FINANCIAL INSTITUTIONS AND MARKETS ACT, 2021

GENERAL

FAIR TREATMENT OF CUSTOMERS AND PRINCIPLES RELATING TO MARKET CONDUCT AND THEIR ADMINISTRATION BY NAMFISA

Standard No. GEN.S.10.21

issued by NAMFISA under section 410(9), read with sections 395(2)(e), 408(1)(d)(i) and 408(1)(e)(ii) of the Financial Institutions and Markets Act, 2021

Definitions

1. (1) In this Standard—

(a) "Act" means the Financial Institutions and Markets Act, 2021 (Act No. 2 of 2021), and it must be read with the regulations prescribed under the Act and the standards and other subordinate measures issued by NAMFISA under the Act;

(b) "bundled financial service" means a designated group of services offered to consumers in a set package at a set price, and it may consist of regulated and non-regulated services; and

(c) "consumer" means a person or group of persons, who is or may become a beneficiary to a financial service regulated under the Act.

(2) Words and phrases defined in the Act have the same meaning in this Standard, unless the context indicates otherwise, including, without limitation, the following, which are defined in section 1 of the Act:

(a) board;

(b) client;

(c) director;

(d) financial advice;

(e) financial institution;

(f) financial intermediary;

(g) financial service;

(h) NAMFISA; and

(i) principal officer.

Application of standard

2. This Standard applies to—

(a) all financial institutions and financial intermediaries registered under the Act; and

(b) the board and senior management, directors and the principal officer of a financial institution or financial intermediary accountable for enforcing its policy relating to the fair treatment of consumers, clients or customers (hereinafter collectively referred to as "customers").

Treating Customers Fairly (TCF) Principles

3. Every financial institution and financial intermediary must—

(a) have a written policy relating to the fair treatment of customers which must include, at a minimum, the outcomes and principles referred to in clause 5; and

(b) take steps to ensure there is awareness, understanding as well as compliance with the provisions of such policy.

4. The policy relating to the fair treatment of customers must be approved by the board of the financial institution or financial intermediary, or by the senior management of the financial institution or financial intermediary where there is no board.

Outcomes and principles

5. The policy relating to the fair treatment of customers must contain, at a minimum, the principles outlined under each of the seven Outcomes:

(a) Outcome One: Fair Treatment Culture;

(b) Outcome Two: Appropriate Financial Services Design and Distribution;

(c) Outcome Three: Clear and Relevant Information;

(d) Outcome Four: Proper Financial Advice;

(e) Outcome Five: Financial Services Perform as Promised or Expected at Point of Sale;

(f) Outcome Six: No Post Sale Barriers; and

(g) Outcome Seven: Data Privacy Protection.

Outcome One: Fair Treatment Culture

6. (1) This Outcome is the underlying driver for all other TCF Outcomes and aims at ensuring confidence in the market place where fair treatment of customers is central to the corporate culture.

(2) Financial institutions and financial intermediaries must embrace principles on treating customers fairly in their corporate values, standards and internal operations daily.

(3) The responsibility to promote such a culture starts with the board and senior management and ends with the staff of the financial institution or financial intermediary, so that—

(a) the board and senior management are responsible for promoting and implementing culture on fair treatment of customers through enforcing—

(i) values based on such culture; and

(ii) day-to-day conduct of activities that put fair treatment of customers at the fore-front by encouraging corporate culture on treating customers fairly in the staff's daily work;

(b) staff receive training to capacitate them with knowledge on fair treatment to customers in accordance with this Standard.

Outcome Two: Appropriate Financial Service Design and Distribution

7. (1) The aim of this Outcome is to ensure that financial services marketed and sold are designed and distributed to meet the well-defined needs of the targeted customer group, which must also be aligned with the nature of the financial institution or financial intermediary's operations.

(2) A financial institution or financial intermediary must ensure that the design and distribution of financial services—

(a) meet the needs of identified customer groups in terms of the costs and benefits; and

(b) where applicable, outline the limitations of the financial services.

(3) Financial institutions and financial intermediaries must have written policies aligned to this Standard on financial services design and distribution thereof and, at a minimum, outlining ways for—

(a) identifying risks and mitigating measures assisting customers as best possible to achieve financial goals from the financial service; and

(b) setting out the methodology used, including on its financial services already offered in the market.

Outcome Three: Clear and Relevant Information

8. (1) This Outcome ensures that customers are given clear and relevant information, and that they are appropriately informed about all the terms and conditions relating to a financial service before point of sale.

