

### **DRAFT GOVERNING RULES FOR THE NATIONAL FINANCIAL OMBUD SCHEME SOUTH AFRICA ("NFO scheme").**

#### **STATEMENT OF NEED, INTENDED OPERATION AND EXPECTED IMPACT**

##### **1. Introduction and Background**

The National Financial Ombud Scheme South Africa ("NFO") is a newly registered company which, if granted recognition by the Ombud Council, intends to start operations in January 2024. The scheme is an amalgamation of the previous Banking, Long-Term Insurance, Short-Term Insurance and Credit Ombudsman offices, all of which were recognised as industry ombud schemes for purposes of the Financial Sector Regulation Act, 2017 (FSR Act) by the Ombud Council in May 2022. The NFO will retain the expertise of the previous schemes in four divisions of the new single scheme.

The NFO is a registered company without members that will register with SARS as a Public Benefit Organisation. The initial board comprises the four executives of the current schemes, namely Reana Steyn, Howard Gabriels, Denise Gabriels, and Edite Teixeira-Mckinon, for purposes of setting up the scheme and applying for recognition. These board members will be replaced by the board members elected by the independent Selection Committee and will be responsible for the oversight of the scheme once it starts operations in 2024. The intention is also for the initial Memorandum of Incorporation (MOI) of the Company to be revised in line with the provisions of the MOI published for comment per Annexure C.

The main purpose, mission and manner of dispute resolution will not differ significantly from the way the four existing schemes operated in the past. Therefore, the history of those four offices remains relevant and is set out shortly below for information purposes:

##### **1.1. Banking division (previously Ombudsman for Banking Services South Africa)**

The Ombudsman for Banking Services ("OBS") has been in existence for more than 20 years, serving the South African banking public. The office was created in its current form in 2000. Even prior to that in 1997 the banking industry set up an Ombudsman's office as they recognised that:

- there was a need to improve the public image of the banks
- Government regulation might occur if the industry did not regulate itself
- the industry was being criticized by government and consumer bodies regarding service
- the industry was out of step with overseas developments to establish an ombudsman scheme.

The Banking Council appointed Mr. Charl Cilliers as the first Ombudsman. Later he identified a need for impartiality and independence as he had been appointed by the banking industry itself, which led to the appointment of a Commission to select a new incumbent. In May 2000, a new Ombudsman's Office was established under new rules and new leadership.

This new Office was initially called the Office of the Banking Adjudicator (OBA) and was incorporated as a company not for gain, in terms of section 21 of the Companies Act. The powers of the Board

were divided between the Board, the Commission and the Adjudicator. The Board of the company was composed mainly of bankers and its main function was to ensure that the Office was adequately funded. The Adjudicator was responsible for the day-to-day running of the office and there was also a Commission that ensured the independence of the Adjudicator and the office.

In 2003 the two bodies were amalgamated into a single Board with a minority of banking representatives to ensure the independence of the scheme. In July 2017, Ms. Reana Steyn was appointed as the third Banking Ombudsman and the first woman to hold this position.

## **1.2. Credit Division (previously the Credit Ombudsman)**

The Credit Ombud was established in 2004 as a voluntary association governed by a constitution. In 2006 the Credit Ombud was recognised by the former Financial Sector Ombud Schemes (FSOS) Council<sup>1</sup> to deal with consumer complaints related to credit information matters.

During 2007, a report commissioned by the FinMark Trust reflected a gap within the non-bank credit market in the resolution of complaints. The Credit Ombud Council after engagement with the subscribing members of the office, took a decision to extend the mandate of the Credit Ombud to investigate complaints relating to credit transactions.

The FSOS Council agreed to expand the mandate of the Credit Ombud in 2009 to include consumer complaints related to non-bank credit matters. At the time the Credit Ombud specifically had a mandate to deal with complaints against the banks related to credit bureaux listings and other adverse, incorrect, or inaccurate credit information matters. The Credit Ombud dealt with both non-bank credit matters and credit information complaints against all other non-bank credit providers registered with the National Credit Regulator (NCR).

In 2010 the NCR requested the Credit Ombud to assist the NCR with dispute resolution relating to debt counselling complaints. The Credit Ombud Council resolved that as the industry was familiar and confident in the role and functions of the Credit Ombud; that it expand its free services to consumers to resolve disputes relating to the debt counselling complaints. The office assisted consumers on debt counselling matters until 2013, when the NCR withdrew the codes of conduct. At present debt counseling disputes are referred to the NCR. Debt counselling is also excluded from the definition of "financial service" in the FSR Act.

