The regulatory nexus between the promotion of financial education and financial inclusion in enhancing consumer protection in South Africa*

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SUMMARY

This paper seeks to share some insights on the regulatory aspects of the promotion of financial education and financial inclusion to enhance consumer protection in South Africa. In recent years, policymakers in different countries, including South Africa, have made various efforts to regulate financial inclusion and integrate financial consumers into the financial sector. Similarly, policymakers and other relevant stakeholders have made efforts to promote financial education to empower financial consumers to make sound financial choices and decisions. Notwithstanding these efforts, the promotion of financial education and financial inclusion has been done in isolation, overlooking the policy synergies between these objectives and/or financial sector outcomes in enhancing consumer protection in South Africa. Given the recent COVID-19 pandemic, both financial education and financial inclusion have become increasingly important policy considerations to negotiate the chasm from the challenges that financial consumers faced before the pandemic and move towards safeguarding the economic interests of financial consumers post-pandemic. Accordingly, this paper explores the interrelationship between the effective promotion of financial education and financial inclusion to enhance consumer protection. Moreover, this paper examines the adequacy of the regulation of financial education and financial inclusion under the National Credit Act 34 of 2005 (NCA); the Consumer Protection Act 68 of 2008 (CPA), the Financial Sector Regulation Act 9 of 2017 (FSR Act) and the proposed Conduct of Financial Institutions Bill (CoFI Bill) in relation to strengthening consumer protection. Put differently, this article focuses on the regulatory nexus of the promotion of financial education and financial inclusion to enhance consumer protection in South Africa. In the end, this article will provide some recommendations and enforcement approaches that could be incorporated into the regulatory framework of the promotion of financial education and financial inclusion to enhance consumer protection in South Africa.

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1 Introduction

The promotion of financial education and financial inclusion is essential for enhancing consumer protection in South Africa. The term financial education is not expressly defined in any statute that regulates the financial sector and consumer-related issues in South Africa.[1] Nonetheless, financial education could be defined as the process by which financial consumers could improve their understanding of financial products, financial concepts, and risks.[2] Financial education can be promoted through, among others, information, instruction, and/or objective advice to develop the skills and confidence of financial consumers to become more aware of financial risks and opportunities.[3] It is also essential to empower financial consumers to make informed choices, to know where to go for help, and to take other effective actions to improve their financial well-being.[4] In contemporary times, the financial sector has become advanced and complex concerning how financial services and products are made available to consumers by the government, financial institutions, and other relevant stakeholders.[5] Owing to complexities and modernisation in the offering of financial services and products through technology and other innovative platforms, financial education has become increasingly important to help

1 See ss 3, 4, 60-66, and 72 of the National Credit Act 34 of 2005 (NCA); also see ss 57(b) and 58 of the Financial Sector Regulation Act 9 of 2017 (FSR Act); ss 3, 4, and 8-78 of the Consumer Protection Act 68 of 2008 (CPA), which supposedly relate to assisting financial consumers to make better and informed financial decisions; also see Chitimira and Magau "A Legal Analysis of the Use of Innovative Technology in the Promotion of Financial Inclusion for Low-Income Earners in South Africa" 2021 *PELJ* 9.

2 Chitimira and Magau "A Legal Conspectus of Some Role-Players in the Development of Financial Education in South Africa" 2022 *EIRP Proceedings* 360; Akpinar and Koch *Contemporary Educational Researches: Theory and Practice in Education. Germany: Books on Demand* (2019) 21; Chitimira and Magau 2021 *PELJ* 9; Zait and Bertea "Financial Literacy: Conceptual Definition and Proposed Approach for a Measurement Instrument" 2014 *Journal of Accounting and Management* 37.

3 Akpinar and Koch (2019) 21; also see Organisation for Economic Co-operation and Development *Improving Financial Literacy: Analysis of Issues and Policies* (2005) 21; Chitimira and Magau 2022 *EIRP Proceedings* 360; see related comments by Emmons "Consumer-Finance Myths and Other Obstacles to Financial Literacy" 2005 *Saint Louis University Public Law Review* 335; see further comments by Zait and Bertea 2014 *Journal of Accounting and Management* 37.

4 Organisation for Economic Co-operation and Development *OECD/INFE International Survey of Adult Financial Literacy Competencies* (2016) 1-95; Chitimira and Magau 2021 *PELJ* 9; see related comments by Godinho, Eccles and Thomas "Beyond Access: The role of Microfinance in Enabling Financial Empowerment and Wellbeing for Indigenous Clients: Lessons from Remote Australia" 2018 *Third Sector Review* 57.

