



FINANCIAL SECTOR REGULATION ACT, 2017

NOTICE REGARDING THE PUBLICATION OF DRAFT CONDUCT STANDARD [-] OF 2021 (CFI) – REQUIREMENTS FOR CO-OPERATIVE FINANCIAL INSTITUTIONS

The Financial Sector Conduct Authority (Authority) hereby invites, in accordance with section 98(1)(a)(iv) of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017) (FSR Act), submissions on the draft Conduct Standard [-] of 2021 (CFI) – Requirements for Co-operative Financial Institutions, to be made under section 106(1), read with sections 106(2)(b) and 108(1) of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017), as per the Schedule below.

The draft Conduct Standard, together with a statement supporting the draft Conduct Standard, is available on the Authority's website at <https://www.fsca.co.za> .

Submissions on the draft Conduct Standard must use the submission template available on the Authority's website, and be submitted in writing on or before **24 September 2021** to the Authority at FSCA.RFDStandards@fsca.co.za.

**UNATHI KAMLANA
COMMISSIONER
FINANCIAL SECTOR CONDUCT AUTHORITY**

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SCHEDULE

CONDUCT STANDARD [-] OF 2021 (CFI) – REQUIREMENTS FOR CO-OPERATIVE FINANCIAL INSTITUTIONS

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1. Definitions

In this Conduct Standard, “**the Act**” means the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017), and any word or expression to which a meaning has been assigned in the Act bears the same meaning so assigned to it unless the context otherwise indicates, and -

“**Authority**” means the Financial Sector Conduct Authority as defined in section 1 of the Financial Sector Regulation Act;

“**Co-operative Banks Act**” means the Co-operatives Banks Act, 2007, (Act No 40 of 2007);

“**co-operative financial institution**” means a co-operative financial institution as defined in the Co-operative Banks Act and a financial co-operative as defined in the Co-operatives Act, 2005 (Act. No 14 of 2005);

“**compensation payment**” means the provision of money, by a co-operative financial institution to a complainant to compensate the complainant for a proven or estimated financial loss incurred as a result of the co-operative financial institution’s non-compliance, action, failure to act, or unfair treatment forming the basis of the complaint, where the co-operative financial institution accepts liability for having caused the loss concerned, but excludes any:

- (a) goodwill payment;
- (b) payment contractually due to the complainant in terms of a product or service agreement with the co-operative financial institution; or

(c) refund of an amount paid by or on behalf of the complainant to the co-operative financial institution where such payment was not contractually due; and includes any interest on late payment of any amount referred to in paragraphs (b) or (c);

“complainant” means a member who –

- (a) has submitted a specific complaint to a co-operative financial institution and who has a direct interest in the financial product or financial service to which the complaint relates; or
- (b) has submitted a complaint on behalf of a person mentioned in paragraph (a).

“complaint” means an expression of dissatisfaction by a person to a co-operative financial institution relating to a financial product or financial service provided or offered by that co-operative financial institution which indicates or alleges, regardless of whether such an expression of dissatisfaction is submitted together with or in relation to a member query, that –

- (a) the co-operative financial institution or its service provider has contravened or failed to comply with an agreement, a law, a rule, or a code of conduct which is binding on the co-operative financial institutions or to which it subscribes;
- (b) the co-operative financial institution’s maladministration or wilful or negligent action or failure to act, has caused the member harm, prejudice, distress or substantial inconvenience; or
- (c) the co-operative financial institution has treated the member unfairly;

“goodwill payment” means the provision of money, by a co-operative financial institution to a complainant as an expression of goodwill aimed at resolving a complaint, where the co-operative financial institution does not accept liability for any financial loss to the complainant as a result of the matter complained about;

“member” means any person who belongs to the co-operative financial institution;

“plain language” means communication that:

- (a) is clear and easy to understand;
- (b) avoids uncertainty or confusion; and
- (c) is adequate and appropriate in the circumstances,

taking into account the factually established or reasonably assumed level of knowledge of the member or average members at whom the communication is targeted;

“rejected” in relation to a complaint means that a complaint has not been upheld and the co-operative financial institution regards the complaint as finalised after advising the complainant that it does not intend to take any further action to resolve the complaint and includes complaints regarded by the co-operative financial institution as unjustified or invalid, or where the complainant does not accept or respond to the co-operative financial institution’s proposals to resolve the complaint;