In March 2021, the Credit Ombud signed a Memorandum of Understanding (MoU) with the NCR. The MoU provides that the NCR will refer any complaint by a consumer against a subscribing member to the Credit Ombud to seek a resolution to the complaint. The MoU also provides for greater cooperation between the parties in several areas, including joint campaigns to generate greater consumer awareness. The NFO intends to approach the NCR to maintain this MoU.

## **1.3. Life Insurance Division (previously the Ombudsman for Long Term Insurance)**

The Life Ombudsman, as it was then known, was the first voluntary financial industry ombud scheme established in South Africa. The office was established in 1985 as a form of self-regulation by some long-term insurers, who drafted a rudimentary set of rules and appointed the first ombudsman,

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<sup>1</sup> The FSOS Council was established by the Financial Sector Ombud Schemes (FSOS) Act to recognise and oversee financial sector ombud schemes. The FSOS Act was repealed in May 2021 and the functions of the FSOS Council were absorbed into the broader oversight functions of the Ombud Council under the FSR Act.

Justice PJJ Wessels, who had recently retired from the Appellate Division, later renamed the Supreme Court of Appeal. He was assisted by a secretary. The administration and financial management of the office was done by Old Mutual until as late as 2002 when it was taken over by the office itself. Until 1997 when the rules were amended to make provision for the binding effect of determinations (commonly referred to as 'rulings') on the insurer, the Ombudsman's rulings were mere recommendations.

The Ombudsman for Long Term Insurance ("OLTI") was structured as a voluntary association not for gain and was registered as a voluntary scheme in terms of the FSOS Act and subsequently granted recognition by the Ombud Council as an industry ombud scheme in terms of the FSR Act.

The office liaises with the long-term insurance industry through the Ombudsman's Committee, consisting of nominated representatives of subscribing members about matters of common concern, but is only accountable to the Ombudsman's Council. The Council was established in 1999 and operates under its own separate constitution. It consists of members of standing in the community, predominantly outsiders to the insurance industry. Its main functions are to appoint the Ombudsman and Deputy Ombudsman, to receive and debate the Ombudsman's Annual Report, to monitor the quality of service of the office and to receive and approve the budget.

Since inception of the office, the Ombudsman has been a retired judge. In terms of a Shared Services Agreement with the office of the Ombudsman for Short-term Insurance, the two offices shared the Ombudsman since 2020.

#### **1.4. Non-Life Insurance Division (Previously the Ombudsman for Short Term insurance)**

The non-life, then the short-term, insurance industry recognised the need for the establishment of an ombud scheme and, 33 years ago, in 1989, the industry established a voluntary association called the Ombudsman for Short-Term Insurance ("OSTI"). The industry proactively acknowledged, before it became a regulatory requirement for financial ombud schemes, the important self-regulatory role that such a scheme would play in the industry.

Judge WHR Schreiner was the first appointed Ombudsman. At that stage, the Ombudsman's formal recommendation against a member had to be made on a strictly legal basis before it was accepted by the member concerned. Then in 2000, a section 21 association not-for-profit was formed and a new dispensation came into effect from 2001. Recommendations or rulings by the Ombudsman could now be based on legal grounds or on grounds of equity or fair insurance practice that would be binding on members, and have the same effect as a court decision, but would not be binding on complainants who would be entitled to pursue the matter in a court of law. The association was already then tasked with assisting the public and consumer organisations in education programmes and with encouraging the industry in all forms of improvement of customer relationships.

The scheme was granted recognition in terms of the FSOS Act, which entailed the FSOS Council being satisfied that the scheme, inter alia, acted independently, followed a fair and cost-effective dispute resolution procedure, applied the principle of equity in its decision making and effectively enforced its determinations.

In 2006, the scheme received an award from the then Department of Trade and Industry (DTI), in the category of Organisational Champion Category, "in recognition of OSTI's contribution to excellence in the protection and maintenance of consumer rights in South Africa".

In 2007, the scheme received the award for the second time from DTI, in the Organisational Champion Category, "in recognition of its efforts in promoting the interest of consumers". (2007 Annual Report)

After the new Companies Act came into force in 2008, the scheme became a non-profit company, a company incorporated for a public benefit or object, and its Memorandum of Incorporation was registered in 2013.

## **2. Statement on the need for the governing rules of the National Financial Ombud Scheme.**

### **2.1. General need for the NFO scheme.**

The scheme will provide a service to consumers in the financial services industry in regard to the following broad categories of complaints: Banking (including bank Credit), Life Insurance, Non-Life Insurance, Non-bank Credit. The need for each division was previously set out in the four separate applications for recognition approved by the Ombud Council in May 2022. It is the NFO's submission that the need established by the separate schemes has not changed or diminished in the period since previous recognition and that it will continue to remain unchanged going forward.

