⁹⁶ Alexy, in turn, conceives constitutional rights as optimisation requirements whose limits are determined through a formalised balancing of the weight of competing principles and the intensity of interference, precisely to counter the accusation of naked intuitionism.⁹⁷ Möller⁹⁸ and Jackson⁹⁹ similarly suggest that, when properly applied, proportionality can supply a common “grammar” of justification for courts and regulators alike, even if it cannot banish moral judgment from adjudication.

Despite the debate on its philosophical fragility, proportionality remains a pragmatic compass in regulatory governance, mediating between the twin perils of under-regulation (which tolerates hazard and leaving significant risks unchecked) and over-regulation (which suffocates autonomy and smothers beneficial activity).¹⁰⁰ In public health, for instance, the gravity of restriction must correspond to the gravity of the threat – a quarantine demands more justification than a labelling rule.¹⁰¹ Modern regulatory science has also attempted to formalise this intuition through qualitative frameworks, such as the structured benefit – risk framework employed by the U.S. Food and Drug Administration, and quantitative tools such as Incremental Net Benefit analysis, used by health-technology assessment bodies to compare interventions on a common cost-effectiveness scale, each designed to make the underlying cost-benefit trade-offs more explicit rather than leaving them to impressionistic judgment.¹⁰² In financial supervision, proportionality assumes

⁹⁴ Henry S. Mather, “Law-making and Incommensurability” (2002) 47 2 McGill LJ 345; Borja Sanchez Barroso, “Beyond the Principle of Proportionality: Controlling the Restriction of Rights under Factual Uncertainty” (2023) 9 2 Oslo Law Review 74; Francisco J. Urbina, “A Critique of Proportionality” (2012) 57 1 Am J of Juris 49.

⁹⁵ Francisco J. Urbina, “‘Balancing as Reasoning’ and the Problems of Legally Unaided Adjudication: A Reply to Kai Möller” (2014) 12 1 NYU Intl J Cont L 214.

⁹⁶ Aharon Barak, *Proportionality: Constitutional Rights and their Limitations* (Cambridge: Cambridge University Press, 2012).

⁹⁷ Robert Alexy, “Constitutional Rights, Balancing, and Rationality” (2003) 16 2 Ratio Juris 131.

⁹⁸ Kai Möller, “Proportionality: Challenging the Critics” (2012) 103 NYU Intl J Cont L 709.

⁹⁹ Vicki C. Jackson, “Constitutional Law in an Age of Proportionality” (2015) 124 Yale LJ 3094.

¹⁰⁰ See David B. Resnik, “Proportionality in Public Health Regulation: The Case of Dietary Supplements” (2017) 2 Food Ethics 1.

¹⁰¹ *Ibid.*

¹⁰² Sanjay Kaul *et al.*, “Benefit-Risk Tradeoffs in Assessment of New Drugs and Devices” (2020) 142 20 Circulation 1974; Giuseppe Santoli *et al.*, “Incremental Net Benefit and Incremental Cost-Effectiveness Ratio of COVID-19 Vaccination Campaigns: Systematic Review of Cost-Effectiveness Evidence” (2023) 11 2 Vaccines 2023; Larry D. Lynd *et al.*, “Using the Incremental Net Benefit Framework for

the form of prudential calibration: capital, liquidity, and margin buffers are maintained with “conservative flexibility” – simple enough for compliance, yet robust enough to preserve resilience.¹⁰³ Likewise, the OECD’s corporate governance principles counsel against rules that, in seeking to protect, unintentionally stifle the very dynamism they mean to safeguard.¹⁰⁴

In other words, proportionality embodies the ideal of “smart regulation” – rules should bite no harder, and no softer, than necessity demands. The guiding theme is an equilibrium between burden and benefit, aligning the cost of compliance with the magnitude of the public good pursued.¹⁰⁵ In practical terms, this balance has distributive consequences: compliance costs often become quasi-fixed overheads, burdening small firms far more than large ones.¹⁰⁶ Studies have shown that community banks, lacking the economies of scale to absorb these costs, face disproportionately high compliance expenses. The result is a market distortion: economic inefficiency arises, and new entry is discouraged.¹⁰⁷ Analogous concerns have been voiced in the capital-markets context, where Sarra argues for “scaled” or proportionate securities regulation that adjusts disclosure and governance obligations to issuer size and risk so that smaller firms are not priced out of public markets by sheer compliance cost.¹⁰⁸

Quantitative Benefit–Risk Analysis in Regulatory Decision-Making—A Case Study of Alosetron in Irritable Bowel Syndrome” (2010) 13 4 *Value in Health* 411.

¹⁰³ Basel Committee on Banking Supervision, *High-level considerations on proportionality* <<https://www.bis.org/bcbs/publ/d534.htm>> (July 2022) [Basel Committee]; Fernando Restoy, Chairman, Financial Stability Institute, Bank for International Settlements, “Proportionality in Banking Regulation”, speech at Westminster Business Forum Keynote Seminar (4 July 2018) <<https://www.bis.org/speeches/sp180704b.htm>> (accessed 10 July 2026); Karen Yeung, *Securing Compliance: a Principled Approach* (Oxford: Hart Publishing, 2004).

¹⁰⁴ OECD, *Flexibility and Proportionality in Corporate Governance* <https://www.oecd.org/content/dam/oecd/en/publications/reports/2018/11/flexibility-and-proportionality-in-corporate-governance_g1g98d91/9789264307490-en.pdf> (2018).

¹⁰⁵ Prasanna Gai *et al.*, “Regulatory Complexity and the Quest for Robust Regulation” *European Systemic Risk Board*, <papers.ssrn.com/sol3/papers.cfm?abstract_id=3723328> (June 2019) at 37 [Prasanna Gai *et al.*]; Patrick McLaughlin *et al.*, “Regulatory Accumulation and its Costs” *Mercatus Center George Mason University* <<https://www.mercatus.org/research/policy-briefs/regulatory-accumulation-and-its-costs>> (4 May 2016) [Patrick McLaughlin *et al.*].

¹⁰⁶ Anita Anand, “Voluntary Corporate Governance, Proportionate Regulation, and Small Firms: Evidence from Venture Issuers” (2017) 60 1 *Can Bus LJ* 34; European Banking Authority, *Proportionality in Bank Regulation* <<https://www.eba.europa.eu/sites/default/files/documents/10180/807776/de9b6372-c2c6-4be4-ac1f-49f4e80f9a66/European%20Banking%20Authority%20Banking%20Stakeholder%20Group-%20Position%20paper%20on%20proportionality.pdf?retry=1>> (10 December 2015) [European Banking Authority].

¹⁰⁷ Thomas Siems, “Do Banking Regulations Disproportionately Impact Smaller Community Banks?” *Social Science Research Network* <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5783382> (29 July 2025); Federal Reserve Bank of St. Louis, *Compliance Costs, Economies of Scale and Compliance Performance* <https://www.communitybanking.org/-/media/files/communitybanking/compliance-costs-economies-of-scale-and-compliance-performance.pdf?sc_lang=en&hash=19C-682B5EFB86B37D6A8604DE9087DA6> (April 2018); European Banking Authority, *supra* note 106.

¹⁰⁸ Janis P. Sarra, “Proportionate Securities Regulation: The Potential for Scaled Treatment of Junior Issuers” *Faculty Publications, The Peter A. Allard School of Law* <https://commons.allard.ubc.ca/fac_pubs/319/> (2008).

