



**STATEMENT SUPPORTING THE CONDUCT
STANDARD FOR BANKS**

DATE OF ISSUE:



Financial Sector
Conduct Authority

1 PURPOSE OF THE STATEMENT

This Statement relates to the Conduct Standard proposed by the Financial Sector Conduct Authority (FSCA) under sections 106(1), read with section 106(2)(b) and 108(1) of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017) (FSRA) in respect of banks, mutual banks and co-operative banks (hereafter referred to as banks). The objective of the Conduct Standard is to introduce requirements that promote the fair treatment of financial customers of banks.

This Statement is published in accordance with Section 103(1)(a) of the FSRA and is intended to support and give context to the Conduct Standard that is published herewith. The Statement explains the need for, the expected impact of, and the intended operation of the Conduct Standard.

2 DRAFT CONDUCT STANDARD

The FSCA, in accordance with section 98(1)(a)(iv) of the FSRA published a draft Conduct Standard on 30 April 2019 and invited submissions in relation thereto.

Submissions on the draft Conduct Standard was open for comment until 18 June 2019 in compliance with the period as required in terms of section 98(2) of the FSRA.

3 STATEMENT OF NEED - POLICY CONTEXT AND PROBLEM DEFINITION

According to the South African Reserve Bank (SARB) Supervision Department report on *Selected South African banking sector trends, January 2018* the number of banks in South Africa at the time was as follows:

Registered banks	19
Mutual banks	3
Co-operative banks	3
Local branches of foreign banks	15
Foreign banks with approved local representative offices	31

At a high level, in total these 71 financial institutions are the financial institutions that will need to comply with the requirements of the draft Conduct Standard for Banks, as applicable. The total banking sector assets amounted to R5 157 billion at the end of 2017 with these assets mainly funded by deposits, current accounts and other creditors.¹

¹ Extracted from SARB Bank Supervision Department Annual Report, 2017

Over the past decade a number of conduct weaknesses have been identified in the South African banking sector. In 2008 the Banking Enquiry, of the Competition Commission (Jali Commission) made a number of findings and recommendations with regards to poor customer outcomes being experienced by the customers of retail banks and highlighted a clear gap in the regulation of market conduct of retail banks. In 2016/2017, National Treasury commissioned the World Bank to undertake a diagnostic focusing on the identification of potential deficiencies from a fair-treatment perspective in banks' provision of transactional and fixed deposit accounts, and whether and how any identified fair-treatment deficiencies could appropriately be addressed through market conduct regulation, taking into account international good practices and the South African market context. The Retail Banking Diagnostic report (Diagnostic) was issued in 2018, with various recommendations to be considered. Similar conduct concerns were raised in both the Jali Commission report and the Diagnostic and included findings relating to, for example, potentially unfair penalty fees, opaque product bundling and pricing. Not all the recommendations put forward in the Diagnostic called for the implementation of regulatory standards. Recommendations were also made with regards to consumer education campaigns that may be required as well as an identified need for a supervisory framework for the conduct of banks.

The 2018 draft Financial Markets Review, which was published for public comment, highlighted market conduct issues in the foreign exchange market, the money market and the bond market. In 2015 the global foreign exchange market was rocked by revelations of the manipulation of foreign exchange rates by banks to increase their profits, sometimes through collusion. Six global banks (Bank of America, UBS, Royal Bank of Scotland, JPMorgan, Citigroup and Barclays) were fined more than USD 5.6 billion by the US Department of Justice to settle allegations in this regard. In October 2015 the SARB released the findings of its review into the trading practices among Authorised Dealers in the South African foreign exchange market and while the review found no evidence of malpractice or serious misconduct, it held there is room for an improvement in overall market conduct. Since 2009, details of the manipulation of financial benchmarks have emerged as regulators in jurisdictions, including the US, UK, Canada, Japan, Switzerland and European Union started investigating the fixing and false reporting of the London Interbank Offered Rate, Euro Interbank Offered Rate and Tokyo Interbank Offered Rate.

With the advent of the FSRA in 2018, the FSCA has been given the explicit mandate of regulating and supervising the conduct of banks in relation to the provision of financial products and services. In order for the FSCA to meaningfully supervise the conduct of banks, there must be an enforceable market conduct regulatory framework against which the FSCA can measure conduct across the banking sector. As part of fulfilling the aforementioned mandate and bearing in mind the identified risks to fair customer outcomes in the sector as highlighted by the Jali Commission, the Diagnostic

as well as the Financial Markets Review, the FSCA identified a critical and urgent need to develop a Conduct Standard for banks in order to enable it to begin directly supervise these institutions. The Conduct Standard is therefore the first step towards rolling out a comprehensive market conduct regulatory framework for the banking sector.

4 SUMMARY OF THE DRAFT CONDUCT STANDARD

As this is the first Conduct Standard applicable to banks, the aim is to establish requirements that are predominantly positioned at a high level. Some specific areas in the draft Conduct Standard, such as Complaints Management, contain more detailed requirements as general cross-sector consultations have previously taken place as part of the roll out of the Treating Customers Fairly regime by the former Financial Services Board.