The mandate of the NFO is to provide individuals, small business and financial customers or beneficiaries with a fair, expeditious and effective dispute resolution process, free of charge. It provides an informal, easily accessible alternative to other remedies, such as court proceedings.

The NFO office will promote and protect individual rights since expert legal advice is accessible free of charge. In addition, where the facts of the matter demand it, independent investigations are undertaken, by qualified lawyers to determine the legal liability. They are able to thoroughly assess the facts and also consider the issue of fairness in all circumstances.

The complaints handling and adjudication services rendered by the NFO will encourage more efficient and fair financial practices and administration. Through their investigations and findings, the four previous schemes have separately in the past, on numerous occasions, caused their participants to change contract wording, implement new procedures, do more to alert customers to risks and overall change in financial practices for the better. This influence over financial practice and policies will continue and we are very aware of the responsibility that this brings.

The NFO will strive to ensure fair outcomes for consumers in all matters, but also for the participants of the scheme. It is contrary to its mandate and the role of an Ombud office to approach matters in a one-sided, biased, or heavy-handed manner.

The availability of this free service of the NFO ensures that financial services customers and beneficiaries have access to a cost-effective dispute resolution mechanism, should they wish to make use of this service. The added benefit is that they are not bound by a negative assessment of their case by the adjudication/investigation team. Complainants retain all their rights to proceed with litigation or other redress action, should they wish to do so.

The scheme bridges the gap between financial institutions and the public, especially in matters where there is a breakdown in the communication between the two parties. Its trained contact center agents, drawn from the previous schemes, have fielded thousands of calls per year, and the fact that they are able to recommend a way forward to upset and irate customers, is just one of the ways in

which the scheme will ensure more trust and the promoting of negotiation and cooperation instead of litigation.

In accordance with its proposed governing rules, the NFO offers a major advantage over the courts for consumers because it can resolve consumer complaints not only based on a strict interpretation of the facts and the law but also on the basis of fairness (equity jurisdiction). Experience in the four schemes has shown that many outcomes of complaints are based on fairness and in the course of these interactions on complaints with participants of the scheme, the NFO will continue to promote the fair treatment of all financial services customers.

In addition to the normal assessment of fairness in each case, the NFO will adopt a policy to identify vulnerable consumers and to ensure that their specific circumstances and vulnerability is brought to the financial institution/ participant's attention. For example, some complainants falling victim to a fraudulent scam are older than 85 or suffer from a disability. The NFO will ensure that these and other factors are highlighted, and, in many instances, this could assist in obtaining a favorable outcome in the case.

Complaints are resolved through a variety of instruments such as negotiation, mediation, conciliation, investigation and where necessary the issuing a recommendation/decision and determinations. The governing rules also provide guidelines to all parties involved on the sequence of events once a complaint is lodged with the NFO. This provides certainty and clarity in respect of process and procedure as well as estimated timelines.

In addition to resolving complaints, and unlike the formal court system, the NFO will also deal with general enquiries from the public and have processes and procedures in place to ensure the speedy resolution of such enquiries, both telephonic and in writing.

Another important aspect of the NFO's mandate as captured in the proposed governing rules, will include raising awareness about the existence of the office, its services and a wide range of financial matters which affect financial services customers and other consumers. The NFO will continue to have a focus on organised communication activities to ensure that it serves all relevant communities, provides information and assistance when required and as a result creates and build trust in the financial system. The scheme aims to raise awareness on a wide range of platforms and in several South African languages, such as radio, TV, social media, and community radio stations etc., about the office, but also to provide information and issue warnings to consumers about matters such as risks and scams to look out for.

In addition to the expected positive influence and impact of the NFO listed above, the NFO will support financial sector outcomes by detecting trends with the detailed statistics that it will be able to extract from its complaints system. The types of complaints, amounts involved, the age, geographical location, the participant/financial services provider, and other relevant information, will allow for very detailed insight into key sectors of the SA financial services industry. It will also allow the NFO to identify any problems at an early point, which matters can then be taken up with the participant/ financial institution to take preventative action. Where necessary it will be reported to the relevant regulators with whom the NFO will continue to regularly share statistics. The scheme will work closely with the regulators and all stakeholders in respect of systemic issues and risks.

## **2.2. Need for the amalgamation of the previous schemes.**

The need for the amalgamation of the four industry schemes in the financial sector was highlighted in the consultation policy document published by National Treasury in September 2017 called “A

*known and trusted ombud system for all.*" The main concern raised in that and subsequent policy positions was that the fragmentation of ombud schemes may result in confusion for the consumer on where to seek assistance. In the context of this policy discussion the report by the World Bank Diagnostic Team published in July 2021 titled "*South Africa: Financial Ombud System Diagnostic*" recommended, among other reforms, that the current financial sector industry ombud schemes and the statutory FAIS Ombud scheme amalgamate to create a National Financial Ombud independent of government and industry.