5 See related comments by Nanziri and Leibbrandt "Measuring and Profiling Financial Literacy in South Africa" 2018 *SAJEMS* 1; see also Chitimira and Magau 2021 *PELJ* 9; Sharrock *The Law of Banking And Payment in South Africa* (2016) 63; Hastings, Madrian and Skimmyhorn "Financial Literacy, Financial Education, and Economic Outcomes" 2013 *Annual Review of Economics* 347.

consumers with budgeting, investing, and saving money for both short and long-term use.[6] Moreover, financial education is also important for the overall well-being of the economy of a country because financially empowered consumers can participate more effectively in the financial sector than those without adequate financial education.[7]

Currently, there is no statutory or universally accepted definition of financial inclusion in South Africa. However, for the purpose of this paper, financial inclusion refers to the access to and use of affordable financial products and services offered by all spheres of government, financial institutions, and other relevant stakeholders to all financial consumers.[8] This paper focuses on both access and use of financial services and products because access itself does not necessarily entail that all financial consumers who can access financial services and products will be able to use them effectively and/or prudently, especially without proper financial education.[9] The lack of proper and adequate measures to promote financial inclusion results in the high rate of financial exclusion of financial consumers. Financial exclusion refers to the inability to access and use financial services and products by financial consumers due to the lack of provision for these financial services and products by the government, financial regulatory bodies, and relevant stakeholders.[10] In this regard, the government, financial regulatory

6 Fox, Bartholomae and Lee "Building the Case for Financial Education" 2005 *The Journal of Consumer Affairs* 197-209; also see related comments by Worthington "Knowledge and Perceptions of Superannuation in Australia" 2008 *Journal of Consumer Policy* 350; Wagland and Taylor "The Conflict Between Financial Decision Making and Indigenous Australian Culture" 2015 *Financial Planning Research Journal* 33.

7 See Williams "Empowerment of Whom and for What? Financial Literacy Education and the New Regulation of Consumer Financial Services" 2007 *Law and Policy* 229; see related comments by Pearson "Reconceiving Regulation: Financial Literacy" 2008 *Macquarie Law Journal* 57, Ramsay "Consumer Law, Regulatory Capitalism and the New Learning in Regulation" 2006 *Sydney Law Review* 11.

8 Nanziri "Financial Inclusion and Welfare in South Africa: Is there a Gender Gap?" 2016 *Journal of African Development* 109; Chitimira and Ncube "The Role of Regulatory Bodies and Other Role-Players in the Promotion of Financial Inclusion in South Africa" 2020 *Acta Universitatis Danubius Juridica* 25; Mago and Chitokwindo "The Impact of Mobile Banking on Financial Inclusion in Zimbabwe: A Case for Masvingo Province" 2014 *MJSS* 222; Barruetabeña "Impact of New Technologies on Financial Inclusion" 2020 *Economic Bulletin, Banco de España* 1-2.

9 Chitimira and Torerai "The Nexus between Mobile Money Regulation, Innovative Technology and the Promotion of Financial Inclusion in Zimbabwe" 2021 *PELJ* 3; Chitimira and Ncube "Overview Legislative Flaws Hampering the Promotion of Financial Inclusion for the Poor and Low-Income Earners in South Africa" 2021 *Interdisciplinary Journal of Economics and Business* 67.

10 Louis and Chartier "Financial Inclusion in South Africa" 2017 *Journal of Comparative Urban Law and Policy* 173; Chitimira and Ncube 2020 *Acta Universitatis Danubius Juridica* 25-26; Ngwenya, Pelser and Chivaura "Perceptions of Post-Multicurrency Regime Financial Inclusion Confidence Challenges in Zimbabwe" 2018 *SAJEMS* 3; Chitimira and Ncube 2021 *Interdisciplinary Journal of Economics and Business* 68.

bodies, and all relevant stakeholders such as financial institutions need to adopt sufficient measures to promote financial inclusion to enhance consumer protection in South Africa.

Consumer protection refers to various measures that are aimed at safeguarding and promoting the rights of consumers to provide the necessary mechanisms to ensure a fair, accessible, and sustainable marketplace for consumer products and services.[11] Put differently, consumer protection entails different measures and mechanisms which are aimed at minimising the risks and potential risks to create an accessible marketplace where financial consumers can access and use financial services and products seamlessly.[12] It is submitted that financial education and financial inclusion are some of the measures and policy interventions that can enhance consumer protection for financial consumers to access and use financial services and products in an environment that promotes and safeguards the rights of financial consumers.[13]

The overall aim of this paper is to share insights on regulatory aspects of the promotion of financial education and financial inclusion in enhancing consumer protection in South Africa. Both financial education and financial inclusion are poorly regulated on a piecemeal approach in South Africa. Apart from the express provision for supporting the promotion of financial inclusion under the FSR Act,[14] there is no legislation that is specifically and solely dedicated to regulating the promotion of financial education and/or the promotion of financial inclusion in South Africa. In addition to this, there is no regulatory authority whose only duty or mandate is the promotion of financial education and financial inclusion. The absence of a body whose only duty is to promote financial education and financial inclusion has a negative effect on enforcing consumer protection in South Africa because both financial education and financial inclusion are directly linked to consumer protection.[15] In rethinking global economies, financial markets, corporate practices, and business activities post the COVID-19

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11 See s 3 of the CPA; also see Woker "Why the Need for Consumer Protection Legislation? A look at some of the Reasons behind the Promulgation of the National Credit Act and the Consumer Protection Act" 2010 *Obiter* 218; Woker "Consumer Protection and Alternative Dispute Resolution" 2016 *SA Mercantile Law Journal* 22.