The draft Conduct Standard was designed to follow the sequencing of the six (6) Treating Customers Fairly (TCF) Outcomes as well as, to the extent possible, the sequencing of the typical financial product lifecycle. The various requirements set out in the Conduct Standard were directly informed by the TCF Outcomes as follows:

- TCF Outcome 1: *Customers are confident that they are dealing with financial institutions in which the fair treatment of customers is central to their culture.* To this end, section 3 of the Conduct Standard sets out the manner in which banks would be expected to demonstrate that fair customer treatment is central to their culture, including the embedment of governance and oversight frameworks in this regard.
- TCF Outcome 2: *Entails that products and services marketed and sold in the retail market are designed to meet the needs of identified customer groups and are targeted at these customer groups.* The application of the Conduct Standard is not limited to retail financial customers, although the application of the entire section 5 and portions of sections 2, 4, 6, 7 and 8 have been limited in application to retail financial customers. Section 4 of the Conduct Standard proposes to regulate the design, suitability and performance requirements for financial products and financial services. The section deals with the oversight arrangements that a bank must have in place in order to ensure that the objective of TCF Outcome 2 is met.
- TCF Outcome 3: *Customers are provided with clear information and kept appropriately informed before, during and after point of sale.* Section 6 of the Conduct Standard sets minimum standards for advertising, including the governance processes that must be in place for the approval of advertisements. In addition, section 7 sets out the disclosures that must be

made to a financial customer in order to ensure that the financial customer is aware of and understands all the relevant facts that could reasonably be expected to influence the financial customer's decisions relating to the financial product or financial service.

- TCF Outcome 4: *Where advice is given, it is suitable and takes account of customer circumstances.* Section 7 of the Conduct Standard identifies the factors that need to be taken into account when making disclosures to financial customers, such as the nature and complexity of the financial product in order to ensure that a financial customer is given appropriate information about a financial product or financial service at the point at which the information will be most useful to the financial customer's decision-making in relation to entering into, using, or maintaining the product or service.

- TCF Outcome 5: *Products perform as firms have led customers to expect, and service is of an acceptable standard and as they have been led to expect.* Section 5 of the Conduct Standard is only applicable to retail financial customers and sets standards for the prohibition of unfair product terms and conditions, including additional product design standards applicable to this market segment.

- TCF Outcome 6: *Customers do not face unreasonable post-sale barriers imposed by firms to change products, switch providers, submit a claim or make a complaint.* Section 8 of the Conduct Standard is more rules-based than the rest of the Conduct Standard and deals with the Complaints Management Framework that a bank must establish, including appropriate training of responsible staff, the categorisation of complaints received from retail customers and other procedures that need to be in place. Sections 9 and 10 of the Conduct Standard deals with account closure and switching, both initiated by the bank as well as by the financial customer themselves.

These requirements apply in addition to any other requirement already imposed on banks by other financial sector laws. The requirements have been crafted in such a way so as to avoid inconsistencies with regulatory requirements already in place.

5 STATEMENT OF IMPACT OF THE CONDUCT STANDARD

It is envisaged that the Conduct Standard will not have an adverse impact on consumer choice, quality of banking products or services, or the efficiency of providing banking products and services. The Conduct Standard is likely to lead to improved outcomes for customers due to better disclosure, and that product offerings must be designed and targeted to appropriate customer groups.

Commentators did not identify substantial risks with regards to the potential impact of Conduct Standard during the comment phase.

The comments received were analysed to understand the anticipated cost and other impacts of implementing the Conduct Standard once it becomes effective. This included the extent to which transitional provisions are required in respect of some of the requirements proposed.

The FSCA acknowledges that there may be instances in which the implementation of the Conduct Standard could have a cost implication for banks. However, commentators did not raise the impact of cost as a substantial risk.

6 STATEMENT OF INTENDED OPERATION OF THE CONDUCT STANDARD

The Conduct Standard is consistent with the objective of the FSRA, and specifically the mandate of the FSCA to protect financial customers by promoting the fair treatment of financial customers by financial institutions. After becoming effective all banks, mutual banks and co-operative banks will be required to comply with the Conduct Standard. Specific transitional periods have been included to allow for sufficient time to enable banks to comply with the requirements of the Standard.

The Conduct Standard effectively balances principles-based and rules-based requirements to ensure that banks deliver fair customer outcomes in a disciplined, transparent and consistent manner. To manage compliance with the requirements of the Conduct Standard, banks will be expected to design and implement appropriate governance arrangements and other controls mechanisms that will ensure that fair treatment of customers is central to their organisational culture. Banks will be required to demonstrate to the FSCA that fair outcomes for customers are consistently delivered when providing financial services and financial products to customers.

The FSCA will monitor compliance with the Conduct Standard by using pro-active supervisory approaches in which potential areas of concern, with a greater emphasis on pre-empting negative customer outcomes where possible, are identified. This proactive approach will cover both emerging risks within a specific bank (micro conduct risks), as well as concerns at sector or business model level (macro conduct risks). Once risks have been identified, the FSCA will have engagements with the bank concerned to try and remediate the situation and pre-empt consumer harm or seek redress where harm has occurred.

To operationalise the pro-active supervisory approach, the FSCA will develop a reporting framework and data obtained through this framework will be used as an offsite supervisory tool identify conduct risks and trends specific to a particular bank and for benchmarking purposes across the banking sector. Furthermore, measures such as “mystery shopping”, interactions with banks and intermediaries, and surveys of customers and intermediaries, to test customer experience will be

undertaken. On-site supervision will also be conducted to examine and assess processes and management information relating to the fair treatment of customers.

7 WAY FORWARD

The draft Conduct Standard has been submitted to Parliament in accordance with section 103(1) of the Financial Sector Regulation Act.

As soon as the 30 days period referred to in section 103(1) of the Financial Sector Regulation Act has elapsed, the Authority will proceed to publish the final amendments.²

² Assuming that no objections are raised through the Parliamentary process.