(2) Financial institutions and financial intermediaries must maintain accurate and retrievable records of information provided to customers at and after the point of sale, such as market performance returns, marketing or promotion material, which must be clear, appropriate and relevant to the customer.

(3) Under this Outcome, financial institutions and financial intermediaries must, at a minimum—

(a) provide clear and truthful information to customers at and after the point of sale;

(b) maintain mechanisms such as a signed declaration as part of the contract used for confirming that the terms and conditions associated with the financial service are understood by customers in the target market;

(c) ensure that information provided in promoting a financial service is easily understandable by clearly outlining to customers the cost, benefits and limitations of a specific financial service in meeting the needs of customers;

(d) ensure, in case of a combined or bundled financial service, that their discrete components are explained separately and as a combined;

(e) provide customers with ongoing relevant information to enable them to monitor whether the financial service continues to meet their needs and expectations;

(f) maintain general records of information provided to customers as long as the service remains active in the market subject to relevant laws on recordkeeping; and

(g) provide a platform, at all times after conclusion of the sale, to address follow-up queries on financial services sold, such as on disputes or complaints.

(4) Other requirements that the financial institution or financial intermediary must adhere to in their conduct when providing financial services include—

(a) the issuance of periodic statements of account and transaction receipts;

(b) the arrangement that all the disclosed documents must be provided in soft or hard copy format, and retained subject to relevant laws on recordkeeping, for the customer to readily access, copy and keep for later reference;

(c) that a notice of any change to the key facts statements summarising terms and conditions pertaining to any type of premium, contribution, fee, commission, interest rate, finance charge, benefit structure and claimed benefit be issued to the customer, if possible, within 21 business days prior to the effective date of the notice; and

(d) that customers be issued, where relevant, with clear and comparable summaries of the key facts statements used within a specific sector across all financial institutions or financial intermediaries as key terms and conditions to a financial service when they are shopping around, and at the contractual stage..

(5) Financial institutions and financial intermediaries must ensure that, in their communications, transparency and full disclosure principles are adopted on the terms and conditions about the financial services so that—

(a) terms and conditions are in a clear, concise and in plain language as articulated under Standard No. GEN.S.10.17 – Description of plain language;

(b) as provided for under Standard No. GEN.S.10.17 – Description of plain language, complicated, legal and technical terms or abbreviations must only be used with proper explanations, in short sentences, and paragraphs must have clear headings;

(c) timely, up-to-date, accurate and relevant information is provided to the customer during the pre-contractual stage, at the point of sale and during the term of the contract and such information is consistent for the same target group, and comparable across financial institutions and financial intermediaries offering similar financial services; and

(d) finance charges such as commissions, fees, penalties, interest rates, etc., are disclosed where applicable and possible, in a visible and easily accessible manner in a language that the customer understands at the premises of the financial institution or financial intermediary, as well as on their respective websites, and are in a form that is comparable to other financial institutions and financial intermediaries within the same industry.

(6) Financial institutions or financial intermediaries may not require customers to waive their rights as a condition to be met before receiving a financial service, or during the life cycle of the financial service.

(7) Financial institutions and financial intermediaries must, subject to the norm in each specific industry and where possible, provide the number of days representing a period to customers during which they can rescind a contract and still have certain payments returned subject to a deduction of certain costs incurred.

(8) When a contract for a financial service is duly terminated by both parties, the financial institution or financial intermediary must, where applicable—

(a) and if appropriate, refund any money that the customer paid under the contract before the expiry of any applicable notice period;

(b) cancel any form of automatic payment and give notice of termination, if necessary, to stop the payment; and

(c) only require payment from the customer to compensate the financial institution or financial intermediary for the costs incurred relating to the contract in question.

(9) The customer’s right of rescission must be communicated to the customer in all contracts and disclosures regarding the financial service.

Outcome Four: Proper Financial Advice

9. (1) The requirement under this Outcome is that financial advice given must be suitable to the customer and takes account of the customer’s circumstances.

(2) Where appropriate, before providing financial advice, a financial institution or financial intermediary is expected to have relevant and sufficient information about the customer’s needs and financial capacity.

(3) Financial institutions and financial intermediaries must, where applicable—

(a) perform a needs and suitability analysis to determine what suits the customer’s needs;

(b) carry out financial affordability assessments to ensure the product or service is suitable for the customer; and

(c) offer proper financial advice to the customer when selling a financial service.

