

# FINANCIAL SERVICES REGULATORY AUTHORITY OF ONTARIO

## Rule 2021- 001

### Sound Business and Financial Practices

#### 1. Interpretation

1(1) In this Rule,

- (i) “management” means individuals who are responsible for planning, directing, controlling, overseeing and executing the day-to-day operations of a credit union.
- (ii) “oversight function” means a credit union’s,
  - (a) internal audit function,
  - (b) risk management function,
  - (c) compliance function, and
  - (d) finance function.
- (iii) “senior management” means the following members of management,
  - (a) the chief executive officer of a credit union,
  - (b) individuals who are responsible for the overall management of a material business or function of a credit union, including that of a subsidiary,
  - (c) the heads of the oversight functions of a credit union,
  - (d) other executives who have a functional reporting line directly to the board or chief executive officer of a credit union, and
  - (e) any other individuals that the board of a credit union designates to be part of that credit union’s senior management.

1(2) In addition to s. 1(1), if a term or phrase used in this Rule is defined in the Act, that definition shall apply for the purposes of this Rule.

1(3) Any policy, procedure or process referred to in this Rule shall be required to be set out in writing.

1(4) All references in this Rule to an employee or employees of a credit union shall include any individuals who are,

- (i) employed by the credit union,
- (ii) a member of the senior management of the credit union, or
- (iii) retained by the credit union to perform all or part of an oversight function.

1(5) For the purposes of this Rule,

- (i) whether an individual or entity is independent is exclusively a question of fact,
- (ii) an independent individual is free from influences that compromise judgment, allowing an individual to act with integrity, and exercise objectivity and professional skepticism, and

- (iii) an individual is independent of a credit union if the individual, or a related person of the individual, does not have a direct or indirect material or pecuniary relationship with a credit union, including a subsidiary, other than ordinary remuneration provided to an individual who is a director of the credit union or a subsidiary or as a member of the credit union, and has not been an officer of the credit union for at least twelve months.

## **2. Co-operative Principles**

- 2(1) The board and senior management of a credit union are responsible for ensuring that the credit union is operated, managed and governed in a manner consistent with co-operative principles.

## **3. Governance Matters Related to Members**

- 3(1) All communications sent to the members of a credit union related to its governance, including but not limited to, annual reports, notices of meetings and proxy solicitations, shall clearly and transparently identify the democratic rights of the members, including but not limited to the rights of members to be notified of, participate in and, if applicable, vote at meetings of the members.
- 3(2) A credit union shall take reasonable precautions to ensure that all of its activities and communications related to members' meetings and voting, including but not limited to the voting process itself, are fair and transparent, and free from misrepresentation, fraud and undue influence.

## **4. Composition of the Board**

- 4(1) Subject to s. 4(7), a credit union shall have a board with an appropriate size and structure, composed of directors who have appropriate skills, education, experience and commitment to enable them to discharge their duties and responsibilities effectively, having regard to the nature, size, complexity, operations and risk profile of the credit union.
- 4(2) If the board or senior management of the credit union proposes or nominates an individual or individuals to be elected by the members as a director or directors of the board, then the board or senior management shall only propose or nominate an individual or individuals who have appropriate skills, education, experience and commitment to discharge their duties and responsibilities effectively, having regard to the nature, size, complexity, operations and risk profile of the credit union.
- 4(3) If the board of the credit union fills a vacancy or vacancies on the board, then the board shall only appoint an individual or individuals as a director or directors of the board who have appropriate skills, education, experience and commitment to discharge their duties and responsibilities effectively, having regard to the nature, size, complexity, operations and risk profile of the credit union.
- 4(4) No individual, other than the chief executive officer of the credit union, may serve as a member of the board of the credit union unless such an individual is independent of senior management of the credit union.
- 4(5) Except for the chief executive officer of the credit union, no individual who is an employee of the credit union, or a related person of an employee of the credit union, may serve as a member of the board of the credit union.

- 4(6) The chief executive officer of the credit union shall not serve as the chairperson of the credit union's board or any board committee.
- 4(7) The board of the credit union shall not have less than five directors or more than seventeen directors.

