

# Guidance

Interpretation

Approach

Information

Decision



**Effective Date:** November 29, 2021

**Identifier:** CU0070INT

## Credit Union Market Conduct Framework

### Purpose

This guidance<sup>1</sup> sets out the Financial Services Regulatory Authority of Ontario's (FSRA) interpretation of requirements, as well as FSRA's approach for supervising against those requirements, as they relate to how credit unions ensure that they are treating their members / customers fairly. Specifically, it outlines FSRA's:

- i. Interpretation of both Deposit Insurance Corporation of Ontario (DICO) By-Law No. 5 "Standards of Sound Business and Financial Practices," and Section 102 of the *Credit Unions and Caisses Populaires Act, 2020 (the New Act)* when *the New Act* is proclaimed into force.
- ii. Approach to supervising and enforcing against market conduct frameworks (MCFs) adopted by credit unions.

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<sup>1</sup> The guidance is being published as an Interpretation and Approach under FSRA's Guidance Framework. Each different component is labelled for clarity.

An MCF includes (a) specific code and related policies, processes and procedures that a credit union establishes to guide its operations and interactions with members / and customers, and (b) governance and oversight processes to ensure the established code, policies, processes and procedures are implemented effectively throughout a credit union's operations.

Throughout this Interpretation and Approach guidance:

- The term “credit union” also refers to “caisse populaire” or “caisse”.
- The term “Board” refers to either the entire Board of the credit union or a committee of the Board that has been delegated an element of Board oversight.
- The term “Senior Management” refers to the senior management of a credit union consisting of the Chief Executive Officer, the Chief Financial Officer, the Chief Risk Officer, and any other member of the Senior Management Team.

## Scope

This guidance affects the following entities regulated by FSRA:

- Credit unions.

## Rationale and Background

By-Law No. 5<sup>2</sup>, established under the *Credit Unions and Caisses Populaires Act, 1994 (the Act)*<sup>3</sup>, sets out minimum requirements regarding sound business and financial practices for credit unions. However, it does not provide explicit details on how a credit union must achieve appropriate customer outcomes.

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<sup>2</sup> Created under paragraph (g) of subsection 264(1) of the *Act*.

<sup>3</sup> By-law No. 5 was originally a by-law of the Deposit Insurance Corporation of Ontario. It is deemed to be a by-law of FSRA pursuant to subsection 321.0.4 (4) of the *Act*.

Section 102 of *the New Act* will also, when it comes into force, require that each credit union:

- adopt a code of market conduct<sup>4</sup>.
- file its code of market conduct and any amendments with FSRA<sup>5</sup>.
- comply with its code of market conduct<sup>6</sup>.

The Interpretation section of this guidance outlines FSRA's interpretation of the requirements in By-Law No. 5 and section 102 of *the New Act*,<sup>7</sup> which credit unions have a legal obligation to follow.

The Approach section of this guidance describes how FSRA determines, according to its Interpretation of the requirements of By-Law No.5 and section 102 of *the New Act*, whether a credit union is meeting legal requirements with respect to the establishment of an MCF.

## For the Industry

An MCF promotes better conduct for a credit union by:

- Detailing how the credit union should behave to ensure fair outcomes for its members and customers by prioritizing treatment of members and customers across the entire organization.
- Promoting consistent conduct standards across the entire credit union and among all levels of its business.
- Setting clear accountability within the credit union for implementation and oversight.

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<sup>4</sup> Subsection 102(1) of the *New Act*.

<sup>5</sup> CUCPA 2020, subsection 102(2). For the purposes of this guidance, a reference to FSRA is deemed to be a reference to the Chief Executive Officer of FSRA and to FSRA.

<sup>6</sup> Subsection 102(5) of the *New Act*.

<sup>7</sup> All references in this guidance to section 102 of the *New Act* are relevant only if the *New Act* is proclaimed into force. All references to the *New Act* refer to how the *New Act* is currently written in the un-proclaimed *New Act* and are subject to change.

- Building trust amongst members / customers and the general public to protect the industry's reputation.

## For Credit Union Members

An MCF enhances protection of members and customers of a credit union by:

- Ensuring fair treatment of all members and customers by establishing conduct requirements.
- Providing transparency to members and customers about their rights and the credit union's obligations.