This concern helps to explain the turn, in the regulatory literature, to “risk-based” and “responsive” regulation, which seek to match the intensity of intervention to both the level of risk and the willingness and capacity of the regulated actor to comply, rather than to apply a one-size-fits-all template.¹⁰⁹ By doing so, it transforms proportionality from a moral intuition into an administrative principle. High-risk entities attract closer scrutiny and tighter standards; low-risk ones receive a lighter touch.¹¹⁰ This philosophy underpins frameworks such as the Basel Framework and Solvency II.¹¹¹ The Basel Framework allows smaller, simpler banks to adopt standardised methods instead of complex internal models, thereby mitigating the risk of regulatory overkill.¹¹² Similarly, Solvency II requires supervisors to account for the “nature, scale, and complexity” of each firm’s risks.¹¹³ The same ethos animates the UK regulators’ duty to intervene only when necessary – a living expression of the “right-touch regulation” philosophy that prizes discernment over zeal.¹¹⁴

Still, some commentators warn that calls for “proportionate regulation” can be co-opted as a convenient slogan for deregulation unless critically examined.¹¹⁵ That concern is real, which is precisely why context and intent matter greatly: proportionality does not equate to deregulation, as a UK House of Lords Financial Services Regulation Committee recently emphasized.¹¹⁶ Determining what is “necessary” is an exercise not in convenience but in evidence-based judgment, often refined through Regulatory Impact Assessments and public consultations. When poorly applied, proportionality risks degenerating into a convenient excuse for doing less than is needed. Conversely, excessive regulation, born of political panic or moral fervour, can be equally ruinous. The answer is not passivity but vigilance: rules must be continually reassessed, and their proportionality re-tested as conditions evolve.

Ultimately, the common thread is a simple but easily forgotten point: proportionate regulation is not an exercise in arithmetic but in judgment. It asks not how much the State can do, but how much it should. The temptation to over-regulate is perennial; it flatters authority with the illusion of control. Yet the true test of good governance lies in knowing when intervention ceases to protect and

¹⁰⁹ Ian Ayres & John Braithwaite, *Responsive Regulation: Transcending the Deregulation Debate* (New York: Oxford University Press, 1992) [Ayres & Braithwaite]; Julia Black & Robert Baldwin, “Really Responsive Risk-Based Regulation” (2010) 32 *2 Law & Pol’y* 181 [Black & Baldwin].

¹¹⁰ Prasanna Gai *et al*, *supra* note 105; Patrick McLaughlin *et al*, *supra* note 105.

¹¹¹ Prasanna Gai *et al*, *supra* note 105; Raihan Zamil, “Proportionality in Banking Regulation: Who, What and How?” *SUERF The European Money and Finance Forum* <<https://www.suerf.org/publications/suerf-policy-notes-and-briefs/proportionality-in-banking-regulation-who-what-and-how/>> (August 2021).

¹¹² Basel Committee, *supra* note 103.

¹¹³ Aaron Baldacchino *et al*, “The Principle of Proportionality: Unraveling the Practical Application of Proportionality in the EU Regulations and the Solvency II Directive for Insurance Undertakings” (2024) 17 *6 Journal of Risk and Financial Management* 233.

¹¹⁴ Stephen Gibson, “A Review of the UK Regulatory Framework” *Harvard Kennedy School* <<https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/programs/senior.fellows/2022-23/Sept%202022%20Research%20Update%20-%20Stephen%20Gibson.pdf>> (September 2022).

¹¹⁵ Philip Aldrick, “Regulators Are Harming UK as a Financial Center, Lords Warn” *Insurance Journal* <<https://www.insurancejournal.com/news/international/2025/06/13/827617.htm>> (13 June 2025).

¹¹⁶ *Ibid*.

begins to suffocate. Proportionality, properly understood, is not a bureaucratic convenience; it is a discipline of restraint, a reminder that good intentions do not license overreach and that authority is justified by reasons, not by the sheer volume of rules.

C. The Refined Tiered Regulatory Framework

In the specific context of influencer regulation, proportionality demands two things: first, that regulatory burdens track the actual risk posed to retail investors; and second, that marginal or low-impact actors are not smothered under compliance obligations that neither enhance investor protection nor market integrity. Such approach seeks to avoid both under-regulation (leaving harmful influence unchecked) and over-regulation (imposing licensing or disclosure burdens where there is no real risk). Accordingly, the Refined Tiered Regulatory Framework proposed here does not create new legal categories for their own sake. Rather, it situates influencers within a three-tiered structure,¹¹⁷ calibrated according to the nature of their content and the extent of their influence:¹¹⁸

- (a) Tier 1 comprises *LFAs* – professionals already governed by existing financial advisory statutes;
- (b) Tier 2 introduces *RFs*, divided into:
 - (i) investment guidance-level *RFs*; and
 - (ii) promotional-level *RFs*; and
- (c) Tier 3 identifies *EFCs* – those whose activities remain outside the perimeter of regulatory concern.

This is not merely a matter of nomenclature. It is an attempt to ensure that legal obligations follow what actors actually do, rather than the labels they bear. Each tier reflects a different level of regulatory engagement, matched to its potential to shape market behaviour. *LFAs* continue to be subject to the full rigors of existing law. The Framework does not disturb their position; it acknowledges and contextualises it. *RFs*, by contrast, are brought within a newly defined perimeter of registration, disclosure, and scrutiny, varying with the nature and reach of their content. *EFCs* are left outside this perimeter, but only so long as they refrain from sponsorship, inducement, or investment guidance. This structure is intentional. It aims for clarity without rigidity:

¹¹⁷ Manfredo, *supra* note 1 at Part II (B), who classifies influencers into three distinct categories, which are similar but not identical to the version proposed in this article.

¹¹⁸ Ayres & Braithwaite, *supra* note 109 at 4.

Table 1: The proposed Three-Tier Classification of Finfluencers.

Category	Legal status	Definition & Function	Licensing & Registration Requirement	Permitted Activities	Prohibited Activities & Limitations	Regulatory Oversight
Tier 1: LFAs	Fully licensed as per the existing financial advisory laws	Tier 1 <i>does not</i> alter or expand existing law. It simply reflects what is already settled: that licensed professionals who provide personalised financial <i>advice</i> for remuneration – however structured and regardless of medium of communication – are subject to fiduciary obligations and full regulatory oversight. This tier is not a reinvention, but a reaffirmation. The Framework’s contribution lies in contextualising this category within a broader ecosystem of influence, not in rewriting its content.				
Tier 2A: RFs – Investment Guidance Level	Newly regulated under Framework	Individuals whose content reasonably influences investment decisions, with or without payment, and where financial services or products are featured or linked.	Mandatory registration with relevant financial regulators.	Discuss market trends, share opinions with risk disclosures, and offer general investment information without personalization.	Prohibited from delivering personalized advice, misrepresenting their role, or evading mandatory disclosure of conflicts.	Subject to periodic compliance audits, mandatory disclosures, and oversight measures similar (but lighter) to LFAs.
Tier 2B: RFs – Promotional-Level	Light regulatory touch	Content creators whose primary function is to endorse or promote financial products or services whether or not compensation is formally received, including in-kind or anticipated future benefit.	Light-touch registration or platform-based oversight (with appropriate conflict disclosures).	Engage in promotions and sponsored content provided all sponsorships are transparently disclosed.	Cannot provide investment guidance or insinuate any regulatory approval that would suggest deeper expertise.	Required to maintain clear, platform-based disclosures and meet lighter regulatory mandates.

Table 1: The proposed Three-Tier Classification of Finfluencers.

Category	Legal status	Definition & Function	Licensing & Registration Requirement	Permitted Activities	Prohibited Activities & Limitations	Regulatory Oversight
Tier 3: <i>EFCs</i>	Exempt, non-commercial	Individuals offering general financial literacy, market commentary, or economic insights without compensation or intent to influence investment conduct	No licensing or registration required.	Share opinions, educational content, and general market commentary as long as it remains non-advisory.	Must avoid any semblance of personalized advice, monetised promotion, or endorsement of financial products.	Remains largely outside the specialized regulatory perimeter, though subject to general consumer protection laws.