“service provider” means any person, whether or not that person is a representative or other agent of a co-operative financial institution, with whom a co-operative financial institution has an arrangement relating to the provision of the financial products or financial services of the co-operative financial institution; and

“upheld” means that a complaint has been finalised wholly or partially in favour of the complainant and that -

- (a) the complainant has explicitly accepted that the matter is fully resolved; or
- (b) it is reasonable for the co-operative financial institution to assume that the complainant has so accepted; and

all undertakings made by the co-operative financial institution to resolve the complaint have been met or the complainant has explicitly indicated satisfaction with any arrangements to ensure such undertakings will be met by the co-operative financial institution within a time acceptable to the complainant.

2. Application

Subject to paragraph 3, this Conduct Standard is applicable to co-operative financial institutions registered in terms of the Co-operative Banks Act in relation to their provision of financial products and financial services.

3. Business principles

- (1) A co-operative financial institution must –
 - (a) conduct its business in a manner that promotes the fair treatment of members;
 - (b) conduct its business with integrity, honestly, fairly, with due skill, care and diligence, and in a manner that does not bring the financial sector into disrepute;
 - (c) identify and promote a culture that supports ethical behaviour and aim to ensure that the matters referred to in items (a) and (b) are central to the values of the co-operative financial institution;
 - (d) organise and manage its affairs responsibly and efficiently;
 - (e) avoid, or, where avoidance is not possible, manage and mitigate actual or potential conflicts of interest;
 - (f) deal with the Authority in an open, accountable and cooperative manner; and
 - (g) conduct its business transparently and with due regard to the information needs of its members.
- (2) For purpose of subparagraph (1)(a) the fair treatment of members encompass achieving at least the following outcomes:
 - (a) The co-operative financial institution can demonstrate that its culture, supported by its governance arrangements and business processes, prioritises the fair treatment of members.
 - (b) financial products and financial services of the co-operative financial institution are suitably designed to meet the needs of members who are targeted accordingly;
 - (c) members are given clear information and are kept appropriately informed before, during and after the time of entering into a contract in respect of a financial product or financial service offered or provided by a co-operative financial institution;

- (d) members are provided with financial products that perform as a co-operative financial institution or its representatives have led them to expect, and the related member service is of an acceptable standard and in line with the expectations created; and
 - (e) members do not face unreasonable post-sale barriers imposed by or on behalf of a co-operative financial institution, including to change or replace or terminate a financial product or financial service, request a withdrawal or submit a complaint.
- (3) When a co-operative financial institution renders a financial service, the service must be rendered in accordance with the contractual relationship and reasonable requests or instructions of the member, which must be executed as soon as reasonably possible and with due regard to the interests of the member which must be accorded appropriate priority over any interests of the co-operative financial institution.

4. Obligations of governing body

- (1) The board of a co-operative financial institution is accountable for compliance with the requirements of this Conduct Standard.
- (2) The board of a co-operative financial institution –
 - (a) is responsible for the culture, as referred to in paragraph 3(1)(c), within the co-operative financial institution;
 - (b) is responsible for the establishment, implementation, embedment, subsequent reviews of, and continued compliance with governance arrangements within the co-operative financial institution; and
 - (c) must ensure that the culture referred to in paragraph 3(1)(c) and governance arrangements are appropriately embedded in the co-operative financial institution.

5. Governance arrangements

- (1) A co-operative financial institution must document, adopt, implement and monitor the effectiveness of appropriate governance arrangements that are reasonably necessary to ensure adherence to the requirements in this Conduct Standard.
- (2) The governance arrangements referred to in subparagraph (1) must -
 - (a) be proportionate to the nature, scale and complexity of the activities and business model of the co-operative financial institution, having due regard to the inherent risks associated with such activities and model;
 - (b) describe how the co-operative financial institution will comply with this Conduct Standard and must at least, through appropriate policies and procedures, address -