## FSRA Mandate

In supervising and regulating the credit union sector, FSRA administers and enforces compliance with the Act and its regulations, the FSRA Act and its regulations and applicable FSRA by-laws and rules. FSRA does so in furtherance of its statutory objects set out in section 3 of the *Financial Services Regulatory Authority of Ontario Act, 2016* (the FSRA Act) which are also reflected in this guidance, including:

- To regulate and generally supervise the credit union sector.
- To contribute to public confidence in credit unions.
- To deter deceptive or fraudulent conduct, practices, and activities.
- To promote high standards of business conduct.
- To protect the rights and interests of consumers/members.

# Interpretation

The Interpretation portion of this guidance, is an interpretation of:

- By-law No. 5, starts on the date that this guidance becomes effective and ends on the date that s. 102 of *the New Act* is proclaimed into force.
- Section 102 of *the New Act*, starts on the date that s. 102 of *the New Act* is proclaimed into force.

A credit union must implement two specific operational changes in order to satisfy the requirements outlined in sections A.1, A.2, and A.3 of By-Law No.5<sup>8</sup> and section 102 of *the New Act*. Together, these requirements constitute an MCF.

## **1. Adoption of a code of market conduct and establishment of related policies, practices, and procedures.**

Section A.1 of By-Law No. 5 states that the Board is “ultimately responsible for ensuring that the credit union is operated in a safe and prudent manner and for ensuring adherence to these standards of sound business and financial practices.”

In addition, By-Law No. 5 requires that the Board “establish standards of business conduct and ethical behaviour”.

Section 102 of *the New Act* will require that the board of each credit union adopt a code of market conduct and file it with FSRA. It will also require that each credit union comply with its market code of conduct as adopted.

FSRA's interpretation of these requirements is that the standards of business conduct and ethical behaviour required by By-Law No. 5, and the code of market conduct required by

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<sup>8</sup> Pursuant to s. 321.0.4 (4) of *The Act*, By-Law No. 5 is deemed to be a FSRA rule.

section 102 of *the New Act*, should both be designed in such a manner so as to (A) prevent a credit union from delivering poor or unfair outcomes for members or customers that will harm their interests, or result in a loss of confidence in the credit unions and (B) minimize risks to members or customers that they will be harmed by deceptive or fraudulent practices or activities, or by unacceptable standards of business conduct by a credit union. A credit union is responsible for complying with By-Law No. 5 and section 102 of the *New Act*, as interpreted by this Guidance, even if the credit union uses one or more third parties to provide all or any part of the credit union's products or services.

A credit union's standards of business conduct and ethical behaviour and its code of market conduct must, at minimum, address the following subjects in a manner that achieves the outcomes described above:

- a) access to deposits.
- b) mis-selling.
- c) tied selling.
- d) misrepresentation of information to members / customers.
- e) disclosure of material information.
- f) complaints handling.
- g) conflicts of interest, with an emphasis on managing / avoiding conflicts of interest.
- h) the protection of member / customer information.

## **2. Establishment of an effective governance structure and oversight processes**

By-Law No. 5 requires that the Board, Audit Committee, and Senior Management should ensure that the credit union adheres to sound business practices. FSRA interprets the requirement to adhere to sound business practices as also requiring a credit union to effectively implement, govern and oversee its standards of business conduct and ethical behavior established, and the code of conduct adopted, under Requirement 1.

Section 102(2) of *the New Act*, will also require that a credit union comply with its market code of conduct.

Responsibilities for ensuring alignment with Requirement 1 are as follows:

- **The Board** - Section A.1 of By-Law No. 5 states that the Board is “ultimately responsible for ensuring that the credit union is operated in a safe and prudent manner and for ensuring adherence” to the standards of sound business and financial practices established under By-Law No. 5. Section 102 of *the New Act*, when it comes into force, will require that each Board adopt a code of market conduct and file it with FSRA.

To ensure a credit union meets its legal responsibilities discussed above:

- As part of the Board’s responsibility for overall governance and supervision of management in its duties, the Board must establish appropriate controls and oversight measures to properly assess the adherence of the credit union to the provisions under Requirement 1.
  - A credit union must have an appropriate governance structure, compliance program, as well as controls and policies in place, for its Board to objectively assess adherence with the credit union’s code of market conduct. A credit union must identify actual or potential deficiencies and remediate such deficiencies in accordance with the provisions under Requirement 1 and intended market conduct outcomes.
- **Audit Committee** - Section A.2 of By-Law No. 5 states that a credit union’s audit committee shall “take all reasonable steps to ensure that the credit union is in compliance with *the Act*, its regulations and other legislative requirements”. Section 102 of *the New Act*, when it comes into force, will require that the Board adopt a code of market conduct and file it with FSRA. It will also require that each credit union comply with its filed code of market conduct.