The gradation among Tiers 1, 2A, 2B and 3 reflects a principled calibration of regulatory response:

- (a) Tier 1 (*LFA*s);
 - (i) It is not the creature of this Framework. Instead, it predates, survives, and continues to operate concurrently yet independently under its own distinct statutory and regulatory framework. The Framework does not seek to regulate the already regulated, but on those who influence without responsibility, and persuade without consequence. These are the *lacunae* Tier 2 exists to fill.
 - (ii) Tier 1 bears the heaviest burden as provided under *existing* statutes: full licensing, strict fiduciary duties, and comprehensive compliance oversight. This reflects the direct, personalised and remunerated nature of the professional advisory relationship it governs.
- (b) Tier 2A (*RF*s – Investment Guidance Level);
 - (i) By contrast, this Tier captures those whose influence is substantial but impersonal: they guide, but do not owe duties; they inform, but disclaim accountability.
 - (ii) Tier 2A involves mandatory registration and subject individuals to periodic compliance audits, mandatory disclosures (including conflicts of interest), and oversight measures lighter than those applicable to Tier 1. Crucially, Tier 2A finfluencers are prohibited from delivering personalised advice or implying they owe fiduciary duties.
- (c) Tier 2B (*RF*s – Promotional-Level);
 - (i) This category addresses commercial persuasion – promotional speech dressed as guidance, often laden with undisclosed incentives.

- (ii) Tier 2B entails a lighter registration process, often facilitated through platforms, focused primarily on ensuring transparent disclosure of sponsorships and affiliations; their activities are strictly confined to promotion and they are prohibited from providing any form of investment guidance or insinuating regulatory approval or expertise beyond that of a promoter.
- (d) Tier 3 (*EFCs*);
 - (i) Tier 3 is not a loophole. It is a deliberate carve-out based on the nature of the activity rather than the identity of the actor. This category does not advise, promote, or sell. Rather, it explains, interprets, and educates. They do not stand in a position of influence over investment behaviour; they simply contribute to public discourse and hence need not be caught in the net of financial supervision.

This calibrated approach is intended to ensure that regulatory intensity is proportionate to both the actual role undertaken and the corresponding risk posed to consumers. Each tier is differentiated by the degree of proximity to potential harm rather than by formal designation: duty, influence, and inducement. In essence, this tiered Framework rests on the premise that responsibility should correspond to reach and regulation should correspond to risk. The relevant inquiry is not the identity of the speaker, but the manner, purpose and effect of the communication. It asks a simple yet profound question: when does financial commentary constitute a service capable of shaping investment behaviour and thereby attracting accountability? Under the Framework, the distinction between a licensed adviser and a finfluencer is not merely on paper. The former is engaged to advise;¹¹⁹ the latter typically seeks an audience to influence. However, once such influence begins to shape decisions, legal accountability must follow.¹²⁰ The focus is not whether one is famous or is a celebrity, but on whether the communication in fact influences conduct. Presenting financial content in an entertaining form does not negate its potential to mislead. Sincere enthusiasm, however strongly expressed, is not sufficient to justify a departure from regulatory safeguards.

The question of payment is relevant to the analysis, but not decisive. An individual may mislead without receiving any fee, just as another may provide educative content while being remunerated. The inquiry should hence be directed to the effect of the communication rather than the form of remuneration. Where content is capable of moving markets – whether sponsored or otherwise – regulatory scrutiny is warranted. Compensation, therefore, is not the governing criterion. What matters is the capacity of the communication to influence behaviour.

Ultimately, the Framework seeks to avoid both overreach and underreach. It aims to focus regulatory attention on communications that matter for investor protection, and to exclude those that do not. The aim is not to silence legitimate financial discourse, but to anchor responsibility where it properly lies. Those who wish to

¹¹⁹ And thus, falls under Tier 1.

¹²⁰ Hence triggering Tier 2 regulations.

influence should do so openly, honestly, and within defined regulatory bounds – without blurring the lines between advice and advocacy, commentary and commission, literacy and lure.

D. Preventing Evasion and Misclassification in Finfluencing

But clarity alone does not ensure compliance. A framework, however elegant, is only as robust as its capacity to withstand manipulation. The Refined Tiered Regulatory Framework must, likewise, confront a challenge inherent to any rules-based system: the risk of strategic evasion. It is naïve to assume that those subject to oversight will not seek to exploit its margins. In the finfluencer ecosystem, this manifests in subtle but deliberate behaviours: avoiding structured investment advice,¹²¹ fragmenting their audience across multiple platforms,¹²² or obfuscating sponsorship arrangements.¹²³ The risk is not theoretical. Without prophylactic measures, the Framework risks degenerating into a formal façade that does little to constrain such conduct.

To meet this challenge, the Framework incorporates dynamic, activity-based thresholds. These serve as practical indicators – not fixed rules – for regulatory classification. Rather than relying solely on qualitative/aesthetic assessments,¹²⁴ Tier 2A and 2B designations are presumptively triggered when quantitative markers of influence or benefit are met. The presumption arises not because numbers alone prove culpability, but because beyond a certain reach or reward, influence becomes too substantial to ignore. For instance:¹²⁵

- (a) A finfluencer who disseminates structured investment content to more than 100,000 followers – a level denoting public-scale influence¹²⁶ – cannot credibly claim to be a casual commentator. At that audience scale, the breadth of reach renders significant impact on investment behaviour a foreseeable consequence. At this juncture, a rebuttable presumption of Tier 2A status arises.

¹²¹ Hayes & Ben-Shmuel, *supra* note 55.

¹²² See IOSCO, *Finfluencers–Consultation Report* <<https://www.iosco.org/library/pubdocs/pdf/IOSCOPD775.pdf>> (November 2024) at 16–17 [IOSCO, “Finfluencers–Consultation Report”], which illustrates the multiple platforms used by finfluencers.

¹²³ See the recent legal reform in New Zealand via the Financial Services Legislation Amendment Act 2019 (NZ) which has introduced new disclosure requirements for finfluencers; individuals providing financial advice must disclose conflicts of interest, commissions, and other relevant details at appropriate points during the advice process, while those offering regulated financial advice must also hold or act under a provider license. This point was also discussed in Stefanou, *supra* note 3 at 973–976; See also Serena Espeute & Rhodri Preece, “The Finfluencer Appeal: Investing in the Age of Social Media” *CFA Institute Research Report* <<https://rpc.cfainstitute.org/sites/default/files/-/media/documents/article/industry-research/finfluencer-report.pdf>> (January 2024) at 4 [Espeute & Preece].

¹²⁴ Espeute & Preece, *supra* note 123 at 23–33.

¹²⁵ The point at which obligations are triggered depends on a mix of regulatory judgment, prevailing market dynamics, and the peculiarities of each jurisdiction. Regulators retain discretion to adjust these thresholds in line with evolving industry risks and enforcement priorities.

¹²⁶ Michelle Hawley & Kaya Ismail, “Types of Social Media Influencers: Mega, Macro, Micro and Nano” *CMSWire* <<https://www.cmswire.com/digital-marketing/social-media-influencers-mega-macro-micro-or-nano/>> (3 October 2024).

- (b) Similarly, where promotional content yields material compensation,¹²⁷ for example, exceeding \$10,000 per annum, Tier 2B scrutiny is presumptively engaged. Compensation is construed broadly, extending beyond direct payments to include non-monetary benefits, in-kind arrangements, and future promotional prospects. Once influence is linked to material compensation, the communication may be more appropriately regarded as at least partly commercially motivated, rather than entirely neutral, regardless of whether any fee is formally invoiced or disclosed.

These thresholds are not absolute triggers, but function as an indicative benchmark at which the burden of justification shifts. They indicate that regulatory interest is not only reasonable but expected.¹²⁸ A finfluencer who exceeds them must either comply with the relevant Tier 2 obligations or demonstrate, with sufficient specificity, that their conduct does not amount to structured investment guidance or financial promotion. Conversely, a finfluencer who falls short of the thresholds is not immune if the substance and effect of their activity nonetheless squarely implicate Tier 2 functions. The inquiry remains rooted in conduct and consequence, rather than formal characterisation. This approach seeks to constrain opportunities for regulatory arbitrage, where actors downplay their influence or fragment their presence across platforms to evade scrutiny.