The NFO is created in line with several of the World Bank Diagnostic report recommendations and is a step toward the broader reforms proposed in the report. Implementation of the broader reforms, including expected incorporation of the FAIS Ombud into the NFO, is dependent on National Treasury confirming its final policy response to the World Bank recommendations, and will require legislative changes.

The four schemes have been cooperating with each other in several ways since 2020 to ensure greater access for consumers to their services. This includes aligning their telephony systems, occupying joint offices, and now merging into a single entity.

Fundamental to the rationale for amalgamation is the belief that the NFO will better serve consumers who have complaints against the financial institutions to deal with those complaints effectively and efficiently. The NFO will retain the expertise of all four schemes.

### **3. Statement in respect of the intended operation of the Governing rules**

The governing rules comprise the Memorandum of Incorporation (MOI) as well as the Rules of the scheme. Prior to the appointment of the first residing Board, an Initial Board comprising an executive member of each of the Credit Ombud, OBS, OLTi and OSTI was appointed. The purpose of the Initial Board was to register and incorporate the Company, apply to the Ombud Council for recognition of the NFO as an industry ombud scheme and any other attendant registrations required for the Company and to ensure a transition to the first residing Board. The members of the first residing Board have been selected by consensus by a Selection Committee, constituted in accordance with a process recommended by the World Bank in its above-mentioned Diagnostic study.

The Initial Board will therefore step down shortly and be replaced by the residing Board before the NFO commences operations. The new Board will appoint the Head Ombud of the scheme in due course.

#### **3.1. The NFO Memorandum of Incorporation (MOI) (see Annexure C).**

In addition to applicable Companies Act requirements, key provisions of the MOI cover the following matters:

The NFO is a registered section 21 (non-profit) company without members.

The MOI provides for the appointment of a board of directors comprising not less than five and not more than nine Directors. A majority of directors, and the chairperson and deputy chairperson of the Board, may not be persons associated with the financial industry.

The Board is responsible for appointing the Head Ombud and Lead Divisional Ombuds of the scheme, and approving the appointment of all other Ombuds, following transparent public advertisement for new Ombud appointments. The Head Ombud will be the chief executive of the NFO, responsible for the day-to-day running of the scheme and the office, with all the matters incidental thereto, such as the appointment of staff, determining processes and overseeing complaints handling.

All Ombuds must have terms of employment that secure their independence from the Board, NFO scheme Participants, consumer bodies, financial regulators, and political influence. This includes terms securing their tenure; protection from removal from office other than on grounds of incompetence, gross misconduct, or inability to effectively carry out their duties; and protection of remuneration from being influenced by the outcome of complaints. An Ombud is thus empowered to act completely independently and objectively in resolving disputes and is not influenced by anybody in making their decisions.

The MOI contains a detailed definition of the different types of Participants in the NFO scheme. Although stakeholders are encouraged to review the definition carefully, in summary, Participants in the NFO scheme will primarily be financial institutions that provide financial products and services (as defined in the FSR Act) in relation to banking, life insurance, non-life insurance and credit agreements.

### **3.2. The NFO Scheme Rules (see Annexure D).**

The NFO Scheme Rules define the types of complaints and complainants that the NFO will deal with and set out the scheme's dispute resolution processes and powers.

Importantly, the Rules provide consistent definitions and end-to-end processes for all types of complaints dealt with by the NFO, thus harmonising the previously inconsistent approaches of the four existing schemes.

The NFO Scheme Rules deal with the following matters. Significant provisions are highlighted below in summary form, but it is important for stakeholders to consider the full text of the Rules in Annexure D before commenting:

#### ***(a) Preamble (Rule 1).***

The preamble to the Rules confirms the status of the NFO and its Rules; that it is free of charge to complainants, who are not obliged to use its services and may withdraw their complaints at any time.

For transition purposes, it confirms that the Rules apply to complaints received by the NFO from its date of commencement (1 January 2024). Existing complaints with the predecessor schemes will be resolved under the rules of those schemes, except that the new appeal provisions of the NFO will apply to final rulings made under such previous rules. Members of the previous schemes as at 31 December 2023 will be deemed to be Participants in the NFO.

#### ***(b) Consistent definitions of "complaint" and "complainant" (Definitions).***

The definitions are aligned with overarching definitions included in the draft Conduct of Financial Institutions bill, which will apply to all financial institutions and ombud schemes. Oral complaints are

included, as well complaints from potential financial customers (also defined) and persons who are members of insurance group schemes. Provision is also made for the NFO to deal with complaints that the Ombud Council designates it to deal with in terms of the FSR Act.

