INFORMATION FACTORY

Seller Beware

Recurring Mis-Selling Practices and Regulatory Challenges in Banking

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Introduction

The mis-selling of financial products remains a persistent challenge in global banking. Despite substantial fines, strengthened conduct rules, and increased regulatory scrutiny, financial institutions continue to distribute products that are unsuitable for a client's needs, risk appetite, or financial objectives. Over the past two decades, regulators across Europe and beyond have repeatedly sanctioned banks for such practices.

Mis-selling erodes consumer trust, distorts financial markets, and generates significant economic harm. It is driven by a combination of information asymmetry, complex product design, high-margin incentives, and weaknesses in internal controls. Understanding why these practices recur is essential for designing effective regulatory, supervisory, and institutional safeguards.

A Brief History...

The global financial crisis (GFC) illustrated how aggressive marketing of mortgage products—combined with flawed underwriting and inadequate oversight—exposed tens of millions of US borrowers to real estate they could not afford once housing prices started to decline.

In Europe, several banks have been fined for selling complex interest-rate derivatives to retail clients and small and medium-sized enterprises (SMEs) that lacked the expertise to understand their embedded optionality and downside risk. This includes Swiss institutions that in some instances have offered significant financial compensation to their clients[1].

In Switzerland, Credit Suisse's trajectory toward failure was accelerated by its promotion of supply-chain finance funds linked to Greensill, which ultimately resulted in losses for thousands of private-banking clients. Since then, banks across Europe have continued to face regulatory sanctions for breaches of client-suitability and product-governance requirements.

In 2025 alone multiple firms were subject to significant regulatory and legal actions due to past mis-selling violations (Exhibit 1). The most significant case relates to UK car loans where several companies illegally incentivized car dealers to sell overpriced financing solutions to their clients between 2007-2024. Although the compensation has not yet been finalized, a large payout of over £8 billion is currently estimated.

Exhibit 1 – 2025 Mis-selling related compensation examples

Institution(s)	Cause	Jurisdiction	Financial impact
Santander	PPI liability dispute	UK (High Court)	£675 MM
Deutsche Bank	FX derivatives to SMEs	Spain (CNMV)	Euro 10 MM
Deutsche Bank	FX derivatives	Germany (BaFin)	Euro 23 MM
UBS (legacy CS)	RMBS	US (DOJ)	US$ 300 MM
Multiple UK firms	Car-finance DCA	UK (FCA)	£8.2 B (estimate)

[1] UBS orders bankers to scale back sale of complex currency products

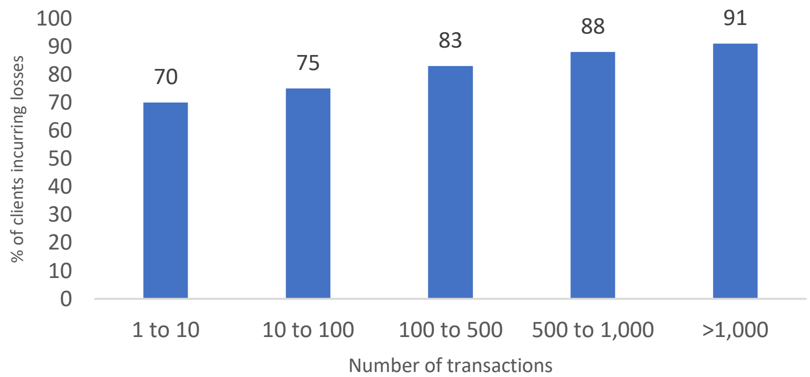
...Repeating Itself

Over the past decade, global financial regulators have significantly strengthened conduct requirements. MiFID II, ESMA's product-governance rules and FINMA's Financial Services Act (FinSA) all require firms to define target markets, assess product complexity, and ensure appropriate client outcomes. Supervisors are increasingly relying on data evidence rather than disclosures alone.

On October 2025, BaFin issued a general administrative order governing the sale and marketing of "turbo certificates," a leveraged structured product[2] widely sold to retail investors. Based on a market study BaFin found that 74% of all retail clients incurred net losses on "turbo certificates"[3]. This ratio increases to a **staggering 91% for actively trading clients** (Exhibit 2) — a result strongly suggesting persistent investor disadvantages relative to product issuers and intermediaries.

The new BaFin rules require intermediaries to conduct mandatory product-knowledge assessments, apply stricter appropriateness tests, and provide enhanced risk disclosures starting in June 2026. It is highly likely that regulators in other EU jurisdictions where "turbo certificates" are prevalent will follow suit in the near future. In 2018 the European Securities and Markets Authority (ESMA) issued temporary production intervention measures related to Contract-for-Difference (CFD) product based on large retail client losses. It is reasonable to expect that ESMA will take similar actions regarding "turbo certificates" in coming months. Regardless of the exact timing, the direction of travel is clear: authorities are focusing increasingly on **actual client outcomes**, not just documentation or disclosure processes. This shift reflects a broader reality: **mis-selling persists** where internal incentives and focus on short-term revenue goals are prioritized over **long-term client welfare**.

Exhibit 2: German Retail Clients incurring losses by transaction range – Turbo-Certificates 2019-2023



Source: BaFin

[2] BaFin - Pressemitteilungen - BaFin interveniert bei Turbo-Zertifikaten

[3] BaFin - Pressemitteilungen - BaFin-Studie: Vertrieb von Turbo-Zertifikaten an deutsche ...

How About Switzerland?

Switzerland has a relatively high proliferation of leveraged retail products compared with other jurisdictions. Although FINMA regularly publishes consumer guidance notices[4] there is currently no indication that FINMA intends to conduct analyses similar to BaFin's. Nevertheless, Swiss institutions should not assume that the domestic market is immune to comparable forms of client detriment. FINMA has historically taken a more "hands-off" supervisory approach, but this places greater responsibility on banks to ensure that products with negative mathematical expectancy are distributed responsibly. While banks are entitled to earn reasonable fees and spreads, they must exercise heightened caution when offering instruments that expose clients to structural, asymmetric risk[4].

Swiss banks should therefore carefully reassess their approach to turbo certificates and other highly leveraged, non-linear products. To mitigate suitability, conduct and reputational risks, banks should consider the following steps:

- Classify turbo certificates and similar products as "high-risk" within their Product Governance Framework
- Implement mandatory, product-specific appropriateness tests and scenario disclosures; and
- Restrict access to clients who explicitly opt in and demonstrate genuine understanding of product pricing and mechanics

Taking these steps now will strengthen client protection and reduce institutional exposure to reputational and regulatory risk—both in Switzerland and in line with evolving expectations abroad.

[4] kundenschutz.pdf

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