Yet, numerical thresholds are not the only avenue by which regulatory culpability may arise. Influence may cross regulatory line not merely by reason of its quantitative reach, but by virtue of its qualitative character. When the substance of the conduct matures into advice or inducement, the law should recognise the shift and treat the actor accordingly. This means that:

- (a) Tier 3: Exemption does not equal immunity.
 - (i) Where an *EFC* begins to drift into monetised promotion or veiled guidance – however incrementally – this triggers regulatory reassessment. A pattern of commentary that functionally nudges investor behaviour while avoiding formal sponsorships may still mislead.
- (b) Tier 2A and Tier 2B: Labels do not shield hybrid conduct.
 - (i) Where content exhibits characteristics of both investment guidance and financial promotion, it shall not be shielded by labels. A content that simultaneously promotes a financial product and shapes investor conduct cannot evade heightened scrutiny by falling between definitions. In such cases, Tier 2A obligations presumptively apply, unless the speaker can show that their content neither amounts to structured guidance nor carries persuasive force. The inquiry is, in substance, functional rather than formal; where conduct assumes a hybrid character, the higher regulatory standard is engaged.

¹²⁷ Bartosz Wojdyski *et al*, “Measuring Sponsorship Transparency in the Age of Native Advertising” (2018) 52 *The Journal of Consumer Affairs* 115 at 116; Stefanou, *supra* note 3 at 987–988.

¹²⁸ But the ultimate line is drawn by the regulator, having regard to the realities of the market, the risk profiles and the regulatory priorities. Their purpose is not to constrain discretion but to guide it and to foster consistency without extinguishing judgment.

- (ii) Moreover, where a promotional-level finfluencer drifts into patterns of structured investment guidance – whether by suggesting timing, strategies, or risk preferences – the presumption of Tier 2A obligations applies. Mere promotional status does not shield the actor from the legal consequences of persuasive influence.
- (c) Tier 1: From general persuasion to specific direction.
 - (i) When the conduct of a finfluencer exceeds even generalised guidance and strays into the domain of bespoke advice, Tier 2A is no longer adequate. The crucial boundary is not defined by tone, but by specificity: where communication is tailored to individual circumstances, delivered in a manner that invites reliance, and carries the indicia of expertise, it is, in substance, advice that attracts Tier 1 obligations. One cannot properly characterise such conduct as mere “influence” while offering personalised financial direction. In these situations, the law must look beyond labels and set aside the finfluencer’s garb. It must recognise the underlying role of adviser because at that point, individualised persuasion has been deployed to shape a particular investor’s decision.

To further close loopholes, the Framework imposes anti-circumvention provisions. A rule that can be evaded by deleting past content, splitting audiences across platforms, or operating under multiple pseudonymous accounts¹²⁹ is no rule at all. Accordingly:

- (a) follower counts¹³⁰ and revenue¹³¹ streams will be aggregated across platforms; and
- (b) past non-compliant content may be retrospectively examined for substance and effect once threshold criteria are met.

Such measures ensure that once influence is exercised, it cannot be concealed by digital sleights-of-hand, nor can finfluencers game the system through cosmetic technical tweaks. However, the aforesaid retrospective powers, of course, must be exercised with restraint. The ability to look backward must not become a licence for arbitrary enforcement. Clarity and fairness are essential. To that end, the familiar principles of administrative law governing the exercise of discretionary power apply:

- (a) Firstly, retrospective scrutiny is only triggered after the relevant threshold (whether by audience size or financial compensation) is crossed. This ensures that regulators are not trawling the archives of marginal actors, but focusing on those whose conduct warrants oversight.¹³²

¹²⁹ Guan, *supra* note 83 at 535–536.

¹³⁰ Swati Bhatt, *The Attention Deficit: Unintended Consequences of Digital Connectivity* (Cham: Springer, 2019) at 45–49.

¹³¹ See Rogge & Eynde, *supra* note 9 at 1, and Guan, *supra* note 83 at 525, have unequivocally observed that influencers derive income through avenues such as advertisements and sponsored content.

¹³² That focus on non-marginal actors is itself a safeguard of proportionality.

- (b) Secondly, the content in question must be *relevant*. Retrospective review is limited to material that – had it remained publicly accessible – would likely have triggered Tier 2 obligations. A regulator may not use retrospective powers to examine personal vlogs or incidental remarks that bear no connection to financial influence.
- (c) Thirdly, the review must be *temporally reasonable*. Content published within a defined window (for instance, the preceding 12 to 24 months) may be considered, particularly where it contributed to the build-up of financial influence or regulatory breach.
- (d) Fourth, retrospective action must respect the principle of *fair notice*. The conduct must have occurred after the Framework was promulgated and made publicly available. A person cannot be held to standards that were not in force, or not knowable, at the time of the act.
- (e) Fifth, enforcement decisions based on retrospective content should be subjected to the test of *reasonableness* supported by written justification. In borderline cases, regulators are advised, though not bound, by an independent advisory opinion from a panel of external experts. Separately, affected persons should have access to a structured internal review process through which they may request a reassessment or reconsideration of the enforcement decision.¹³³ This twin-layered safeguard ensures that retrospective power is exercised not only lawfully, but also judiciously.

These safeguards preserve the legitimacy of retrospective enforcement. The objective is not to punish finfluencers after the fact, but to prevent them from escaping regulatory responsibility. In short: the past may not always be prologue, but it is not beyond reach, so long as the reach is fair, principled, and bounded.

Apart from the foregoing, platform accountability is also woven into the Framework.¹³⁴ Social media companies, long positioned as passive bystanders of financial discourse, are now brought within the regulatory effort. They are required under the Framework to provide to regulators “engagement and monetisation data”¹³⁵ – that is, quantitative metrics on the reach of financial content and the

¹³³ A separate unit within the regulator (not involved in original decision) reassesses whether the enforcement action conformed to the Framework’s principles and thresholds. The review body may uphold, vary, or reverse the original enforcement decision. Its decision is final within the agency. If dissatisfied, the person may still seek judicial review in the courts—but only on grounds of law or procedural impropriety.

¹³⁴ See Shuang Liang, *A Comparative Study of Consumer Protection Regulation in the Case of Online Influencers’ Hidden Advertisement: Towards the Development of a Universal Regulatory Framework* (2022) (LL.M. thesis, Chulalongkorn University, archived at <<https://digital.car.chula.ac.th/chula-etd/5754/>>), who proposes a “Triangle Model” that emphasizes shared responsibility among governments, self-regulatory bodies, and social supervision, and also Peter J. May, “Regulatory Regimes and Accountability” (2007) 11 *Regulation & Governance* 8 at 11–12 who observed that there are at least three distinct levels of accountability, *ie* the responsibility of those who frame the rules, those who enforce and follow them, and those elected to fix what the system fails to catch.

¹³⁵ “Engagement data” refers to quantitative indicators of reach and interaction, such as follower counts, views, likes, shares, watch-time, comments, and click-through rates on a finfluencer’s content. “Monetisation data” refers to information on the income derived from that engagement – for example, through platform ad-revenue sharing, sponsorship fees, affiliate-link commissions, and other performance-linked payments. Because these revenue streams typically scale with engagement,

manner in which such reach is translated into revenue. Accounts nearing regulatory thresholds must also be flagged for regulatory review. This obligation is not mere courtesy. It reflects the basic proposition that platforms which derive economic benefit from financial content are also expected to bear a commensurate share of responsibility for its attendant risks. Where their systems or algorithms are designed to amplify online content, platforms can no longer credibly invoke a stance of neutrality. Platforms are further required to implement internal protocols to detect potential breaches, and to cooperate promptly with regulatory directives. Moreover, they are required to maintain digital audit trails and preserve deleted content for a reasonable period. A system that allows evidence to vanish at will undermines effective enforcement and facilitates impunity. Artificial Intelligence (“AI”) is also contemplated as an auxiliary tool,¹³⁶ not as an autonomous enforcer but as a sentinel to support proportionate enforcement. Its function is to flag content patterns, engagement spikes, or threshold breaches for human review. Such tools enable regulators to triage their oversight, prioritising cases with real-world risk while preserving regulatory bandwidth.¹³⁷

Taken together, these anti-evasion mechanisms transform the Refined Tiered Regulatory Framework from a static classification model into a dynamic, resilient system. By integrating quantitative thresholds, behavioural triggers, and platform accountability measures, the Framework makes it difficult for significant finfluencing activity to slip beneath the regulatory radar while preserving flexibility for low-risk, legitimate financial commentators. It draws a clear line: speak freely, but not deceptively; influence responsibly, or be answerable. The goal is not to constrain public discourse, but to ensure that financial persuasion, particularly in the digital agora, is exercised with transparency, truthfulness, and due regard to its consequences.