12 See s 3 of the CPA; also see Jacobs, Stoop and Van Niekerk "Fundamental Consumer Rights Under the Consumer Protection Act 68 of 2008: A Critical Overview and Analysis" 2020 *PELJ* 302; see also Woker 2010 *Obiter* 218.

13 See related comments by Jacobs, Stoop and Van Niekerk 2020 *PELJ* 302; also see more comments by Woker 2020 *Obiter* 218; see further related comments by Chitimira and Ncube "Legislative and Other Selected Challenges Affecting Financial Inclusion for the Poor and Low Income Earners in South Africa" 2020 *Journal of African Law* 344-345.

14 See ss 40 and 70, read with s 58(e) of the FSR Act; Osode "Two Heads are Better than One: Assessing South Africa's Twin Peaks' Financial Regulation Model" 2021 *Interdisciplinary Journal of Economics and Business Law* 18-19.

15 See related comments by Woker "Consumer Protection: An Overview Since 1994" 2019 *Stell LR* 103.

pandemic, the adequate regulation of financial education and financial inclusion is vital for curbing consumer protection challenges. Accordingly, this paper focuses on the regulatory nexus between the promotion of financial education and financial inclusion in enhancing consumer protection in South Africa. In this regard, the first part of this article provides an overview of the statutory framework for the promotion of financial education and financial inclusion in South Africa. To this end, the relevant provisions of the NCA, the CPA, the FSR Act, and the CoFI Bill[16] on the regulation of financial inclusion and financial education to enhance consumer protection will be discussed. The second part focuses on the need for the promotion of financial education and financial inclusion in enhancing consumer protection post the COVID-19 pandemic in South Africa. This is followed by concluding remarks at the end.

2 Overview of the statutory framework on the promotion of financial education and financial inclusion and the enhancement of consumer protection

2 1 Financial inclusion and financial education under the NCA

The enactment of the NCA is one of the positive and progressive steps on the part of policymakers in safeguarding the interest of financial consumers in line with the policy objectives for financial education, financial inclusion, and consumer protection in South Africa.[17] As regards the promotion of financial education, the NCA prohibits any unfair credit and credit-marketing practices, to promote responsible credit granting and prohibit reckless credit lending.[18] One of the objectives of the NCA is to regulate the negotiating power between financial consumers and credit providers.[19] This is done through, inter alia, providing financial education, disclosure of standardised information, and protection from deception, unfair or fraudulent conduct by credit providers.[20] The rationale behind the regulation of consumer

16 See ss 57 and 58 of the FSR Act; also see the proposed s 3 of the Conduct of Financial Institutions Bill of 2020 (CoFI Bill).
17 See ss 3, 80 and 81 of the NCA; Chitimira and Magau 2021 *PELJ* 12.
18 See s 3(e)(i) of the NCA; see related comments by Singh and Sankharaj “Financial Inclusion: A Critical Assessment of its Concepts and Measurement” 2015 *Asian Journal of Research in Business Economics and Management* 12; also see Chitimira and Ncube 2020 *Journal of African Law* 344; Chitimira and Ncube 2021 *Interdisciplinary Journal of Economics and Business Law* 75.
19 See s 3(e) of the NCA; also see Chitimira and Magau 2021 *PELJ* 11.
20 See s 3(e)(i)-(iii) of the NCA; also see Chitimira and Magau 2021 *PELJ* 11.

education under the NCA is to empower financial consumers to make prudent choices and decisions regarding their finances.[21]

The NCA has established the National Credit Regulator (NCR) and the National Consumer Tribunal (NCT) to, among other functions, help with the promotion of financial education.[22] In particular, the NCR is an independent body responsible for regulating all consumer credit-related matters in South Africa and has an array of powers and functions that could be useful to assist it with the promotion of financial education.[23] For instance, the NCR has the power to suspend and/or cancel any credit agreements that are not in compliance with the requirements of the NCA.[24] The NCT is required to work hand in hand with the NCR by requiring financial consumers to undergo a financial literacy programme when the NCT makes a suspension order for debt intervention.[25] Nonetheless, both the NCR and NCT have not recorded desired success in promoting financial education and financial inclusion.[26] According to Chitimira and Ncube, only about 77 per cent of the South African adult population is banked and has access to bank accounts whereas about 23 per cent remains financially excluded.[27] The long-term goal of the South African government in terms of the National Development Plan is to achieve at least 90 per cent of financial inclusion by 2030.[28] Accordingly, despite the commendable effort on the part of policymakers to expressly provide for consumer education under the NCA, more still needs to be done by the NCR and the NCT with the enforcement and implementation

21 See s 3(e) of the NCA; also see Chitimira and Magau 2021 *PELJ* 11; see further Pearson, Stoop and Kelly-Louw 2017 *PELJ* 19.