- (i) roles and responsibilities of key persons of the co-operative financial institution;
 - (ii) remuneration, compensation and incentive practices;
 - (iii) conflicts of interest;
 - (iv) disclosure of interests in related and inter-related parties;
 - (v) record keeping;
 - (vi) communication with the Authority;
 - (vii) decision making and management procedures, including delegation of authority arrangements;
 - (viii) risk management, compliance and internal control procedures, including segregation of duties and functions;
 - (ix) security, integrity, privacy and confidentiality of information; and
 - (x) any other matter that this Conduct Standard requires to be included in the governance arrangements.
- (3) The matters contemplated in subparagraph (2)(b) may be addressed in one or more separate policies or procedures forming part of the overall governance arrangements of the co-operative financial institution.
- (4) A co-operative financial institution's governance arrangements must provide for proportionate risk-based monitoring and evaluation of the adequacy and effectiveness of the co-operative financial institution's systems, processes, procedures and internal control mechanisms and measures to address any identified deficiencies.
- (5) The proportionate monitoring and evaluation contemplated in subparagraph (4) must specifically consider the systems, processes, procedures and internal control mechanisms in place to ensure -
- (a) compliance with this Conduct Standard; and
 - (b) the effectiveness of the co-operative financial institution's practices in relation to the fair treatment of its members.

6. Design, suitability and performance requirements for financial products and financial services

- (1) A co-operative financial institution must design its financial products and financial services, including the related methods utilised for the distribution and provision of these financial products and financial services, with due regard to the interests of its members.
- (2) A co-operative financial institution must establish and implement appropriate oversight arrangements to monitor and review the design and suitability of its financial products and financial services on an ongoing basis.
- (3) The oversight arrangements referred to in subparagraph (2) may vary depending on the financial product or financial service, taking into consideration the nature, scale and complexity of the relevant business of the co-operative financial institution and the complexity of the financial product or financial service, and related business models.
- (4) A co-operative financial institution must ensure that a financial product or financial service -

- (a) performs or is executed as that co-operative financial institution has led members to expect, which expectations include those created through disclosure;
 - (b) is subject to appropriate monitoring by relevant key persons to enable on-going, informed decision making relating to the extent to which the financial product or financial service continues to comply with the requirements of this Conduct Standard;
 - (c) is supported by adequate post-sales service that is of a standard that members have been led to expect.
 - (d) A co-operative financial institution must review the oversight arrangements referred to in this paragraph from time to time to ensure that they remain effective and up to date.
- (5) A co-operative financial institution must ensure that timeous remedial action is taken in respect of those financial products and financial services that are reasonably expected to lead, or are leading, to unfair outcomes for members.

7. Additional requirements in respect of members

- (1) A co-operative financial institution that provides financial products or financial services to members must –
- (a) when designing a financial product or financial service, make use of adequate information on the needs and reasonable expectations of its members and assess the distribution methods intended to be used in relation to the financial product or financial service, and the related disclosure approach and materials, to ensure that they -
 - (i) are consistent with the co-operative financial institution's business model and risk management approach;
 - (ii) target the identified group(s) of members for whose needs and reasonable expectations the financial product or financial service is likely to be appropriate;
 - (iii) include reasonable measures to limit access by members for whom the financial product or financial service is likely to be inappropriate; and
 - (iv) are appropriate, taking into account the risk of unfair outcomes for members;
 - (b) ensure on an on-going basis that the financial products or financial services remain appropriate to meet the identified needs of the target members after they have been made available to the said members;
 - (c) ensure reasonable flexibility in the design of financial products and financial services to deal with and adjust to the reasonably expected changes in the needs of targeted members during the lifetime of the financial product or financial service; and
 - (d) ensure that the terms, conditions and requirements in a contract between the co-operative financial institution and its members, relating to a financial product or financial service, including fees and charges, are not unfair.

- (2) Without limiting the generality of subsection (1)(d) above, a term, condition or a requirement in a contract is unfair, if it –
- (a) would cause a significant and unreasonable imbalance in the parties' rights and obligations under the contract;
 - (b) is not reasonably necessary to protect the legitimate interests of the financial institution, who would be unduly advantaged by the term, condition or requirement;
 - (c) would result in an unfair outcome (financial or otherwise) to a member if it was applied or relied on;
 - (d) unreasonably requires a member, whether as a condition to enter into a transaction or otherwise, to:
 - (i) waive any right; or
 - (ii) absolve the co-operative financial institution of any obligation or liability.