E. Alignment with Existing Legal Architecture

A key consideration in adopting the Refined Tiered Regulatory Framework is its interaction with existing financial advisory laws. This article posits that the Framework complements, rather than conflicts with, prevailing regulatory regimes. Tier 1 (*LFAs*) remains firmly governed by *existing* financial advisory statutes, irrespective of whether the *advice* is delivered in a boardroom or broadcast on social media. Licensed professionals continue to be bound by fiduciary duties, licensing obligations, and conduct standards as prescribed under statutes such as the SEC’s Investment Advisers Act or Singapore’s Financial Advisers Act. The Framework does not chase novelty for its own sake; it is meant to fill real gaps, not to displace the existing statute architecture. The introduction of Tier 2 (*RFs*) addresses a clear regulatory blind spot. Present laws fail to capture finfluencers who *influence* investment

finfluencers are structurally incentivised to maximise popularity. See Espeute & Preece, *supra* note 123 at 24, and Guan, *supra* note 83 at 525.

¹³⁶ Espeute & Preece, *supra* note 123 at 3.

¹³⁷ But the deployment of AI must itself be governed by principle. Its parameters should be transparent and its operation subject to human oversight. The law must remain the instrument of reason, not automation.

decisions yet do not fall squarely within the scope of full financial adviser licensing. Tier 2A (Investment Guidance-Level *RFs*) are brought within the perimeter – registered, subject to appropriate scrutiny, but not overwhelmed. Tier 2B (Promotional-Level *RFs*), for their part, are tethered to advertising and consumer protection laws, and will find themselves in regulatory crosshairs where disclosures are lacking or representations stray from the truth. Importantly, the Framework avoids unnecessary complexity. It establishes clear legal thresholds, distinguishing between investment advice that demands regulatory scrutiny and general financial commentary that does not. This ensures that casual financial commentators remain outside the regulatory perimeter, while those actively shaping financial decisions are brought within it. In doing so, the Framework closes enforcement gaps without duplicating licensing regimes or creating regulatory contradictions. Regulation remains targeted, proportionate, and enforceable.

In sum, the Refined Tiered Regulatory Framework does not claim to solve all ills. But it is a principled step forward – an architecture of oversight that balances rigour with restraint. It recognises the realities of the digital marketplace, preserves space for legitimate discourse, and provides regulators with the tools to act when influence crosses into inducement. It is, in short, regulation that sees clearly, acts proportionately, and refuses to remain silent where the demands of investor protection and market integrity call for intervention.

F. *Practical Limitations*

No regulatory scheme, however elegant in design, is immune to the frictions of real-world implementation. Four principal limitations warrant consideration: the difficulties of cross-border enforcement, the spectre of regulatory arbitrage, the ever-present constraint of limited resources, and the resistance (some tacit, some overt) of entrenched industry actors. If left unaddressed, these challenges risk turning the Refined Tiered Regulatory Framework into a paper tiger: fearsome in conception, but impotent in execution.

1. *Cross Border Enforcement*

The first and perhaps most intractable obstacle is that of jurisdictional reach.¹³⁸ Finfluencers do not recognise borders and algorithms are indifferent to national frontiers. A content creator domiciled in Country X can effortlessly influence retail investors in Country Y, operating entirely outside the jurisdiction of Country Y's regulatory authorities.¹³⁹ While certain agencies such as the SEC¹⁴⁰ possesses

¹³⁸ See Krause, *supra* note 3.

¹³⁹ World Economic Forum, *supra* note 64 at 32. See also IOSCO, "Finfluencers–Consultation Report", *supra* note 122 at Part 5.3.

¹⁴⁰ Joshua D. Roth *et al*, "A New Era of Extraterritorial SEC Enforcement Actions" *Harvard Law School Forum on Corporate Governance* <<https://corpgov.law.harvard.edu/2019/06/09/a-new-era-of-extraterritorial-sec-enforcement-actions/>> (9 June 2019).

extraterritorial enforcement tools,¹⁴¹ these are typically invoked in extreme cases involving securities fraud or market manipulation. For routine breaches, particularly by actors in low-regulation jurisdictions, the likelihood of enforcement remains remote. Absent enhanced international cooperation¹⁴² mechanisms such as bilateral enforcement agreements,¹⁴³ mutual recognition of licensing restrictions, and shared regulatory databases,¹⁴⁴ the bulk of finfluencer activity will continue to elude meaningful regulatory oversight.

2. Regulatory Arbitrage

The second challenge is the finfluencer's appetite for creative interpretation. Regulatory arbitrage thrives in ambiguity. Finfluencers may deliberately structure their content to avoid regulatory obligations, framing their posts as educational rather than advisory.¹⁴⁵ Disclaimers such as "this is not financial advice" are frequently used as shields,¹⁴⁶ even when the substance of the content influences investment behaviour.¹⁴⁷ This is particularly problematic if the definition of financial advice remains context-dependent¹⁴⁸ and lacks bright-line statutory thresholds. Addressing this requires codification of clearer legal tests. A principled threshold is therefore proposed. A finfluencer is deemed to provide financial guidance and falls within Tier 2A (*RF*–Investment Guidance Level) where:

- (a) The content is specific enough to be acted upon (*eg* references to ticker symbols,¹⁴⁹ financial products, or explicit buy/sell cues); and
- (b) There is reasonable foreseeability¹⁵⁰ that an audience would rely on such content in making investment decisions.

Both limbs must be present. Specificity without reliance remains no more than opinion. Reliance without specificity is, by contrast, too indeterminate to attract coherent regulatory standards. But once the two coincide, the content functions, in law

¹⁴¹ *US Securities and Exchange Commission v Scoville*, 913 F.3d 1204 (10th Cir, 2019); see also Securities Act of 1933 15 USC (US) § 78j(b), s 17(a), and Securities and Exchange Act of 1934 15 USC (US) § 78j(b), s 10(b).

¹⁴² See one particular instance where Singapore and Hong Kong joint operation against suspected cross-border Pump-and-Dump Syndicate (16 December 2021) <<https://www.mas.gov.sg/news/media-releases/2021/singapore-hong-kong-joint-operation-against-suspected-cross-border-pump-and-dump-syndicate>>.

¹⁴³ IOSCO, "Finfluencers Consultation Report", *supra* note 122 at 5.3.

¹⁴⁴ See the discussions in Part IV of this article.

¹⁴⁵ Tejwani, *supra* note 29 at 1012.

¹⁴⁶ IOSCO, "Finfluencers Consultation Report", *supra* note 122 at 35.

¹⁴⁷ Rogge & Eynde, *supra* note 9.

¹⁴⁸ Arrowood, *supra* note 15 at 448–450.

¹⁴⁹ Adam Hayes, "Stock Symbol (Ticker Symbol): Abbreviation for a Company's Stock" *Investopedia* <<https://www.investopedia.com/terms/s/stocksymbol.asp>> (31 August 2024); Ann Behan, "How to Read the Ticker Symbols for Stock Options" *Investopedia* <<https://www.investopedia.com/ask/answers/05/052505.asp>> (28 March 2024).

¹⁵⁰ Vladimír Petrík, *Influencers on YouTube and Investment Advice: Thin Regulatory Ice and Potential Threat for First-Time Investors in the Czech Republic*, Financial Markets 2023 Conference, Prague, Czech Republic (30–31 May 2023) at 8.

and logic, as a form of investment guidance, and registration and compliance obligations should then follow. Those who merely promote financial products without entering the terrain of guidance/advice fall within Tier 2B (Promotional-level *RF*) and are subject only to a lighter, disclosure-based regulation.