22 See ss 12-14 and ss 26-36 of the NCA; also see related comments by Pearson, Stoop and Kelly-Louw "Balancing Responsibilities – Financial Literacy" 2017 *PELJ* 12.

23 See s 12 of the NCA; see also Chitimira and Ncube 2020 *Journal of African Law* 345; also see Chitimira "Historical Aspects of the Statutory Regulation of Financial Inclusion for the Poor and Low-Income Earners in South Africa" 2020 *Acta Universitatis Danubius Oeconomica* 279.

24 See s 14 of the NCA; also see related comments by Vessio "What does the National Credit Regulator Regulate?" 2008 *SA Mercantile Law Journal* 231.

25 See ss 86A (5)(a)-(b) read with s 87A(2)(b) of the NCA; also see Coetzee "An Opportunity for No Income No Asset (NINA) Debtors to Get Out of Check? – An Evaluation of the Proposed Debt Intervention Measure" 2018 *THRHR* 605; Coetzee and Roestoff "Rectifying an Unconstitutional Dispensation? A Consideration of Proposed Reforms Relating to No Income No Asset Debtors in South Africa" 2020 *International Insolvency Review* 99-100; Chitimira and Magau 2020 *Euro Economica* 211.

26 See Chitimira and Magau "The Role of Selected Regulatory Bodies in the Promotion of Financial Education in South Africa" 2023 *Acta Universitatis Danubius Juridica* 38; Abrahams R "Financial Inclusion in South Africa: A Review of the Literature" 2017 *Southern African Accounting Association* 632, and 632-64; Pearson, Stoop and Kelly-Louw 2017 *PELJ* 13; also see Chitimira and Ncube 2020 *Acta Universitatis Danubius Juridica* 9.

27 Chitimira and Ncube 2020 *Acta Universitatis Danubius Juridica* 35; also see Coovadia "Annual Report" 2018 *The Banking Association South Africa* 8-9.

28 See Manuel "National Development Plan Vision 2030" *National Planning Commission* (11 Nov 2011) 129; Chitimira and Ncube 2020 *Acta Universitatis Danubius Juridica* 35.

of these provisions.[29] Currently, the NCA is silent on the standard of education that has to be provided to financial consumers.[30] Additionally, the NCA does not make any provisions regarding monitoring the promotion and provision of financial education.[31] This legislative oversight creates a problem regarding the effective enforcement and implementation of financial education provisions under the NCA. If financial education is consistently monitored by regulatory bodies such as the NCR, this will help in determining whether progress has been made in promoting financial education and whether it has been achieved in the coming years in South Africa.

With regard to financial inclusion, the NCA does not contain any express provisions for the promotion of financial inclusion. This is notwithstanding provisions for the promotion of an accessible credit market and the right to apply for credit which could be said to be some of the key financial inclusion aspects which attempts to balance consumer protection objectives and access to the credit market.[32] In this regard, it is submitted that the NCA should promote financial inclusion through financial education since it already has provisions for financial education.[33] Moreover, the current provisions on the promotion of an accessible credit market should also be reconsidered and aligned with the financial inclusion objective.[34] Nonetheless, financial education remains an important tool that can promote financial inclusion because financial consumers who are well-informed about different financial services and products can make better financial decisions such as avoiding overindebtedness and engaging in reckless credit.[35] To this end, and given that there is no regulatory body whose only duty is to promote financial education and financial inclusion, the government, regulatory bodies, and other relevant stakeholders will have to improve their efforts regarding the enforcement of the financial education provisions under the NCA. This is one of the ways by which the synergies and regulatory nexus between the promotion of financial education and