***(c) The NFO's principal powers and duties (Rule 3).***

These are, in summary:

- To resolve complaints, without charge to complainants, in a way that is accessible, effective, efficient, fair (both procedurally and substantially), impartial, independent and timely.
- To promote and publicise the NFO to consumers, including through outreach activities.
- To ensure that the NFO has the appropriate expertise and resources.
- To be transparent, subject to confidentiality.
- To account for its activities by publishing an annual report, rulings and other information.
- To promote continuous improvement of its service.
- To comply with applicable legislation.

***(d) Jurisdiction of the NFO (Rule 4).***

The NFO has the power to consider complaints made by complainants about participants, subject to applicable monetary limits, which are set out in Schedule A to the Rules (see below). Any complaint which falls under the jurisdiction of the Pension Funds Adjudicator or the FAIS Ombud is excluded from the jurisdiction of the Scheme, unless the PFA or the FAIS Ombud has agreed that the NFO should deal with the complaint.

The NFO may, subject to certain exceptions, dismiss a complaint where prior to lodging the complaint to the NFO the complaint has been subject to legal proceedings or certain other dispute resolution processes; or more than three years have elapsed since the complainant became aware or ought reasonably to have become aware that there was cause to complain.

The Rules provide a mechanism for jurisdictional disputes to be determined by an Ombud.

***(e) Submitting a complaint to the scheme (Rule 5).***

Complaints may be submitted orally or in writing, through the NFO online complaint form; e-mail fax or post; telephone or other electronic means; or in person - in any South African official language. The intention of the Rule is to provide as many access points as possible although based on experience of the previous schemes in practice most complaints are completed online, or consumers print and complete complaint forms. By submitting a complaint to the NFO, a complainant is deemed to have complied with the NFO Rules.

***(f) Time-barring and prescription (Rule 6).***

The Rules provide that receipt of a complaint by the NFO suspends applicable time-barring provisions and the running of prescription.

***(g) Procedure for complaint handling (Rule 7).***



The NFO decides on the method and process to be used to deal with a complaint, which may include one or more of the following:

- Deciding not to consider a Complaint because it is outside the NFO's jurisdiction.
- Dismissing a complaint on stated grounds
- Conciliation
- Mediation
- Recommendation
- Ruling.

At any time while a complaint is under consideration by the scheme, it may be resolved by agreement between the parties.

The internal complaint handling processes of the participant must have been exhausted before the NFO will deal with a complaint, unless the NFO believes there was good cause not to.

The Rules provide mechanisms for the NFO and the parties to provide or request information to and from one another and to set timelines for these processes. Mechanisms are provided for the NFO to obtain expert advice at the participant's cost; and to take reasonable action where parties do not co-operate.

#### ***(h) Determination of disputes (Rule 8).***

The NFO's decision-making criteria include applicable law, procedural fairness, relevant industry practice, previous relevant rulings by the NFO or the previous schemes (although these are not binding precedents), and applicable industry codes. Importantly, the NFO must always determine what in its opinion is equitable, fair and reasonable in all the circumstances. The NFO is not bound by legal rules of evidence.

The NFO must resolve material disputes of fact on a balance of probabilities. If an Ombud believes a material dispute of fact cannot be resolved on a balance of probabilities the parties will be advised that no determination can be made. An Ombud has the discretion to conduct a hearing of evidence in this regard.

#### ***(i) Recommendations, dismissals and rulings (Rule 9).***

If a complaint is not resolved by other means, the NFO will make a recommendation to the parties setting out its views on whether the complaint should be upheld or not, and any appropriate remedies. If the parties agree to implement the recommendation, the complaint is finalised on that basis.

The NFO has the power to dismiss a complaint without further consideration of its merits (in effect a summary dismissal), or at any stage, on various stated grounds. In summary:

- No reasonable prospect of success;
- Complaint is being pursued in a dishonest, frivolous, vexatious, abusive or unreasonable manner;
- More appropriately dealt with by a court;
- Predominantly about investment performance or legitimate commercial judgment, unless there are grounds for a prima facie presumption of misrepresentation, negligence, or maladministration;
- No financial loss or material distress or inconvenience suffered, or this has already been compensated for and NFO would not award more;

- Complaint involves other parties whose consent has not been obtained.

If the parties do not accept the recommendation, an Ombud will make a ruling. Alternatively, the Ombud has the discretion to make a provisional ruling which, if not challenged by either party, resolves the complaint on that basis.