The mischief lies not in hyperbole, but in inducement masquerading as casual commentary. A influencer may protest that she is merely sharing a view, perhaps even disclaiming advice – but when her words shape investment behaviour, the regulatory interest is engaged. It is immaterial whether the speaker intends to advise; what matters is how a reasonable listener perceives the message. A simple recounting of one's portfolio is benign – so long as it remains just that. But the moment the narrative tilts from neutral disclosure to tacit endorsement – from “this is what I did” to “you might consider doing the same” or worse “if I had money lying around, I'd be all over this” – a line is crossed. At that point, the content ceases to be harmless chatter and becomes functionally equivalent to advice. And if it walks, talks, and influences like a financial adviser, then, it ought to be regulated as one.

This approach ensures proportionality. Properly understood, closing off avenues for arbitrage is not a plea for heavier regulation everywhere, but for regulation that bites hardest where the mischief is greatest. It merely draws the regulatory net tightly enough to capture conduct that materially affects investment decisions, while leaving general financial commentary outside the regulatory perimeter. Codifying these thresholds into national legislation provides clarity and predictability, closing existing enforcement gaps without imposing unnecessary constraints on legitimate discourse.

3. Resource Constraints

Third, and by no means trivial, are resource constraints. Regulators, unlike algorithms, cannot scale infinitely. While licensed advisers typically operate within firms subject to regular audits, finfluencers are diffuse, decentralised, and prolific. A single influencer may produce dozens of posts across multiple platforms in a single day. To expect uniform oversight is not just impractical – it borders on delusion.¹⁵¹ A risk-based enforcement strategy is therefore necessary.¹⁵² Enforcement should be prioritised based on reach and impact: high-profile finfluencers with large audiences and financial affiliations merit closer scrutiny, while low-risk individuals may be subject to lighter-touch supervision or automated flagging systems.¹⁵³ Seen through the lens of proportionality, such triage is not an abdication of duty but an aspect of good governance. It directs scarce enforcement capacity to those actors whose con-

¹⁵¹ Kirthana Singh Khurana, “Finfluencers as Investment Advisors—Time to Rein Them in?” in Soham De *et al*, eds. *Social media and Society in India*, (University of Michigan, 2023) 109 at 112; Brigitte Unger & Frans van Waarden, “How to Dodge Drowning in Data: Rule and Riskbased Antimoney Laundering Policies Compared” (2009) 5 2 *Review of Law and Economics* 953 at 957 [Unger & Waarden].

¹⁵² Black & Baldwin, *supra* note 109.

¹⁵³ Given that harm fluctuates with time and context, a risk-based approach necessarily entails a sliding scale of enforcement—calibrated to align regulatory scrutiny with the evolving severity and probability of harm. See Jacqueline Peel, *Science and Risk Regulation in International Law* (Cambridge: Cambridge University Press, 2010) at 79–80; Unger & Waarden, *supra* note 151 at 959.

duct poses the greatest risk of retail harm, while sparing marginal speakers and preserving regulatory bandwidth. Proportionate regulation demands that the big guns be reserved for the big targets.

4. *Industry Resistance*

Lastly, no enforcement regime can succeed without the cooperation of the digital platforms that host influencer content. Here, resistance is likely. While legislative efforts such as the EU Digital Services Act impose obligations to monitor misleading content, whether full compliance can be attained remains an open question.¹⁵⁴ Social media platforms are not naturally inclined to act against their own revenue interests. The Framework's success, therefore, turns in part on securing cooperation: mandatory financial promotion labelling, platform-level risk indicators, and AI-powered content filters will all be necessary to close the enforcement loop.

In conclusion, these limitations, though serious, are not insuperable. The path forward lies in legislative precision, calibrated enforcement, and international regulatory solidarity. With such measures in place, the Refined Tiered Regulatory Framework offers not only conceptual clarity but also a credible prospect of operational viability. The next section addresses concrete enforcement strategies and policy levers to ensure that the model moves from principle to practice.

IV. RECOMMENDATIONS

Designing a regulatory framework is relatively simple; ensuring its effective operation is not quite straightforward. The Refined Tiered Regulatory Framework seeks to provide a structured and proportionate regime, but its normative force ultimately depends on its practical implementation. Enforcement under this Framework is conceived as a coordinated exercise involving not just financial regulators, but also enforcement agencies, platform operators, and international partners. The borderless nature of digital financial content renders reliance on traditional regulatory bodies alone inadequate. Effective oversight instead requires an integrated approach that combines technological monitoring, platform accountability, and cross-border cooperation. Enforcement is thus cast not as the task of a single actor; but as a shared regulatory enterprise.

A. *Regulatory Sandbox and Phased Implementation*

The implementation of any regulatory reform must be tempered by prudence. A heavy-handed or abrupt introduction invites backlash and operational resistance.

¹⁵⁴ Catalina Goanta, Thales Bertaglia & Adriana Iamnitchi, *The Case for a Legal Compliance API for the Enforcement of the EU's Digital Services Act on Social Media Platforms*, ACM Conference on Fairness, Accountability, and Transparency (Republic of Korea) (21–24 June 2022), and Pflücke, "Regulating Finfluencers", *supra* note 8 at Part 3.3.

A phased rollout, by contrast, allows room for calibration. Regulatory sandboxes¹⁵⁵ and phased implementation serve as practical mechanisms to road-test the Framework and adjust it according to market response.

A regulatory sandbox¹⁵⁶ provides a controlled environment in which *RFs* – those falling under Tiers 2A and 2B – may operate with temporary regulatory forbearance. This permits regulators to monitor actual market conduct, assess the sufficiency of disclosure requirements, and detect emerging *lacunae* prior to the imposition of binding obligations. The sandbox model, familiar in the regulation of AI technologies,¹⁵⁷ offers a judicious compromise between oversight and flexibility. Finfluencers admitted into the sandbox would remain subject to periodic compliance submissions, full transparency of financial ties, and appropriate conduct rules, thereby maintaining regulatory discipline without stifling innovation.

Regulatory experience shows that financial mischief is rarely committed through overt language. A social media post that avoids saying “Buy XYZ stock” may still be a functional recommendation if, in context, it induces investment behaviour. A post proclaiming “This coin is going to the moon!” may be interpreted by some as mere hyperbole, and by others as tacit financial recommendation. The sandbox thus permits regulators to observe such interactions in the wild and to draw principled lines based on real-world behaviour rather than academic abstraction.

The sandbox should be paired with a phased implementation strategy.¹⁵⁸ Initial regulatory efforts ought to concentrate on high-risk finfluencers, *ie* those with expansive audiences, direct sponsorships, or promotional ties to speculative instruments. Subsequent stages may introduce mandatory platform-level safeguards: algorithmic flagging, sponsorship detection, and disclosure verification. Only when these measures have been tested and proven effective should the full machinery of regulation be activated, complete with penalties for non-compliance.

Such graduated approach¹⁵⁹ ensures that the Framework is introduced with realism and restraint. It provides a proving ground for refining legal concepts, managing cross-border complexities, and setting regulatory priorities – all without disrupting legitimate market activities or overburdening enforcement agencies.

¹⁵⁵ Dirk Zetsche *et al*, “Regulating a Revolution: From Regulatory Sandboxes to Smart Regulation” (2017) 23 1 Fordham Journal of Corporate and Financial Law 31; Manfredo, *supra* note 1 at 837.

¹⁵⁶ Sonia Rach, “‘Finfluencers’ Are the Supply Filling a Demand”, *Financial Times Adviser* <<https://www.ftadviser.com/your-industry/2022/08/25/finfluencers-are-the-supply-filling-a-demand/>> (25 August 2022); Simon Chesterman, “From Ethics to Law: Why, When, and How to Regulate AI” in David J. Gunkel ed. *Handbook on the Ethics of Artificial Intelligence* (Cheltenham: Edward Elgar Publishing Limited 2024) 113 at 120.

¹⁵⁷ See, for example, Harvard University Information Technology, “AI Sandbox” <<https://www.huit.harvard.edu/ai-sandbox>>; Infocomm Media Development Authority, “Singapore’s first generative AI Sandbox to familiarise and help SMEs get head start in capturing new AI opportunities” <<https://www.imda.gov.sg/resources/press-releases-factsheets-and-speeches/press-releases/2024/sg-first-genai-sandbox-for-smes>> (7 February 2024).