29 Rootman and Antoni "Investigating Financial Literacy to Improve Financial Behaviour among Black Consumers" 2015 *Journal of Economic and Financial Sciences* 474; Ssebagala "Relieving Consumer Over-indebtedness in South Africa: Policy Reviews and Recommendations" 2017 *Journal of Financial Counseling and Planning* 237.
30 See ss 86A-87 of the NCA; Chitimira and Magau 2021 *Interdisciplinary Journal of Economics and Business Law* 295.
31 See ss 86A(5)(a)-(b) of the NCA; Chitimira and Magau 2021 *Interdisciplinary Journal of Economics and Business Law* 293-295.
32 See the Preamble to the NCA, read with ss 3 and 60.
33 See ss 86A(5)(a)-(b) of the NCA; Chitimira and Magau 2021 *Interdisciplinary Journal of Economics and Business Law* 293-295.
34 See the Preamble to the NCA, read with ss 3 and 60 of the NCA.
35 See related comments by Babych, Grigolia and Keshelava "Financial Inclusion, Financial Literacy, and Financial Education in Georgia" 2018 *ADBI* 23-24; also see more related comments by Grohmann, Klühs and Menkhoff "Does Financial Literacy Improve Financial Inclusion? Cross Country Evidence" 2017 *German Institute for Economic Research* 12.

financial inclusion could be harnessed to enhance consumer protection in South Africa.

2 2 Financial inclusion and financial education under the CPA

The CPA is a comprehensive primary legislation aimed at the regulation of consumer protection in South Africa.[36] The CPA followed the introduction of the NCA which, as discussed above, is also one of the statutes dealing with consumer protection in South Africa.[37] One of the objectives of the CPA is to promote a fair and accessible marketplace for consumer products and services for the development of good norms and national standards for consumer protection in South Africa.[38] The CPA, among other objectives, provides for the promotion of financial education for low-income earners in South Africa by requiring the use of plain and understandable language in contracts that raise financial obligations for financial consumers.[39] Moreover, the CPA also makes provision for financial education by the National Consumer Commission (NCC) in cooperation with any consumer protection group by facilitating or otherwise supporting consumer advice and education activities.[40] Although the CPA makes express provision for the promotion of consumer confidence, empowerment, and the development of a culture of consumer responsibility through financial education, little guidance is provided under the CPA on how this objective is to be achieved.[41] Woker argues that consumer protection legislation has been introduced to protect the interests of the poor, vulnerable, and less literate consumers.[42] Nonetheless, if consumers are not aware of their rights they will continue to remain vulnerable and susceptible to exploitation in the marketplace.[43] Accordingly, it is submitted that consumer protection requires consumers to be aware of their rights for such consumers to be able to claim and benefit from those rights in the marketplace. The primary mechanism for making consumers aware of their rights is

36 See s 3 of the CPA; Woker 2010 *Obiter* 218.
37 Woker 2010 *Obiter* 217. The NCA came into full effect on 1 June 2007, thus preceding the CPA which only came into effect on 1 April 2011.
38 See ss 3-4, and 8-78 of the CPA; Chitimira and Ncube 2020 *Journal of African Law* 344; Chitimira 2020 *Acta Universitatis Danubius Oeconomica* 278; Chitimira and Ncube 2021 *Interdisciplinary Journal of Economics and Business Law* 75.
39 See ss 3(1)(a)-(f), and 22 of the CPA; also see s 64 of the NCA which makes provision for the right to information in plain and understandable language; see related comments by Du Preez "The Consumer Protection Bill: A Few Preliminary Comments" 2009 *TSAR* 76; also see Chitimira and Magau 2021 *PELJ* 12.
40 See ss 77(a), 83(3)(a), and 96(a), read with s 3(1)(f) of the CPA; also see Chitimira and Magau 2023 *Acta Universitatis Danubius Juridica* 38.
41 See s 3(1)(f) of the CPA; also see Van Eeden and Barnard *Consumer Protection Law in South Africa* (2017) 39.
42 See s 3(1)(b) of the CPA; also see Woker 2019 *Stell LR* 103.
43 Woker 2019 *Stell LR* 103.

through the effective promotion of consumer education for all financial consumers to ensure that they are included in economic activities.

In line to promote financial education, the CPA established various bodies and regulatory authorities such as NCC, the NCT, the Provincial Consumer Protection Authorities (PCPAs), and the Provincial Consumer Protection Offices (PCPOs).[44] It is worth mentioning that the NCT also derives its mandate from the CPA.[45] Notwithstanding the introduction of these bodies, the levels of financial education remain significantly low in South Africa.[46] The CPA does not contain any provisions regarding clear measures and/or guidelines on how the NCC, the NCT, PCAOs, and PCPAs should promote and provide financial education.[47] The lack of clear guidelines on how the NCC, the NCT, the PCPAs, and the PCPOs should carry out the promotion of financial education and financial inclusion could be viewed as a legal issue debarring them from executing this mandate. The NCC, the NCT, the PCPAs, and the PCPOs must exercise their authority according to the law and cannot act arbitrarily.[48] Woker argues that the rule of law requires that all of those who exercise public powers do so within the powers that have been conferred upon them and that the law authorises all their decisions and acts.[49] Accordingly, it is submitted that more still needs to be done under the CPA to oblige the NCC, the NCT, the PCAOs, and the PCPAs to promote financial education and financial inclusion through clear statutory guidelines and measures that these bodies could adopt. Although these bodies may have not primarily been established to in particular promote financial education and the goal of financial inclusion, the author submits that they could still play a significant role in these policy objectives to advance consumer protection which is their primary mandate. Moreover, the author argues that although the NCT was established

44 See ss 3-4, and 8–78 of the CPA; also see Chitimira and Ncube 2020 *Journal of African Law* 344; Chitimira and Magau 2022 *EIRP Proceedings* 366-368.