## **5. Responsibilities of the Board of the Credit Union**

- 5(1) The board of the credit union shall discharge its responsibilities in a manner which,
  - (i) results in independent oversight of the credit union's management, and
  - (ii) permits and encourages directors to provide effective oversight of the decisions, plans, processes and policies proposed by the credit union's senior management and implemented by its management.
- 5(2) The board of the credit union shall establish and maintain a clear division between the roles and responsibilities of the board and those of senior management, to ensure the board complies with the Act's prohibition on the board directly managing, or being involved in, the day-to-day activities of the credit union.
- 5(3) The board of the credit union is responsible for providing oversight, supervision and direction to management, and shall oversee and approve,
  - (i) the credit union's,
    - (a) short-term and long-term business plan and strategy,
    - (b) material decisions made outside of the normal course of the credit union's operations,
    - (c) significant strategic initiatives,
    - (d) code of market conduct,
    - (e) plans related to capital and liquidity management,
    - (f) mandates and budgets for the oversight functions, and
    - (g) risk management,
  - (ii) the appointment, setting of performance objectives, compensation, incentives, succession plans and reviews of the credit union's chief executive officer in accordance with s. 9, and
  - (iii) the establishment and use of committees to assist the board in discharging its responsibilities.
- 5(4) The board of the credit union is responsible for overseeing
  - (i) delegations of authority by the credit union's senior management, and
  - (ii) the adequacy of the credit union's and its subsidiaries' resources to conduct business, carry out its financial and risk management activities, and protect members, depositors and other stakeholders.
- 5(5) The board of the credit union shall approve,

- (i) delegations of authority by the board, and
- (ii) a policy which defines the thresholds for what constitutes a material decision made outside of the normal course of the credit union's operations, having regard to the nature, size, complexity, operations and risk profile of the credit union.

## **6. Responsibilities of Senior Management of the Credit Union**

- 6(1) Senior management of the credit union shall create, develop, update and implement, and the board of the credit union shall oversee and approve,
  - (i) policies, procedures and processes,
    - (a) as required by the Act, its regulations and rules, and
    - (b) establishing and governing the respective roles and responsibilities necessary to effectively manage, control and oversee all businesses, operations and activities of the credit union, and
  - (ii) the credit union's short-term and long-term business plans and strategies, referred to in s. 5(3)(i)(a) which shall,
    - (a) identify strategic objectives with measurable outcomes,
    - (b) identify an ethical framework for the credit union's operational management, and
    - (c) reflect the co-operative principles referred to in s. 2(1).
- 6(2) The responsibilities of senior management of the credit union include,
  - (i) providing recommendations, developing reports and analysis and making proposals to or for the board of the credit union,
  - (ii) implementing the board of the credit union's directions and decisions, and
  - (iii) the day-to-day management and operation of the credit union within the parameters set by the board of the credit union.

## **7. Ethical and Responsible Action**

- 7(1) The board and senior management of the credit union shall ensure the credit union's,
  - (i) policies, procedures and processes are consistent with its values, ethics and code of market conduct, and
  - (ii) members, employees and other stakeholders are able and encouraged to raise any matters of concern pertaining to the credit union to the appropriate person in the circumstances.
- 7(2) The credit union shall adopt, communicate internally, and ensure compliance with a whistleblower policy which,
  - (i) identifies the protections offered to whistleblowers, including protection from reprisals, and
  - (ii) sets out procedures and processes for providing information regarding misconduct or fraud on a confidential basis to the auditor of the credit union and, if applicable,

any other individuals identified in the credit union's whistleblower policy as appropriate recipients of information from whistleblowers.