¹⁵⁸ Shadrack Obeng *et al*, “The Transformative Impact of Financial Technology (FinTech) on Regulatory Compliance in the Banking Sector” (2024) 23 1 World Journal of Advanced Research and Reviews 2008 at 2011.

¹⁵⁹ Indeed, the integration of the aforementioned mechanisms with the conventional *Consultative Approach* will facilitate more substantive contributions from participating members, enabling them to articulate perspectives and establish a more coherent and effective set of best practices, rules, and regulations. This, in turn, will enhance and refine the Framework with greater clarity and coherence.

B. Enforcement and Penalties

A legal framework that lacks credible sanctions risks degenerating into mere exhortation and empty declarations. The success of the Refined Tiered Regulatory Framework therefore depends not merely on its conceptual design, but on its effective enforcement. Deterrence, after all, remains the principal medium through which regulatory norms are translated into actual market behaviour. A principled, risk-based approach to enforcement is accordingly essential.

Tier 1 actors, being *LFA*s, already fall within the ambit of established regulatory regimes. The burden lies with Tiers 2A and 2B, where finfluencers skirt the edges of formal regulation, often under the guise of personal opinion or lifestyle commentary. To this end, enforcement mechanisms must be tiered. The objective is not to stifle discourse but to curtail deception. A summary of the proposed enforcement posture is set out below:

Table 2: Tiered Enforcement and Penalty Framework

Tier	Regulatory Risk Level	Regulatory Actors	Enforcement Mechanisms	Enforcement Priorities	Recommended Penalties
Tier 1 (<i>LFA</i> s)	High	Financial regulators (eg, MAS, SEC, ASIC)	Refer to existing financial advisory laws		
Tier 2A (<i>RF</i> s – Investment Guidance Level)	Moderate to high – quasi-advisory influence	Financial regulators; compliance units	(a) Mandatory registration (b) Periodic compliance reports (c) Randomised audits (d) Correction directions ¹⁶⁰ requiring misleading content to be corrected ¹⁶¹ or removed ¹⁶² swiftly. (e) Stop Communication, Disabling, and Access Blocking Directions, to prevent further harm to users ¹⁶³ (f) Real-time monitoring through automated keyword detection and content analytics (g) Criminal referral for fraud	Prevent unlicensed advice; ensure factual accuracy; deter misleading guidance	(a) Fines proportionate to revenue (b) Registration revocation (c) Prohibition against rebranding (d) Criminal prosecution for fraud

¹⁶⁰ Akin to Singapore’s Protection from Online Falsehoods and Manipulation Act 2019 (2020 Rev Ed) [POFMA].
¹⁶¹ See, for example, *ibid*, s 11, s 23, s 24 .
¹⁶² See, for example, *ibid*, s 12.
¹⁶³ Analogous to Singapore’s Online Criminal Harms Act 2023 (Act 24 of 2023), s 8, s 9, s 10, s 11.

Table 2: Tiered Enforcement and Penalty Framework

Tier	Regulatory Risk Level	Regulatory Actors	Enforcement Mechanisms	Enforcement Priorities	Recommended Penalties
Tier 2B <i>(RFs – Promotional-Level)</i>	Moderate – promotional bias with financial incentives	Regulators + Platform operators	(a) Financial promotion labelling (b) Algorithmic ad monitoring (c) Joint platform-regulator enforcement (d) Platform-level correction notices particularly for failures to disclose paid promotions (e) Dedicated in-app “Report Promotion” function for users (f) Account Restriction & Access Blocking Directions (g) Real-time scanning of influencer content for undeclared sponsorships and financial trigger phrases	Enforce disclosure of paid content; curb deceptive promotions	(a) Platform sanctions (eg demonetisation, suspension) (b) Regulatory fines (c) Public disclosures (d) Joint liability with sponsoring financial institutions
Tier 3 <i>(EFCs)</i>	Low – general education or opinion	Light regulatory oversight + consumer protection bodies	(a) Complaint-driven oversight (b) Consumer reporting channels (c) Empower users with easy-to-use reporting tools (d) Stop Communication & Disabling Directions for egregious fraud/misrepresentations.	Target misrepresentation; support consumer trust	Cease-and-desist orders

Persistent non-compliance must attract escalating sanctions. A compliance database, maintained jointly by regulators and platforms, should flag repeat offenders. Rebranding and platform-hopping – tactics of the habitual rule-dodger – must not confer immunity.

Ultimately, the legitimacy of any regulatory framework rests on the credibility of its enforcement. Without credible sanctions, the Framework is little more than an aspirational text. But when sanctions are proportionate, transparent, and systematically applied, the Framework will be a shield for the public as well as a catalyst for responsible conduct.

C. Platform Accountability

Social media platforms are not bystanders in this regulatory landscape. They are the conduits through which financial content flows and must therefore bear part of the regulatory burden.¹⁶⁴ Given the sheer scale of content generation, regulators cannot realistically police the digital terrain alone. Platform-based oversight is indispensable for scalable enforcement.

To align with the Refined Tiered Regulatory Framework, platforms should be required to embed automated mechanisms for flagging,¹⁶⁵ labelling,¹⁶⁶ and tracking financial content. A mandatory labelling regime for sponsored promotions – akin to existing advertisement disclosures – would ensure transparency concerning finfluencers’ regulatory status and financial affiliations. Algorithmic screening should detect suspicious content, particularly where risk disclosures are omitted or promotional material masquerades as independent advice.

Other jurisdictions are already moving in this direction. The European Union, via the Digital Services Act, mandates the removal of misleading advertisements and fraudulent investment schemes.¹⁶⁷ Similarly, the UK FCA and ASA have strengthened oversight of financial promotions on social media through updated guidance, voluntary platform standards, and awareness campaigns to ensure compliance with advertising regulations.¹⁶⁸ Taken together, these developments illustrate what has been termed as the “Brussels Effect”:¹⁶⁹ whereby EU regulatory standards exert global influence through market power and are progressively internalised by global firms and platforms. It is therefore prudent to anticipate and incorporate these developments early, thereby reducing opportunities for regulatory arbitrage.

The rationale is simple: platforms that monetise financial promotions should shoulder a commensurate duty of compliance.¹⁷⁰ To permit platforms to pocket the revenue from financial promotions while disclaiming any meaningful responsibility for screening or intervention is to privatise advertising revenues while externalising the risks and losses to retail investors and the public purse. These intermediaries are not passive postmen but gatekeepers: they design the algorithms that amplify certain messages, control the advertising rails through which promotions are targeted, and hold real-time data that no regulator can ever fully replicate. Having assumed that

¹⁶⁴ Pflücke discusses how platforms like Facebook (Meta) and YouTube have community guidelines and advertising policies specifically addressing financial content, and how some platforms have voluntarily ‘gold-plated’ legal rules by banning certain financial ads. This confirms that platforms act as key gatekeepers and implement content moderation practices: Pflücke, “Regulating Finfluencers”, *supra* note 8 at Part 4

¹⁶⁵ Espeute & Preece, *supra* note 123 at 20–22.

¹⁶⁶ See, for example, the research conducted by UK’s Advertising Standards Authority (ASA), which demonstrated that only 35% of influencer advertisements on Instagram were properly labelled, with affiliate marketing disclosures often being unclear or insufficient: ASA, “Influencer Ad Disclosure on Social Media” <<https://www.asa.org.uk/static/dd740667-6fe0-4fa7-80de3e4598417912/Influencer-Monitoring-Report-March2021.pdf>>.

¹⁶⁷ Digital Services Act, *supra* note 42, Art 26.

¹⁶⁸ Finalised Guidance, *supra* note 37.

¹⁶⁹ Anu Bradford, *The Brussels Effect: How the European Union Rules the World* (Oxford: Oxford University Press, 2019) at XIV.

¹⁷⁰ Riefa & Clausen, *supra* note 43 at Part 3.2.

degree of control – and collected their share of the proceeds – platforms cannot credibly claim to be mere bystanders in the regulatory scheme. It therefore follows that a dual-enforcement model – regulator and platform acting in concert – is the only realistic way to provide the reach and responsiveness needed to supervise a global, decentralised ecosystem.