45 See s 75 of the CPA; also see Chitimira and Magau 2023 *Acta Universitatis Danubius Juridica* 38.

46 Pearson, Stoop and Kelly-Louw 2017 *PELJ* 13; also see Visagie and Van Schalkwyk "The Association between Sources of Financial Advice and Retirement Confidence among Working Pre-retirees in South Africa" 2020 *Management Dynamics: Journal of the Southern African Institute for Management Scientists* 3; Engelbrecht "The Scope of Financial Literacy Education: A Poverty Alleviation Tool in Social Work?" 2008 *Social Work Journal* 254; Chummun "An Analysis of the Development Influences of the Low-income Cover Market-end in South Africa" 2017 *African Journal of Science, Technology, Innovation and Development* 798.

47 See ss 85-106 of the CPA; also see Chitimira and Magau 2022 *EIRP Proceedings*; see also Jacobs, Stoop and Van Niekerk 2020 *PELJ* 302-398.

48 See Woker 2019 *Stell LR* 109; also see *National Credit Regulator v Capitec Bank Ltd* GPPHC 23032016 case no A440/2014 (hereinafter *NCR v Capitec*); see also related *Albutt v Centre for the Study of Violence and Reconciliation* 2010 3 SA 293 (CC) (hereinafter *Albutt*).

49 See Woker 2019 *Stell LR* 109; also see *NCR v Capitec*; see also *Albutt*. See further *Fedsure Life Assurance Ltd v Greater Johannesburg Transitional Metropolitan Council* 1999 1 SA 374 (CC) para 58; *Clur v Keil* 2012 3 SA 50 (ECG).

under the NCA, in line with the tenor and the context of this paper on consumer protection, it would be preferable for the powers of the NCT to be expanded under the CPA to give effect to the promotion of consumer protection.[50] As a point of departure, policymakers should consider amending the CPA to include clear provisions obliging the NCC, the NCT, PCAOs, and PCPAs to promote financial education to enhance consumer protection. This approach will also aid in the promotion of financial inclusion as consumers would engage with financial services and products from an informed perspective.

With regard to financial inclusion, the CPA, concernedly, does not contain any express or specific provisions for the promotion of financial inclusion.[51] This lacuna affects the effectiveness of the CPA in the overall objective of consumer protection. Chitimira and Ncube have argued for the CPA to be amended to include express provisions for financial inclusion to enable financial consumers to access financial products that are safe and good for use.[52] This paper supports this view since it is in line with what needs to be done to fully achieve consumer protection – both financial education and financial inclusion should be promoted. In this regard, it is submitted that the CPA should be amended to empower the NCC, the NCT, PCAOs, and PCPAs to promote financial inclusion for all financial consumers, especially the vulnerable, poor, and less literate consumers through financial education.[53] This approach will not necessarily burden the aforementioned consumer bodies, but will reinforce and strengthen consumer protection for the vulnerable consumers which the CPA seeks to protect.[54] Financial education is a better tool that can be used to achieve financial inclusion of the vulnerable, poor, and less literate financial consumers. This comes against the backdrop of the need to reverse the negative effects of apartheid and the challenges relating to inequality and the two economies – one for the modern affluent population and another for the poor and underdeveloped.[55] Accordingly, the promotion of financial education and financial inclusion for the enhancement of consumer protection is an enormous challenge that the government, regulatory bodies, and other relevant stakeholders are faced with. It is submitted that there is a need to expedite policy reform mechanisms in line with

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50 See s 75 of the CPA; Chitimira and Magau 2023 *Acta Universitatis Danubius Juridica* 38.
51 See ss 3-4, and 8-78 of the CPA; also see Chitimira and Ncube 2020 *Journal of African Law* 344.
52 Chitimira and Ncube 2021 *Interdisciplinary Journal of Economics and Business* 75.
53 See s 3(1)(b) of the NCA; also see Woker 2019 *Stell LR* 103.
54 See ss 3(1)(a)-(f) read with ss 75-106 of the CPA; also see Van Eeden and Barnard (2017) 39.
55 See related comments by Chitimira and Ncube 2020 *Journal of African Law* 338. Also see Cousin "Agrarian Reform the Two Economies: Transforming South Africa's Countryside" in Hall and Ntsebeza (eds) *The Land Question in South Africa: The Challenges of Transformation and Redistribution* (2005) 5; Bond "Introduction: Two Economies: Or One System of Super Exploitation" 2007 *Afrikanus: Journal of Development Studies* 1.

the regulatory nexus between the promotion of financial education and financial inclusion in enhancing consumer protection in South Africa.