Subject to the applicable monetary limits in Schedule A, an Ombud may, in summary, make one or more of the following rulings:

- Determine that a Complaint is outside the NFO's jurisdiction on the grounds set out in the Rules;
- Uphold the Complaint, either wholly or in part, including by making an appropriate monetary award;
- Dismiss the Complaint on the grounds set out the Rules;
- Make a ruling of a procedural or evidentiary nature;
- Order the participant to pay interest on a fair basis;
- Order a participant to take, or refrain from taking, any necessary action;
- Award compensation for material inconvenience or distress or for financial loss suffered by the complainant as a result of error, omission, or maladministration (including manifestly unacceptable or incompetent service).

Subject to the participant's right of appeal (see below), a ruling is final and binding on the parties if accepted by the complainant.

***(j) Right of appeal (Rule 10).***

Either party may apply for leave to appeal against a ruling, to a designated Appeal Tribunal, comprising three members who are retired judges of the High Court, the Appeal Court or the Constitutional Court, or Senior Counsel and who are appointed by the NFO Board.

The chair of the Tribunal will designate one of the Tribunal members to decide whether leave to appeal should be granted; and if so, will appoint one or more Tribunal members to consider the appeal.

The Appeal Tribunal will grant leave to appeal if in its opinion one or more of the following apply:

- there are reasonable prospects that the Appeal Tribunal will reach a different conclusion to that of the Ombud;
- the complaint raises issues which may have general or systemic implications in relation to the financial sector or a significant part of it;
- the complaint raises matters of public or policy interest;
- there is prima facie evidence that the Ombud misunderstood the law, or misunderstood the scope of its jurisdiction, or did not follow a fair process;
- it is in the interests of justice to do so.

If the appeal is upheld by the Appeal Tribunal, it has the discretion to either remit the complaint to the NFO for redetermination or if it considers that it would benefit the parties, it can reach its own decision in the complaint and make any ruling the NFO would have been able to make.

***(k) Enforcement (Rule 11).***

If a Participant fails to comply with an NFO ruling or with a decision of the Appeal Tribunal, after being given notice to do so, the NFO will report the non-compliance to the Board, the FSCA, or the

NCR as appropriate, and the Ombud Council. The NFO may publish the fact of such non-compliance.

The NFO must advise the FSCA or the NCR of any material contravention of the NFO Rules or persistent or material non-cooperation with the NFO by a participant; and any complaints regarding financial products or services that are provided by persons who are not participant or not licensed under a relevant financial sector law, to enable them to consider appropriate action.

***(l) Complainant's rights (Rule 12).***

A complainant may institute litigation or use an alternative forum to pursue a complaint at any time, including if they do not accept an NFO recommendation, ruling or Appeal Tribunal decision, in which case the NFO or Tribunal will cease dealing with the complaint.

***(m) Confidentiality (Rule 13).***

The Rules include provisions protecting the confidentiality of various types of information in connection with complaints.

***(n) Reporting and publication of rulings and information (Rule 14).***

The Rules require the NFO to publish annual reports, complaints statistics, rulings, and any other information the Ombud Council requires it to publish. Published rulings must disclose the identity of the participant, but not that of the complainant.

***(o) Precedents (Rule 15):***

Rulings or recommendations of the NFO or the predecessor schemes do not establish legal precedent.

***(p) Access to information (Rule 16)***

The Rule references relevant information access laws.

***(q) Restrictions applicable to participants (Rule 17).***

Participants may not commence or continue litigation against participants to effectively prevent the NFO from dealing with complaints, other than to the extent necessary to preserve their rights.

***(r) Immunity from liability and protection from being subpoenaed (Rule 18).***

The NFO and its officials enjoy certain protections appropriate to protect the scheme's independence.

***(s) Systemic issues (Rule 19).***

This Rule defines "systemic issues" that the NFO may identify in the course of dealing with complaints and how they will be investigated and reported to relevant regulators.

***(t) Complaints about the NFO's service (Rule 20).***

A party to a complaint may complain to the NFO, and escalate the complaint to an independent assessor, if it is dissatisfied with the NFO's standard of service. This mechanism does not apply to dissatisfaction with the NFO's decision on the merits of a complaint.

***(u) Information about the NFO (Rule 21).***

Participants are obliged to disclose the availability and contact details of the NFO to their financial customers at specific stages and in specific ways. A transition period of six months is provided for members of the four predecessor schemes to comply with this rule, provided they continue to make the corresponding disclosures in relation to the predecessor schemes in the interim.

***(v) Participation and funding (Rule 22).***

This Rule obliges participants to meet their NFO funding obligations, in accordance with the funding model approved by the NFO Board. Failure to do so may result in legal action for recovery of the amounts due; reporting the non-payment to the relevant regulator and to relevant industry bodies; and publication of the non-payment.