(4) Under this Outcome, financial institutions and financial intermediaries must—

(a) ensure that proper financial advice provided is based on the customer’s financial needs and capability to honour financial obligations;

(b) consider factors such as the complexity of the financial service;

(c) inform customers of any material changes to the contract that could potentially have negative financial implications on them before such changes become effective; and

(d) ensure that staff are providing proper financial advice to customers either on demand by the customer or when the financial institution or financial intermediary deems it necessary based on circumstances observed about the customer.

Outcome Five: Financial Services Perform as Promised or Expected at Point of Sale

10. (1) The aim under this Outcome is to ensure that financial services must perform the way customers were led to expect at the point of sale.

(2) Financial institutions and financial intermediaries must ensure that customers are informed about the benefits to be derived from the financial service and that it is according to the standards as communicated at the point of sale.

(3) Financial institutions and financial intermediaries must—

(a) keep their promises to the customer by ensuring that they offer financial services that perform the way the customer has been told; and

(b) provide, where relevant, clear cautionary advice concerning possible adverse effects that could arise after the customer acquires the financial service.

Outcome Six: No Post Sale Barriers

11. (1) Under this Outcome, where applicable, the aim is to ensure that customers do not face post sale barriers that inhibit customers to change financial services, switch financial institutions or financial intermediaries, submit a claim or make a complaint.

(2) Financial institutions and financial intermediaries must not make it unnecessarily difficult for customers to submit claims or to complain when something goes wrong; thus, the principle on the implementation of a mechanism for complaints resolution is imperative.

(3) Financial institutions and financial intermediaries must provide for a timely and responsive mechanism for handling complaints as a means to resolve customer complaints or the decision to change the financial services.

(4) A designated member of senior management must be responsible for the complaints handling oversight to ensure that complaints registered by customers against the financial institution or financial intermediary are resolved effectively, promptly, and justly.

(5) At a minimum, the following principles are imperative under this Outcome:

(a) **Complaints Handling Procedure -** must be established for the purpose of receiving complaints in any form, and must be equipped and empowered to resolve complaints decisively;

(b) **Accessibility and Disclosures -** all complaints handling procedures must be designed to operate in such a way that it is easily accessible to all customers, such that—

(i) information explaining how to lodge a complaint is communicated to the customer ;

(ii) information is displayed clearly at the physical locations or electronic websites ; and

(iii) contact information for purposes of the complaint handling procedure by the financial institution or financial intermediary, and NAMFISA, is included in all contracts with customers and on disclosures made by the financial institution or financial intermediary;

(c) **Responsiveness-** a timeline for resolving complaints must be established to ensure that all complaints are addressed in a manner that is equitable, objective and on time, such that—

(i) complainants receive from the financial institution or financial intermediary a clear explanation for complaints that are rejected and the basis of the decision taken immediately upon completion of the complaint investigation; and

(ii) financial institutions or financial intermediaries inform the customer about the right to lodge a complaint with NAMFISA after the internal complaints mechanisms of the financial institution or financial intermediary have been exhausted; and

(d) **Records and Reporting -** records of customer complaints, inclusive of how each complaint has been resolved, must be maintained by the financial institution or financial intermediary for the period prescribed by law, and periodically reported as may be required.

Outcome Seven –Data Privacy Protection

12. (1) Under this Outcome, the aim is to ensure that customers are informed about data collection, ownership and the usage of such data, as well as the disclosure of personal information, including the customer's right to provide consent when their personal information is shared with third parties.

(2) Financial institutions and financial intermediaries may collect customer data—

(a) to the extent possible as determined by law and the purpose for collection; and

(b) only within the established legal limits provided for under the relevant laws, inclusive of the required customer's consent when data is shared with third parties,

but except in certain circumstances exempted by law, customer's consent is required when sharing with a third party.

(3) Other requirements that must be explained by the financial institution or financial intermediary to the customer include the:

(a) minimum retention period, required and subject to the provisions under relevant laws on customer records, rights of ease of access conditional to the duration of the financial service being offered to the consumer; and

(b) preservation of confidentiality of the customer's personal information, ensuring that it is not used for purposes other than what it was specifically obtained for and as permitted by law, or otherwise specifically agreed with the customer.

(4) It is imperative that the collection, possession, storage and handling of the customer's personal information and data is in accordance with internal policies and procedures—

(a) articulating that the customer's personal information and data is owned by the customer;

(b) clearly setting out the financial institution's or financial intermediary's practices when collecting and processing sensitive customer information and data, such as the security measures safeguarding confidentiality of customer data;

(c) explaining the purposes for which the customer's personal information and data is collected and used for; and

(d) disclosing when a customer may voluntarily allow for the disclosure to a third party of their personal information and data.