## **8. Integrity in Reporting and Disclosure**

- 8(1) The board and senior management of the credit union shall implement appropriate reporting processes and controls, such that,
  - (i) members, regulators and other stakeholders of the credit union have timely access to information to which they are legally entitled respecting its business and operations, and
  - (ii) members of the credit union are able to exercise their membership rights on an informed basis.
- 8(2) The board and senior management of the credit union, as applicable, shall present an assessment and disclosure of the credit union's financial position, material risks and outlook, which shall be communicated to the credit union's members and relevant stakeholders, which may include shareholders, creditors and prospective members, in a timely, effective and transparent manner.
- 8(3) The board or senior management of the credit union, as applicable, shall ensure that any assessments and disclosures referred to in s. 8(2) are presented in a fair, balanced and understandable manner.
- 8(4) The credit union shall at all times maintain financial and operational management reporting systems and controls which provide timely, accurate and reliable information on both a consolidated and unconsolidated basis.

## **9. Fair and Responsible Remuneration**

- 9(1) The board of the credit union shall be responsible for the creation, development, monitoring, updating and implementation of remuneration programs, policies and practices for the members of the board, including board committees, and senior management of the credit union, which shall be structured appropriately to attract, retain and motivate high-quality directors and members of senior management, proportionate to the credit union's nature, size, complexity, operations and risk profile.
- 9(2) Senior management of the credit union shall create, develop, update and implement, and the board of the credit union shall oversee and approve, remuneration programs, policies and practices for all other employees of the credit union, which are structured appropriately to attract, retain and motivate high-quality senior executives and employees, proportionate to the credit union's nature, size, complexity, operations and risk profile.
- 9(3) The credit union shall disclose to its members the credit union's programs, policies and procedures with respect to the remuneration of directors and senior management, which are sufficient to enable the members to assess whether such remuneration is reasonable.
- 9(4) The credit union shall ensure that its remuneration programs, policies and practices referred to in s. 9(1) and s. 9(2) are consistent with the following,
  - (i) employees engaged in the oversight functions are remunerated in a manner that is independent of the business areas they oversee and commensurate with their key role in the credit union,

- (ii) remuneration is aligned with prudent risk taking,
- (iii) remuneration payout schedules are sensitive to the time horizon of risks, and
- (iv) forms of remuneration are consistent with risk alignment.

## **10. Status, Authority and Independence of the Oversight Functions**

- 10(1) The credit union shall establish and maintain oversight functions within its organizational structure, or through an outsourcing arrangement approved by the board of the credit union and documented in writing, such that these functions, including, as appropriate, employees who primarily support these functions, have sufficient resources, status, authority and independence to perform their roles and satisfy responsibilities, proportionate to the credit union's nature, size, complexity, operations and risk profile.
- 10(2) Individuals primarily responsible for conducting the activities of the credit union's oversight functions shall, having regard to the nature, size, complexity, operations and risk profile of the credit union, be sufficiently independent of the credit union's and its subsidiaries' operational activities and businesses.
- 10(3) Subject to s. 10(4), the credit union may, if appropriate, as determined by its nature, size, complexity, operations and risk profile, combine any or all of its risk management function, compliance function and finance function, which may also include the head of such function.
- 10(4) The credit union shall not combine its internal audit function with any other oversight function.
- 10(5) The head of an oversight function of the credit union may be an individual employed by a third party to whom the credit union has outsourced that oversight function, as long as another member of the credit union's senior management, who is employed by the credit union and, other than an employee within the meaning of s. 1(4)(iii), remains accountable for the performance of such individual and oversight functions and such an arrangement has been approved by, and is overseen by, the board of the credit union.
- 10(6) Senior management of the credit union shall create, develop, update and implement, and the board of the credit union shall oversee and approve a policy which,
  - (i) defines the nature, roles and responsibilities of the credit union's oversight functions, and
  - (ii) mandates sufficient and reasonable coordination and co-operation between the credit union's oversight function and all management, employees, activities, operations, business units, short-term and long-term business plans and strategies, and objectives of the credit union.
- 10(7) The policy referred to in s. 10(6) shall specify all rights, duties and obligations of the credit union's oversight functions.
- 10(8) Individuals working for one of the oversight functions shall, having regard to the nature, size, complexity, operations and risk profile of the credit union, possess relevant professional competency and an appropriate level of experience relating to the individual's role in the oversight function or functions.
- 10(9) The heads of the oversight functions of the credit union shall at all times,