***(w) Consumer education.***

The NFO may contribute to financial education of consumers.

***(x) Applicable monetary limits (Schedule A).***

Schedule A to the NFO rules sets different monetary limits for the maximum monetary value of the complaints that each of the four Divisions of the NFO may consider and, in some cases, for the maximum turnover of complainants that are businesses. The NFO may not consider complaints where the value exceeds these limits, unless the participant agrees to the limit being exceeded or the complainant agrees to limit the complaint to such amounts.

Note that, in addition to or regardless whether any other award is made in relation to a complaint, any Division of the NFO may award up to R50,000.00 as compensation for material inconvenience, distress or financial loss caused by an error, omission or maladministration (including manifestly unacceptable or incompetent service).

The limits are, in summary:

- Non-life Insurance complaints: R10 million for homeowners' / buildings cover; and R5 million for all other types of cover. The same limits apply to commercial and personal lines matters.
- Banking complaints (including bank Credit complaints): R5 million complaint value; turnover of below R10 million for complainants that are businesses; and R10,000.00 for unnecessary delays by the participant.
- Non-bank Credit complaints: R5 million complaint value; turnover of below R10 million for complainants that are businesses.
- Life Insurance complaints: No monetary limits, except for the R50,000.00 maximum award for distress or inconvenience referred to above.

#### **4. Statement on the expected impact of the governing rules**

##### **4.1. Key differences from the rules of the previous schemes.**

Generally, stakeholders should review the draft NFO Scheme Rules attached as Annexure D and summarised in section 3.2 of this document, as the consolidated Rules differ in several respects from the divergent sets of rules of the existing schemes.

For all participants, Rule 21 requiring them to disclose the name and contact details of the NFO to their financial customers will have operational implications. Rule 21 does however allow a six-month transition period to implement these changes.

The over-arching definitions of "complaint" and "complainant" in the NFO may alter the scope of eligible complaints, including but not limited to the inclusion of potential financial customers and members of insurance group schemes.

Although there are no material differences in the types of dispute resolution processes the NFO will use compared to the existing schemes, the specific steps in the complaint-handling process - and the terminology used to describe them - may differ from those some participants are accustomed to. Participants will therefore need to ensure their complaint handling staff familiarise themselves with these changes. The NFO scheme will also engage with participants in the respective sectors to assist them in this regard.

Processes and grounds for appeals against NFO rulings may also differ for some participants.

The NFO Scheme funding model also differs in some respects from those of the existing schemes.

Some specific changes to note are the following:

***(a) Differences from existing rules of the Credit Ombud:***

For participants falling under the non-bank Credit Division, changes include the following:

- The Credit Ombud was a voluntary association with a constitution and the NFO is registered in terms of the Companies Act, No 71, 2008 as a not-for-profit company without members.
- The Rules are now a separate document, whereas in the Credit Ombud complaint handling rules were included in its constitution.
- The definition of Participant explicitly includes debt collection but excludes credit bureaux. Complaints regarding the provision of credit information by other participants to credit bureaux will however be covered.
- The funding model provides for a participant (or membership) fee in addition to a case fee, which will be invoiced in January every year.
- The introduction of an internal appeal mechanism, which provides that both parties to the dispute have the right to appeal against a ruling.
- Monetary limits as set out in Schedule A to the Rules are introduced, including a maximum of R50,000.00 for compensation for material inconvenience or distress or for financial loss suffered by the Complainant as a result of error, omission, or maladministration (including manifestly unacceptable or incompetent service).

***(b) Differences from existing rules of the OSTI scheme:***

For participants falling under the Non-life Insurance Division changes include:

- The NFO may award compensation for material inconvenience or distress or for financial loss suffered by the Complainant as a result of an error, omission, or

maladministration (including manifestly unacceptable or incompetent service) on the part of the Participant. The limit of such compensation is R50 000.

- The funding model provides for a participant (or membership) fee in addition to a case fee, which will be invoiced in January every year.
- A complainant or participant may apply for leave to appeal against a ruling to a designated Appeal Tribunal and not to the Ombud who made the Ruling.
- Complaints about the NFO's service can be escalated to an Independent Assessor, if the party complaining about the service remains dissatisfied after receiving a response.

***(c) Differences from existing rules of the OLT scheme:***

For participants falling under the Life Insurance Division changes include:

- The OLT is a voluntary association with respective constitutions governing the Ombudsman Council and the Long-term Insurance Ombudsman's Association, whereas the NFO is registered in terms of the Companies Act, No 71, 2008 as a not-for-profit company without members.
- A complainant or participant may apply for leave to appeal against a ruling to a designated Appeal Tribunal and not to the Ombud.
- The NFO rules provide that a (final) ruling may follow on a recommendation, although a provisional ruling may be issued in some cases.
- The NFO rules provide for a funding model that is similar to the funding model used by OLT, in that a Participant (membership) fee and case fee are charged. The details differ somewhat.