To ensure a credit union follows the legal requirements described above, either its Audit Committee, or another board committee with a similar mandate to the Audit Committee, must oversee independent assessments of the credit union’s adherence to its standards of business practices and ethical behaviour and its code of market conduct and report its findings to the Board.

- **Senior Management** - Section A.3 of By-Law No. 5 states that a credit union’s Senior Management is responsible for ensuring that “the credit union applies the processes,

procedures and controls necessary to prudently manage the risk and to provide the board of directors with timely, relevant, accurate and complete information to enable it to assess that delegated responsibilities are being discharged effectively.” Section 102 of the *New Act*, when it comes into force, will require that each credit union comply with its market code of conduct.

To ensure a credit union follows the legal requirements described above, Senior Management must ensure that the credit union effectively implements its standards of business conduct and ethical behavior, its code of market conduct and establishes governance, controls and oversight responsibilities, policies and procedures to ensure such implementation continues to be effective. As such, Senior Management must:

- Implement the standards of business conduct and ethical behavior and the credit union’s code of market conduct and related policies, practices, and procedures throughout the entire organization.
- Establish appropriate controls and measures to identify and address potential non-compliance with its standards of business conduct and ethical behavior and the credit union’s code of market conduct.
- Develop a self-assessment program to effectively monitor the credit union’s adherence to its standards and code, as well as a plan to address any areas identified when adherence should be improved<sup>9</sup>.
- Report to the Board regularly on the credit union’s overall adherence to the standards of business conduct and ethical behavior and its code of market conduct.

FSRA monitors adherence to By-law No. 5 and will monitor adherence to s. 102 of *the New Act*, including the requirements described in this Interpretation section, as part of its supervision as outlined in the Approach section and this guidance below.

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<sup>9</sup> Credit unions are not required to regularly submit their self-assessments to FSRA but should report their self-assessment to their boards. Self-assessment programs will be reviewed by FSRA on a risk basis, on demand or as part of scheduled supervision activity



# Approach

This Approach defines the guiding principles, processes and practices that FSRA uses when assessing a credit union's adherence to the requirements of By-Law No. 5, section 102 of *the New Act*.

## Guiding Principles

FSRA's uses a general supervision approach, which is consistent with its statutory objects, reflects the following:

- *Proactive and Risk-Based* – FSRA focuses its supervision on high-risk aspects of a credit union's operations, that pose the greatest member / customer harm.
- *Principles-Based and Outcome-focused* – FSRA uses a cooperative, principles-based approach embedded within the regulated sectors. As a result, less prescriptive requirements are specified to provide flexibility for entities and the regulator while improved outcomes are generated for consumers.
- *Governance* – FSRA relies on the governance structure, internal controls and ongoing supervision established by a credit union to assess adherence to legal requirements to the extent these are effective. Effective structure, controls and supervision includes division between operations (the first line of defense), risk management/oversight functions (the second line of defense) and internal audit (the third line of defense) to promote a strong risk culture and mindset among their Senior Management and employees throughout their organization and in every branch. Credit unions will be assessed as to whether they have designed and implemented a governance structure and a MCF that reflects the nature, size, and complexity of their operations.
- *Proportional Approach to Discipline* – FSRA uses a range of compliance and enforcement tools to influence marketplace behaviour. The tools used depend on, for example, the nature and extent of risks to members, mitigating actions taken by credit unions, and past supervisory findings.

## Processes and Practices

### Supervision

The objective of FSRA’s supervisory approach is to assess the effectiveness of a credit union’s MCF and its ongoing implementation, by determining whether:

- Its established standards of business conduct and ethical behaviour and code of market conduct are consistent with the Interpretation portion of this guidance, considering the nature, size, and complexity of its operations.
- The established standards are effectively implemented, governed, and controlled throughout a credit union’s operations (including those of its subsidiaries)<sup>10</sup> and among different levels of management and staff to achieve the outcomes intended, including the fair treatment for members and customers.
- Its governance and oversight processes effectively:
  - Identify, report, and rectify non-compliance or issues with respect to a credit union’s established standards and code in a timely manner.
  - Ensure periodic reviews and refinements to the MCF e.g. periodically or when there are significant changes to its business.