2 3 Financial inclusion and financial education under the FSR Act

The FSR Act is one of the statutes aimed at the promotion and advancement of the social and economic welfare of South Africans.[56] The FSR Act was enacted to, among others, promote consumer protection, financial literacy, and financial education in South Africa.[57] To achieve this, the FSR Act has established the Financial Sector Conduct Authority (FSCA) and the Prudential Authority (PA) as the two main regulatory bodies to regulate the financial sector in South Africa.[58] With regard to financial inclusion, both the FSCA and the PA are obliged to support and promote financial inclusion in South Africa.[59] In particular, the PA is obliged to protect consumers against any financial risks that may occur when financial institutions fail to meet their obligations towards consumers.[60] The FSCA is statutorily obliged to support the promotion of financial inclusion.[61] Notwithstanding this, the FSCA is unable to adequately and effectively promote financial inclusion. This follows that, apart from the requirement for the development of financial inclusion strategy, the FSR Act does not contain further specific measures or provisions on how financial inclusion should be supported and promoted by the FSCA and the PA.[62] It is agreed that an Act cannot state all the details required since it only makes general enabling provisions. Different agencies and authorities established under each Act are supposed to develop policies pursuant to the Act. However, both the FSCA and the PA have not achieved significant success in their role/ efforts to promote financial inclusion, especially during the COVID-19 pandemic.[63] This is confirmed by the FSCA in its annual report for the 2020/21 financial year.[64] This is because, apart from the financial inclusion strategy, the FSCA and the PA have not developed clear measures on their own as the regulatory bodies for the promotion of financial inclusion and financial education to promote consumer

56 See ss 57(b) and 58 of the FSR Act; also see related comments by Woker 2019 *Stell LR* 97.
57 See ss 57(b) and 58 of the FSR Act; see further Woker 2019 *Stell LR* 97.
58 See ss 32-49, and 56-72 of the FSR Act.
59 See ss 34(1)(e) and 58(1)(e) of the FSR Act; Chitimira and Ncube 2021 *Interdisciplinary Journal of Economics and Business* 80.
60 See s 33(e) of the FSR Act; also see Chitimira and Ncube 2021 *Interdisciplinary Journal of Economics and Business* 80.
61 See s 58(1)(e) of the FSR Act; Chitimira and Ncube 2021 *Interdisciplinary Journal of Economics and Business* 80.
62 See ss 40 and 70, read with s 58(1)(e) of the FSR Act; Osode 2021 *Interdisciplinary Journal of Economics and Business Law* 18-19.
63 See ss 40, 57(b)(ii), and 58(j) of the FSR Act; also see Chitimira and Ncube 2020 *Journal of African Law* 352.
64 See related comments in FSCA "2021 FSCA Annual Report 2020-21" https://www.fsca.co.za/Annual%20Reports/FSCA%20Annual%20Report%2020 20-21.pdf (last accessed 2023-03-28) 55.

protection in South Africa. This suggests the lack of competent and capable personnel from the FSCA and the PA that can enforce the enabling provisions of the FSR Act.[65]

Concerning financial education, the FSR Act mandates the FSCA to provide financial education programmes to financial consumers to assist them to make sound financial decisions.[66] The FSCA is supposed to achieve this objective by developing and implementing financial inclusion and financial education strategies to protect financial consumers against unfair treatment from financial institutions and any form of financial risk or threats.[67] The FSCA currently has a financial inclusion strategy in place and one of the strategic pillars includes promoting financial inclusion through financial education.[68] Nonetheless, the FSCA has not yet developed a strategy dealing specifically with the promotion of financial education.[69] Moreover, the FSCA has not been able to effectively promote financial education and/or meet its targets for the promotion of financial education during the COVID-19 pandemic owing to the lockdown restrictions.[70] This is despite the clear mandate in terms of the FSR Act on the promotion of financial education. The failure to develop adequate and appropriate financial education suggests that financial consumers were left vulnerable and without adequate financial education on how to be financially resilient during a pandemic since the FSCA could not provide workshops or campaigns to promote financial education. In this regard, it is submitted that the FSCA should strongly consider other methods and/or measures such as the use of innovative technology to promote financial education to safeguard the interests of consumers, even during a pandemic.[71] The

65 See ss 40 and 70, read with s 58(1)(e) of the FSR Act; Osode 2021 *Interdisciplinary Journal of Economics and Business Law* 18-19.