8. Advertising

- (1) A co-operative financial institution must ensure that its financial products and financial services are advertised to members in a way that is clear, fair and not misleading.
- (2) A co-operative financial institution may not incentivise or pay a referral fee to existing members or personnel for recruiting new members.
- (3) If a co-operative financial institution relies on another person to advertise a financial product or financial service on its behalf, the co-operative financial institution remains responsible for –
- (a) the manner in which its financial product or financial service is advertised; and
 - (b) ensuring that the advertisement complies with this Conduct Standard.
- (4) Advertising by a co-operative financial institution must –
- (a) be factually correct;
 - (b) not contain any statement, promise or forecast which is fraudulent, untrue or misleading; and
 - (c) use plain language.
- (5) Where a co-operative financial institution uses a telephone or mobile phone call, voice or text message or other electronic communication for any advertisement targeted at a member, it must inform the member during that call or within a reasonable time after receiving the message, that the member may demand that the co-operative financial institution not make use of any of these mediums to provide any further advertising to the member.

- (6) A co-operative financial institution or any person acting on its behalf must comply with a demand made by a member in terms of subsection (5).
- (7) A co-operative financial institution or any person acting on its behalf may not charge a member a fee or allow a service provider to charge a member any fee for making a demand in terms of subsection (5).
- (8) A co-operative financial institution must have in place processes and procedures for the approval of advertisements and advertising methods by a person of appropriate seniority and expertise within the co-operative financial institution, which must form part of the arrangements required in paragraph 3 above.
- (9) Where a co-operative financial institution becomes aware that any advertising that relates to its business, financial products or financial services, whether published by the co-operative financial institution or any other person, is inconsistent with this Conduct Standard, the co-operative financial institution must -
 - (a) as soon as reasonably practicable correct or withdraw the advertising; or
 - (b) take reasonable steps to ensure that it is corrected or withdrawn; and
 - (c) notify any persons who it knows have relied on the advertising.
- (10) A co-operative financial institution must keep adequate records of all advertisements for a period of at least five years after publication.
- (11) Subparagraphs (1) to (10) apply equally to the advertising of any service or benefit provided or made available by a co-operative financial institution together with or in connection with any financial product or financial service, including a loyalty benefit.

9. Disclosures

- (1) Before, during and after the conclusion of a contract for the provision of a financial product or a financial service, a co-operative financial institution must take reasonable steps to ensure that a member is aware of and understands all relevant facts that could reasonably be expected to influence the member's decisions relating to the financial product or financial service, including -
 - (a) a balanced presentation of benefits and risks in relation to the financial product or financial service;
 - (b) all estimated costs to the member in relation to the supply of that financial product or financial service, including the total expected or actual costs as may be appropriate, and, for the same period, the total expected, or actual returns earned by the member in relation to the supply of that financial product or financial service as may be appropriate and whether the costs are subject to change at any given point;

- (c) contractual obligations of the member and the co-operative financial institution;
 - (d) the consequences for each party should there be a breach of contract; and
 - (e) recourse options available to the member in the case of a dispute.
- (2) A co-operative financial institution must make disclosures to members that -
- (a) use plain language;
 - (b) are adequate, appropriate, timely, relevant and complete;
 - (c) are factually correct and not misleading;
 - (d) are not deceptive, fraudulent, contrary to the public interest and do not contain incorrect statements;
 - (e) promote understanding of the financial product or financial service being provided; and
 - (f) are readily available to the member affected by the agreement.
- (3) When making disclosures to members, a co-operative financial institution must take into account -
- (a) the nature and complexity of the financial product or financial service concerned;
 - (b) the needs and reasonably assumed level of knowledge, understanding and experience of the members at whom the disclosure is targeted; and
 - (c) the most appropriate timing of the disclosure concerned, in order to ensure that a member is given appropriate information about a financial product or financial service at the point at which the information will be most useful to the member's decision-making in relation to entering into, using or maintaining the financial product or financial service.
- (4) Where a financial product provides for the payment of surplus/income by the co-operative financial institution to the member, a co-operative financial institution must, in addition to and with equal prominence to any other disclosure regarding the interest rate concerned, appropriately describe the rate of interest concerned and also disclose to a member the effective annual surplus/income rate of the financial product.
- (5) The Authority may determine the manner and form of disclosures that must be made in respect of financial products and financial services to members.