- (i) maintain direct and unfettered access to,
    - (a) all individuals, facilities and information in respect of the credit union's activities, operations and businesses, in order to perform their roles and satisfy their responsibilities, and
    - (b) the board of the credit union or a suitable board committee, and
  - (ii) engage in regular reporting to the board of the credit union or a suitable board committee.
- 10(10) The heads of the oversight functions of the credit union shall be entitled to participate in all internal meetings, including those of senior management, of the credit union and its subsidiaries, on a reasonable basis, in order to reasonably monitor and assess the credit union's activities.
- 10(11) The oversight functions of the credit union shall have, use and apply a reasonable range of resources to collect, possess, analyze and disseminate material information, in order to accurately, objectively and comprehensively understand, evaluate and report risks.

## **11. Internal Audit Function**

- 11(1) The internal audit function of the credit union shall provide senior management, the board of the credit union and the audit committee of the board with its evaluation and recommendations respecting the design, framework, implementation, and effectiveness of the credit union's activities, processes, policies and procedures in its businesses, operations and activities and in its other oversight functions.
- 11(2) The internal audit function shall provide accurate, reliable and risk-based audits and support to those responsible for the corporate governance and other oversight functions of the credit union.
- 11(3) The head of the internal audit function of the credit union shall, on at least an annual basis, create and deliver to the board of the credit union and the audit committee of the board, upon recommendation by the audit committee of the board, a risk-based audit plan in written form, which takes into account the credit union's,
- (i) nature, size, complexity, operations and risk profile, and
  - (ii) strategies, operations, business objectives, activities and risk management processes.
- 11(4) The audit plan referred to in s. 11(3) shall define the internal audit function's priorities and work.
- 11(5) The head of the internal audit function of the credit union shall,
- (i) review, amend and update the audit plan in response to any material changes in the credit union's activities, risk, operations, programs, systems and controls,
  - (ii) on at least an annual basis or upon request, report to the board, the audit committee of the board and senior management of the credit union on the internal audit function's mandate, authority, roles and responsibilities, taking into account the objectives of the internal audit plan and applicable professional standards and ethics, and

- (iii) create, develop, update and implement processes, policies and procedures to,
  - (a) monitor audit reports and directly report all results and opinions in connection with an audit report to senior management and the board of the credit union, and
  - (b) oversee and monitor that reasonable actions have been implemented by senior management of the credit union in response to any risk identified in an audit report.
- 11(6) Any failure to respond to an issue identified in an audit report within a reasonable period of time, or any decision to assume the risk of not responding to an issue identified in an audit report, shall be brought to the attention of the board of the credit union at the earliest reasonable opportunity and documented in the meeting minutes of the board.
- 11(7) The head of the internal audit function of the credit union and employees who are part of the internal audit function of the credit union shall not have any responsibilities for the credit union outside of the internal audit function.

## **12. Risk Management Function**

- 12(1) The head of the risk management function of the credit union shall create, develop, update and implement, and the board of the credit union shall oversee and approve,
  - (i) an enterprise-wide risk management program, which facilitates and protects the credit union's stability and viability, through the identification, assessment, mitigation and management of all risks and unforeseeable events which may arise from the business and operations of the credit union and its subsidiaries and have a potentially material impact on the credit union's financial performance, capital, liquidity, members, other stakeholders, reputation, operations or viability, and includes an enterprise-wide risk appetite framework which is appropriate relative to the risk profile of the credit union on an enterprise-wide basis, its long-term strategic plan and its operating environment, and
  - (ii) procedures, policies and processes to understand and evaluate all such risks, and to facilitate direct reporting to the board and senior management of the credit union by the head of its risk management function.
- 12(2) The board of the credit union shall oversee and approve the appointment of the head of the risk management function.

## **13. Compliance Function**

- 13(1) The compliance function of the credit union shall provide systematic, comprehensive and timely oversight of compliance risks through the identification, measurement, monitoring and reporting of compliance risks across the credit union as a whole and within its specific business lines and units.