D. Cross Border Cooperation

Finfluencers operate without regard for borders; regulation must correspondingly transcend jurisdictional lines. Without cross-jurisdictional cooperation, finfluencers will continue to operate with impunity, targeting investors in jurisdictions with robust regulatory frameworks while sheltering in those with comparatively lax enforcement.

The IOSCO MMoU provides a foundation for regulatory collaboration.¹⁷¹ It facilitates information-sharing and joint investigations, offering a rudimentary tool for tackling cross-border misconduct. However, its ambit must be expanded to encompass digital financial promotions and content creators. Information-sharing, while essential, is insufficient. A recurring problem is the ease with which sanctioned finfluencers can re-emerge under different banners in foreign jurisdictions. To combat this, reciprocal enforcement of regulatory sanctions must be institutionalised – much like the cross-border recognition of court judgments. Fines, bans, or revoked registrations in one jurisdiction should be honoured in others, closing the door to regulatory arbitrage.

Regulators should also consider adopting a communication protocol modelled on the existing framework for court-to-court communication.¹⁷² Such protocols would allow direct, expedient coordination between regulatory authorities in cases involving financial misconduct spanning multiple jurisdictions. Real-time collaboration, rather than ponderous formal channels, is the only effective response to a fast-moving digital environment. It bears emphasising that international cooperation is not a proxy for supranational control. Financial regulation is, and ought to remain, a domestic affair – anchored in national policies, legal traditions, local laws, and enforcement capabilities. The goal is not to establish a global super-regulator, but to *converge* on basic standards where consensus exists. As Chief

¹⁷¹ IOSCO, “Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (MMoU)” <<https://www.iosco.org/v2/about/?subsection=mmou>>.

¹⁷² Currently applied in cross-border insolvency cases, though limited to select jurisdictions, its adoption is expanding. See the Judicial Insolvency Network, “Modalities of Court-to-court Communication” <<https://www.jin-global.org/initiatives/modalities-of-court-to-court-communication/>> (4 December 2025), and the court-to-court protocol between Malaysia and Singapore as examples of such cooperation SG Courts, “Media Release: Malaysia and Singapore implement protocols on court-to-court communication and cooperation in admiralty, shipping and cross-border corporate insolvency matters” <<https://www.judiciary.gov.sg/news-and-resources/news/news-details/media-release-malaysia-and-singapore-implement-protocols-on-court-to-court-communication-and-cooperation-in-admiralty-shipping-and-cross-border-corporate-insolvency-matters>> (5 October 2021).

Justice Sundaresh Menon has observed,¹⁷³ the law need not – and cannot – be the same everywhere. Each jurisdiction’s laws reflect compromises shaped by its unique political, social, and economic conditions. But this does not rule out cooperation. In some areas, uniformity is attainable. In others, full alignment may be out of reach, but convergence remains possible. Even where differences persist, understanding the principles behind divergence has value. In the present context, the regulation of finfluencers presents an area where harmonisation is both possible and prudent. Minimum global standards for disclosure and transparency would anchor cross-border enforcement in shared principles, reducing the appeal of jurisdiction-hopping while enhancing consumer protection.

In conclusion, international cooperation is not a luxury but a necessity. Finfluencers, operating in cyberspace, are constrained only by the weakest link in the regulatory chain. A combination of reciprocal enforcement, regulator-to-regulator communication, and shared compliance standards can ensure that financial content – regardless of origin – remains subject to meaningful oversight.

E. *Leveraging the aid of AI*

The scale, speed, and volume of digital financial content have rendered traditional enforcement mechanisms increasingly obsolete. Manual monitoring – whether through public complaints, targeted audits, or after-the-fact investigations – is too sluggish and labour-intensive to police the ever-evolving world of finfluencers. Financial regulators must, therefore, turn to AI¹⁷⁴ and automated compliance technologies. These are necessities if oversight is to remain timely, scalable, and effective.

One promising solution lies in algorithmic detection systems.¹⁷⁵ These systems, powered by machine learning models trained on statutory disclosure obligations and advertising norms, can scan financial content in real time – identifying, flagging, and reporting suspected breaches. Non-compliant investment promotions, undisclosed sponsorships, or false claims of regulatory endorsement¹⁷⁶ can be swiftly intercepted. Platforms should be required to deploy such tools as a condition of continued operation. Content promoting high-risk investments without risk warnings or falsely implying regulatory approval should not be left online to do its damage.

Platforms must also embed Application Programming Interfaces¹⁷⁷ (“APIs”) into their infrastructure, enabling real-time data-sharing with regulators. These APIs would grant enforcement agencies access to flagged content, user engagement

¹⁷³ Sundaresh Menon CJ, *The Law of Commerce in the 21st Century: Transnational Commercial Justice amidst the wax and wane of Globalisation*, lecture hosted by the University of Western Australia Law school and the Supreme Court of Western Australia (27 July 2022).

¹⁷⁴ See similarly Teja Reddy Gatla, “AI-driven Regulatory Compliance for Financial Institutions: Examining How AI Can Assist in Monitoring and Complying with Ever-changing Financial Regulations” (2024) 12 3 International Journal of Creative Research Thoughts 1607.

¹⁷⁵ Krause, *supra* note 3 at Part VI.

¹⁷⁶ Espeute & Preece, *supra* note 123 at 22.

¹⁷⁷ Parth Sagdeo, “Application Programming Interfaces and the Standardization-Value Appropriation Problem” (2018) 32 1 Harvard JL & Tech 235 at 237–239.

statistics, and metadata indicating potential misconduct. By reducing dependence on manual reporting, regulators can act with greater agility and precision, upholding compliance without exhausting their resources. Technology-driven enforcement is not merely convenient. It is indispensable. An AI-assisted regulatory model enables the State to maintain oversight without stifling legitimate discourse. Crucially, the use of AI ensures that enforcement remains targeted: focused not on those sharing financial ideas in good faith, but on those who mislead, conceal, or deceive.

In sum, the effectiveness of the Refined Tiered Regulatory Framework rests not solely on its conceptual elegance, but on its operational enforceability. Implementation demands a coordinated strategy – combining regulatory scrutiny, platform cooperation, cross-border mechanisms, and intelligent automation. Phased implementation, targeted penalties, and reciprocal recognition of sanctions ensure that the Framework remains practical and proportional. At its core, effective enforcement safeguards the investing public, deters misconduct, and preserves the space for credible financial dialogue. That is the measure of a viable, scalable regulatory model.

V. CONCLUSION

The time has come for the law to speak with clarity. Finfluencers inhabit a twilight zone of regulation – neither quite financial advisers, nor yet captured fully by the legislations. The existing regime, rooted in assumptions of institutionalised advice and professional gatekeeping, is ill-equipped to deal with the digitally-distributed, personality-driven model of financial influence that now holds sway. What is needed is not another layer of patchwork regulation, but a principled rethinking of the regulatory perimeter: one that aligns form with substance, and influence with accountability.

To that end, legislative reform must proceed from first principles. The law must distinguish between mere financial commentary and the deliberate solicitation of investment decisions. Where a finfluencer's conduct crosses the line from opinion into persuasion, particularly when monetary or reputational gain is at stake, regulation ought to follow. Clear statutory definitions, calibrated exemptions, and proportionate sanctions will provide the necessary scaffolding for a credible enforcement regime. This is not simply a matter of investor protection; it is a question of regulatory legitimacy in the digital age. If the law is to remain relevant, it must evolve—and quickly.

Beyond domestic reform, the inherently borderless nature of digital platforms demands greater international cooperation. A finfluencer based in one jurisdiction can reach and mislead audiences in another with a few keystrokes. Regulatory arbitrage, already a concern in traditional finance, becomes a virtual certainty if legal regimes remain fragmented. At the same time, legal literacy must keep pace with digital fluency. No regulatory framework, however sophisticated, can substitute for a public that is able to discern puffery from advice, and virality from credibility. In the final analysis, the integrity of financial markets depends not just on the law's ability to keep up with technology, but also on society's willingness to confront the risks that come with conflating charisma with competence.