FSRA considers that the Canadian Credit Union Association (CCUA)’s Market Conduct Code (MCC), August 2020, - properly implemented, governed and overseen - meets the minimum requirements both for the standards of business conduct and ethical behaviour required by By-Law No. 5 and the code of market conduct required by section 102 of the New Act. Credit unions may adopt the CCUA’s MCC, another code, or establish their own if it is consistent with the interpretation portion of this guidance.

The following are different types of examinations that FSRA may conduct pursuant to section 228 of the Act, or section 201 of the New Act, to assess the effectiveness of a credit union’s MCF and its ongoing implementation:

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<sup>10</sup> Note the Guidance would not apply to a subsidiary that is subject to a comparable market conduct regime administered by another regulatory body. Credit unions that have such subsidiaries should contact their Relationship Manager to determine whether this Guidance would apply.

- *Comprehensive examinations* - FSRA assessment of documents and practices of a credit union against all aspects of its MCF and its implementation, governance and controls.
- *Targeted examinations* - FSRA focuses on specific potential risks to members / customers and the related aspect(s) of a credit union's MCF and its implementation, governance and controls.
- *Thematic examinations* - FSRA conducts examinations of several credit unions relating to all or some aspects of their MCF and their implementation, governance and controls to assess overall trends or compliance of the industry.

FSRA may conduct examinations on site at a credit union or remotely (known as desk examinations).

Where FSRA determines through its supervisory activities that a credit union has effective internal governance and oversight processes, FSRA may reduce the level of substantive direct testing to assess whether the credit union has implemented its established market conduct standards throughout its operations.

When a credit union has not fully implemented effective internal governance and oversight processes, FSRA will advise the credit union of deficiencies and the need to develop a corrective action plan to address shortcomings. However, under section 102(3) of the New Act, and under FSRA's powers to enforce By-Law No. 5 through orders, FSRA may, in its discretion, direct the Board to amend a deficient code of conduct, or to remediate ineffective implementation, governance, controls and oversight of a code and related business practices, at any time.

FSRA will rely on data and analysis of complaints, inquiries, examinations, and filings to identify current and emerging regulatory issues including issues of non-compliance in the credit union sector.

## **Enforcement**

FSRA may enforce the requirements for standards of business conduct and ethical behaviour required by By-Law No. 5, the Act and its regulations, the code of market conduct required by section 102 of the New Act, and the FSRA Act, including as these requirements are interpreted

in the Interpretation portion of this guidance.<sup>11</sup> FSRA will consider non-compliance with its Interpretation set forth in this guidance as evidence that a credit union is conducting its affairs in a way that might prejudice or adversely affect the interests of a member, depositor or shareholder of the credit union under section 234 of the Act.<sup>12</sup>

Issues of non-compliance can lead to certain compliance or supervisory action, including, but not limited to:

- Issuance of an order against any employee or credit union.
- Remediation and reporting.
- Placing a credit union under supervision or administration.
- Suspension of business.

## Effective Date and Future Review

This guidance will be effective upon issuance. However, credit unions will have a transition period until March 31, 2022, by which time credit unions will be required to have adopted and implemented a market conduct framework. Credit unions are required to complete their first round of self-assessment by March 31, 2023. Credit unions should be prepared to provide progress updates to FSRA during this transition period if requested.

[Guideline No. 03/18: Treating Financial Services Consumers Fairly Guideline](#) is replaced by this Interpretation and Approach Guidance.

The latest date for FSRA to initiate a review of this Interpretation and Approach guidance is November 29, 2024.

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<sup>11</sup> In accordance with, but not limited to, sections 225, 226, 234, 240, 279 to 281 and 294 to 295.1 of CUCPA, 1994 and sections 206-208 and 228 to 235 of the CUCPA 2020.

<sup>12</sup> Pursuant to Section 234 of the Act, the Chief Executive Officer of FSRA (“CEO”) is granted the regulatory authority to make an order if he or she is of the opinion that the credit union, director, officer or employee is doing anything that constitutes a practice that might prejudice or adversely affect the interest of a member, depositor or shareholder of a credit union. However, for the purposes of this Interpretation and Approach Guidance, the reference will be to FSRA making that determination.

## About this Guidance

Interpretation guidance sets out FSRA's view of requirements under its legislative mandate (i.e. legislation, regulations and rules) so that non-compliance can lead to enforcement or supervisory action.

Approach guidance describes FSRA's internal principles, processes, and practices for supervisory work, action, and application of CEO discretion.