10. Complaints management

- (1) A co-operative financial institution must establish, maintain and operate an adequate and effective complaints management framework to ensure the fair treatment of complainants that -
 - (a) is proportionate to the nature, scale and complexity of the co-operative financial institution's business and risks;
 - (b) is appropriate for the business model, financial products, financial services and members of the co-operative financial institution;
 - (c) enables complaints to be considered after taking reasonable steps to gather and investigate all relevant and appropriate information and circumstances, with due regard to the fair treatment of complainants; and
 - (d) does not impose unreasonable barriers to complainants.
- (2) A co-operative financial institution must review its complaints management framework at least annually and document any changes thereto.
- (3) The complaints management framework must at least, provide for -
 - (a) relevant objectives, key principles and the proper allocation of responsibilities for dealing with complaints;
 - (b) expected turnaround times for providing feedback on complaints
 - (c) documented procedures for the appropriate management and categorisation of complaints;
 - (d) documented procedures which clearly define the escalation, decision-making, monitoring, oversight and review processes within the complaints management framework;
 - (e) appropriate record keeping, monitoring and analysis of complaints, and reporting (regular and ad hoc) to the governing body of the co-operative financial institution and any relevant committee on -
 - (i) identified risks, trends and actions taken in response thereto; and
 - (ii) the effectiveness and outcomes of the complaints management framework;
 - (f) appropriate communication with complainants and their authorised representatives on the complaint and the complaints processes and procedures;
 - (g) appropriate engagement between the co-operative financial institution and any relevant ombud, where applicable;
 - (h) compliance with any applicable requirements for reporting to the Authority and public reporting;
 - (i) regular monitoring of the complaints management framework.

- (4) Any person on behalf of the co-operative financial institution that is responsible for making decisions or recommendations in respect of complaints generally or a specific complaint must -
- (a) be adequately trained;
 - (b) have an appropriate mix of experience, knowledge and skills in complaints handling, fair treatment of members, the subject matter of the complaints concerned and relevant legal and regulatory matters;
 - (c) not be subject to a conflict of interest; and
 - (d) be adequately empowered to make impartial decisions or recommendations.
- (5) A co-operative financial institution must categorise complaints received from all members in accordance with the following minimum categories:
- (a) Complaints relating to the design of a financial product or financial service, including the fees or charges related to that financial product or financial service;
 - (b) complaints relating to disclosures made to the members;
 - (c) complaints relating to advertising of financial products and financial services;
 - (d) complaints relating to advice;
 - (e) complaints relating to the performance of a financial product and financial service;
 - (f) complaints relating to financial customer service, including complaints relating to the way in which staff dealt with the member, the administrative processing of payments to or by the member as well as breaches of confidentiality;
 - (g) complaints relating to the accessibility of funds, changes or switches between financial products or financial services;
 - (h) complaints relating to complaints handling; and
 - (i) other complaints.
- (6) Where a complaint is upheld, any commitment by the co-operative financial institution to make a compensation payment, goodwill payment or to take any other action must be carried out without undue delay and within any agreed timeframes.
- (7) Where a complaint is rejected, the complainant must be provided with clear and adequate reasons for the decision and must be informed of any relevant ombud, where applicable, which can be approached, including how to contact them and any relevant time limits.