## **14. Finance Function**

- 14(1) The credit union's finance function shall,
  - (i) provide systematic, comprehensive and timely oversight of all of the credit union's governance and operational requirements in respect of budgeting, planning, financial reporting and analysis,



- (ii) provide accurate, reasonable, independent and reliable financial services, financial reporting and financial analysis to the other oversight functions, senior management and board of the credit union, and
- (iii) ensure that all financial analysis, reporting and communication on financial matters is timely, reasonable, impartial, independent and suitable, in order to assist the senior management, board and oversight functions of the credit union.

14(2) The head of the finance function of the credit union shall,

- (i) advise the chief executive officer and board of the credit union, including in relation to the matters described in s. 14(1), and
- (ii) have reasonable knowledge of all material functions of the credit union's businesses and operations.

## **15. Operational Management**

15(1) Senior management of the credit union shall create, develop, update and implement, and the board of the credit union shall oversee and approve,

- (i) a reasonable and suitable management and control system and framework for the credit union's businesses, operations and activities and its management and employees, and
- (ii) policies, procedures and processes designed to ensure that senior management is sufficiently informed to monitor and be accountable for the credit union's businesses, operations, activities, management and employees.

15(2) In addition to responsibilities assigned by senior management of the credit union, the responsibilities of the credit union's operational management shall include to,

- (i) perform and execute on, and ensure the credit union's employees understand and execute on, the credit union's approved business plans and strategies,
- (ii) create, develop, update and implement policies, procedures and processes providing for appropriate controls for the credit union and its businesses, operations and activities,
- (iii) comply with, and oversee the credit union's employees in compliance with, the credit union's approved policies, procedures, processes and controls,
- (iv) understand and manage, and ensure that the credit union's employees understand and manage, the risks for the areas in which they operate or provide services,
- (v) ensure that employees of the credit union have sufficient resources, status and authority necessary to perform any roles and responsibilities related to risk management and compliance, and
- (vi) act, and ensure employees of the credit union act, in the best interests of the credit union and its members and in compliance with all laws and regulatory requirements.

## **16. Subsidiary Governance**

- 16(1) Senior management of the credit union shall create, develop, update and implement, and the board of the credit union shall oversee and approve, all policies, procedures and processes necessary to,
- (i) provide for effective oversight of a credit union's subsidiary, including the board or management thereof, having regard to the nature, size, complexity, operations and risk profile of the subsidiary relative to that of the parent credit union, and
  - (ii) ensure that the credit union's or such subsidiary's oversight functions enable the credit union to fulfill all of its obligations, including the obligation of the credit union, considering the nature, size, complexity, operations and risk profile of such subsidiary and its materiality to the credit union, to ensure that the credit union and its subsidiaries carry out, and benefit from, sound business and financial practices, such as those set forth in this Rule.
- 16(2) If the credit union outsources a material business, strategic or operational function or activity to its subsidiary, then senior management of the credit union shall create, develop, update and implement, and the board of the credit union shall oversee and approve, policies, procedures and processes respecting the function or activity outsourced to the subsidiary, having regard to the subsidiary's and the credit union's nature, size, complexity, operations and risk profile.
- 16(3) A credit union shall require its subsidiary to disclose or provide all information or records in that subsidiary's possession or control necessary to ensure effective oversight by the credit union of the subsidiary's material operations and related risks, upon request, to the credit union, unless there is a legal basis upon which the information or records cannot be disclosed or provided, then such information or records need not be disclosed or provided as long as such basis remains valid.
- 16(4) If a credit union's subsidiary cannot disclose or provide any information or records in its possession or control to the credit union in response to a request from the credit union, then the credit union shall provide written notice to the Authority within a reasonable period of time, setting out the type of information or records which cannot be disclosed or provided and the basis upon which the credit union's subsidiary claims such information or records cannot be disclosed or provided.

## **17. Coming into force**

- 17(1) This Rule will come into force on the later of the date that clause 1 of subsection 285(1) of the Act come into force and 15 days after the Rule is approved by the Minister.