***(d) Differences from existing rules of the Ombudsman for Banking Services:***

For participants falling under the Life Insurance Division changes include:

- The monetary limit for the value of complaints the scheme may consider has been increased to R5 million, in light of the fact that this amount has not been updated in line with inflation and allowing for a broader and more inclusive scope of cases, but also to bring the banking complaints in line with the other types of complaints that the NFO will deal with.
- With regards to process, the OBS utilised the "assessment" process and very seldom issued recommendations. The new process will entail that most complaints will be resolved on the basis of a written recommendation issued to the parties, and if not accepted, it will escalate to a ruling. In addition, the process allows for provisional rulings, in the discretion of the NFO.
- There are minor differences in relation to the time periods allowed for certain processes, but these are not anticipated to have any major impact on the relevant dispute departments in the banks nor require system changes. The benefit is that all the NFO Divisions will apply the same timelines.
- No immediate impact is expected with regard to the manner in which complaints are categorised; the statistical reporting or manner in which complaints are submitted to the bank, as we will continue to use the same case management system.
- The funding model will change and it will have a slight impact on the banks. The funding model provides for a participant (or membership) fee in addition to a case fee, which will be invoiced in January every year. The membership fee has the effect of slightly reducing the case fee for banks with more than 50 cases.

- We will have a charge of 50% of the standard case fee for premature cases and 200% for exceptionally difficult or delayed cases, which was not previously part of the funding model.
- The parties who do not accept a ruling, may apply for leave to appeal against that ruling to a designated Appeal Tribunal and not to the Ombud. The grounds for appeals have been expanded.
- Complaints about the NFO's service can be escalated to an Independent Assessor, if the party complaining about the service remains dissatisfied after receiving a response.

#### **4.2. General impact of the governing rules**

The NFO will be a critical institution that will play a pivotal role in safeguarding the interests of financial customers and participants in the financial sector. It will have a significant impact in the sector and all affected parties, offering a mechanism for resolving disputes and ensuring fair and ethical practices.

The NFO, like other financial ombud schemes around the world, serves as an impartial mediator between businesses and consumers. It is designed to resolve disputes efficiently and fairly, allowing consumers to seek redress when they believe they have been treated unfairly.

Moreover, the NFO serves as a vital mechanism for protecting the rights of consumers. It is instrumental in addressing various issues, including mis-selling of financial products, disputes over transactional errors, and concerns related to contract terms and conditions, to name a few. When customers are unable to resolve these issues directly with the business, the NFO steps in, ensuring that customers are not unfairly disadvantaged. This has a significant impact on consumers' financial well-being by preventing them from falling victim to unscrupulous practices and ensuring that their rights are protected in all circumstances.

On the other hand, participants of the scheme, which include banks, life and non-life insurance companies, non-bank credit providers and other financial institutions, are also impacted by the NFO. The scheme will place an onus on financial institutions to operate ethically and transparently. They are required to adhere to industry regulations and standards and maintain proper documentation of transactions and communications. This, in turn, leads to a higher level of accountability among these institutions, as they know that any misconduct can lead to a complaint being filed with the NFO.

In practice, the existence of the NFO will incentivise financial participants to improve their customer service and dispute resolution processes. Institutions that consistently face complaints adjudicated in favor of customers are likely to face reputational damage, which can have long-term consequences. As a result, many financial institutions will continue to implement stronger internal dispute resolution mechanisms and improved customer service to minimise the likelihood of complaints escalating to the NFO. This will have a positive impact on customer service standards across the financial sector.

Furthermore, the NFO will play a role in promoting financial stability by preventing disputes from escalating into costly legal battles. By providing an alternative, cost-effective, and efficient mechanism for dispute resolution, it reduces the burden on the judicial system and minimises the time and resources spent on protracted legal proceedings. This is advantageous not only

for financial participants, who can avoid expensive legal battles, but also for financial customers, who can expect quicker and more equitable resolutions to their disputes.

The existence of the NFO based on the proposed governing rules will ensure that thousands of complainants are assisted through the scheme's expert services. In addition, the NFO will serve the community at large through its contact centre and mail inbox where it will respond to thousands of consumers.

Whilst the NFO will be a new company without a history of its own, it will build on the significant history, knowledge, expertise, and goodwill created by the four predecessor Ombudsman offices over the past decades.