- (8) A co-operative financial institution must maintain the following data in relation to complaints received:
- (a) number of complaints received;
 - (b) number of complaints upheld;
 - (c) number of rejected complaints and reasons for the rejection;
 - (d) number of complaints referred to any specific ombud, where applicable, and their outcome;
 - (e) number and amounts of compensation payments made;
 - (f) number and amounts of goodwill payments made; and
 - (g) total number of complaints outstanding.
- (9) Complaints information recorded in accordance with subparagraph (8) must be scrutinised and analysed by a co-operative financial institution on an ongoing basis and utilised to pro-actively identify and manage conduct risks and affect improved outcomes and processes for its members, and to prevent recurrences of poor outcomes and errors.
- (10) A co-operative financial institution must establish and maintain appropriate processes and procedures for reporting of the information in subparagraph (8) to its governing body and appropriate key members.
- (11) A co-operative financial institution must ensure that its complaint processes and procedures are transparent, visible and accessible through channels that are appropriate to the co-operative financial institution and its members.
- (12) A co-operative financial institution may not impose any charge for a complainant to make use of complaint processes and procedures.
- (13) All communications with a complainant must use plain language.
- (14) A co-operative financial institution must, within a reasonable time after receipt of a complaint, acknowledge receipt thereof and promptly inform a complainant of the process to be followed in handling the complaint, including -
- (a) contact details of the person that will be handling the complaint;
 - (b) indicative timelines for addressing the complaint; and
 - (c) details of any relevant ombud, where applicable.
- (15) A complainant must be kept adequately informed of -
- (a) the progress of the complaint;
 - (b) causes of any delay in the finalisation of the complaint and revised timelines; and

- (c) the co-operative financial institution's decision in response to the complaint.
- (16) A co-operative financial institution must -
- (a) have appropriate processes and procedures in place for engagement with any relevant ombud, where applicable, in relation to its complaints;
 - (b) clearly and transparently communicate the availability and contact details of any relevant ombud services to members and complainants at all relevant stages of the relationship with the co-operative financial institution, including at point of sale, in relevant periodic communications, and when a complaint is rejected;
 - (c) display or make available information regarding the availability and contact details of any relevant ombud services at the premises or on the website of the co-operative financial institution;
 - (d) maintain specific records and carry out specific analysis of complaints referred to the co-operative financial institution by any relevant ombud and the outcomes of such complaints;
 - (e) monitor determinations, publications and guidance issued by any relevant ombud with a view to identifying failings or risks in their own financial products, financial services or practices; and
 - (f) keep complaints information for a period of 5 years after the communication concerned.
- (17) A co-operative financial institution must have appropriate processes and procedures in place to ensure compliance with any prescribed requirements for reporting complaints information to the Authority or to the public as may be required by the Authority.

11. Refusal, withdrawal or closure of financial products or financial services by the co-operative financial institution

- (1) A co-operative financial institution must, subject to other applicable regulatory requirements, document, adopt and implement processes and procedures relating to the -
- (a) refusal to provide a financial product or render a financial service to one or more member; and
 - (b) withdrawal, termination or closure of a financial product or withdrawal or termination of a financial service in respect of one or more members.
- (2) Subject to subparagraph (4), a co-operative financial institution may not take any of the actions referred to in subparagraph (1)(b), without providing reasonable prior notice of the withdrawal, termination or closure to the member.

- (3) Subject to subparagraph (4), a co-operative financial institution must, when it takes any of the actions referred to in subparagraph (1), disclose to the member the reasons for the refusal, withdrawal, termination or closure.
- (4) A co-operative financial institution may take any of the actions referred to in subparagraph (1) without providing the member reasonable prior notice or reasons as contemplated in subparagraphs (2) and (3) if it –
 - (a) is compelled to do so by law; or
 - (b) has a reasonable suspicion that the financial product or financial service is being used for any illegal purpose; and
 - (c) has made the necessary reports to the appropriate authority.
- (5) Contractual agreements with members must make provision for the types of circumstances in which the contractual agreement may be terminated or withdrawn by the co-operative financial institution.

12. Termination, closure or switching of financial products or financial services by a member

- (1) A co-operative financial institution must appropriately and adequately assist a member to close, terminate or transfer to another financial institution a financial product or financial service, upon receiving a request from a member to do so.
- (2) Contractual agreements with members must make provision for the circumstances in which the contractual agreement may be terminated or closed by the member.

13. Short title and commencement

- (1) This Conduct Standard is called Requirements for Co-operative Financial Institutions, 2021 and comes into operation as follows –
 - (a) paragraphs 3, 4, 5 and 6 come into operation 8 months after the date of publication of this Conduct Standard;
 - (b) paragraphs 7, 8, 9, and 10 come into operation 12 months after the date of publication of this Conduct Standard; and
 - (c) all other paragraphs come into operation on the date of publication.