66 See s 57(b)(ii) of the FSR Act; Godwin "Introduction to Special Issue – The Twin Peaks Model of Financial Regulation and Reform in South Africa" 2017 *Law and Financial Markets Review* 152; Abrahams "Financial Inclusion in South Africa: A Review of the Literature" 2017 *Southern African Accounting Association* 632-640; Osode 2021 *Interdisciplinary Journal of Economics and Business Law* 18.

67 See ss 57(b)(ii) and 58(j) of the FSR Act; also see Morgan, Zhang and Kydyrbayev "Overview of Financial Inclusion, Regulation, Financial Literacy, and Education in Central Asia and South Caucasus" 2018 *Social Sciences Research Network Electronic Journal* 1-29.

68 See ss 40 and 70, read with s 58(1)(e) of the FSR Act; Osode 2021 *Interdisciplinary Journal of Economics and Business Law* 18-19; FSCA "FSCA Financial Inclusion Strategy" https://www.fsca.co.za/Documents/FSCA%20Financial%20Inclusion%20Strategy.pdf 20 (last accessed 2023-04-21); Magau *A Comparative Legal Analysis of the Promotion of Financial Education for Low-Income Earners in South Africa* (LLD thesis 2021 NWU) 212.

69 See s 58(1)(j) of the FSR Act, which requires the FSCA to formulate and implement strategies and programs for financial education for the general public.

70 Magau (LLD thesis 2021 NWU) 58; also see related comments in FSCA "FSCA Annual Report 2020-21" https://www.fsca.co.za/Annual%20Reports/FSCA%20Annual%20Report%202020-21.pdf (last accessed 2022-11-10).

71 See Chitimira and Magau 2021 *PELJ* 6.

FSR Act does not make provision for the use of innovative technology by the FSCA and the PA to promote financial education. However, since these bodies are statutorily mandated to promote financial education programmes for consumers, they must consider adopting all innovative means and measures to execute their mandate. Additionally, whereas the FSR Act makes it a statutory obligation for the FSCA to promote financial inclusion, and develop and implement strategies for financial education, the effective execution of this mandate remains equally important.[72] For any law to fully achieve its objectives, it must be enforced effectively. The author calls for the FSCA and the PA to conduct their functions effectively under the FSR Act to recognise the synergies and regulatory nexus between the promotion of financial education and financial inclusion to enhance consumer protection in South Africa.[73]

2 3 Financial inclusion and financial education under the CoFI Bill

The CoFI Bill which had its second draft published in 2020 is one of the recent developments in the framework for the promotion of financial education and financial inclusion for financial consumers in South Africa.[74] The CoFI Bill was developed pursuant to the FSR Act.[75] The objective of the CoFI Bill is to establish a consolidated, comprehensive, and consistent regulatory framework for financial institutions which will support the FSCA in the achievement of its objective.[76] The CoFI Bill, once finalised into law, will promote financial inclusion by ensuring the fair treatment and protection of consumers.[77] This will be done by promoting trust and confidence through financial products and services by ensuring that there is a transformation in the financial sector.[78] The achievement of fair treatment and the promotion of trust and consumer confidence will be done through increasing compliance and governance of financial institutions which will be required to have robust systems

72 See ss 40, 70, and 57, read with ss 58(1)(e)-(j) of the FSR Act; Osode 2021 *Interdisciplinary Journal of Economics and Business Law* 18-19.
73 See ss 40 and 70, read with s 58(e) of the FSR Act; Osode 2021 *Interdisciplinary Journal of Economics and Business Law* 18-19.
74 The first draft of the CoFI Bill was published for comment during 2018. See National Treasury "Conduct of Financial Institutions (COFI) Bill 2018 – Draft" https://pmg.org.za/call-for-comment/784/ (last accessed 2023-04-22). The second draft of the COFI Bill was published in September 2020. See National Treasury "Second Draft Conduct of Financial Institutions Bill, 2020" http://www.treasury.gov.za/legislation/GovernmentNotices/43741_29-09_NatTreasury.pdf (last accessed 2023-04-22).
75 See ss 57-58 of the FSR Act; also see the proposed s 3 of the CoFI Bill.
76 See s 3 of the proposed CoFI Bill; also see Visagie-Swart and Lawack "An Overview of the First Draft of the Conduct of Financial Institutions Bill and the Potential Impact on the National Payment System in South Africa" 2020 *SA Mercantile Law Journal* 129.
77 Koekemoer "An Analysis of Aspects of the Proposed Reform of the Financial Consumer Complaint Resolution Mechanisms in the South African Banking Sector" 2021 *Obiter* 337.
78 See Koekemoer 2021 *Obiter* 337; also see Visagie-Swart and Lawack 2020 *SA Mercantile Law Journal* 129.

and operational processes. If financial consumers are not treated fairly by financial institutions, this erodes the trust they have in such institutions and such mistrust of the financial institutions leads to financial exclusion.[79] The author submits that the CoFI Bill is a positive step in the right direction by the policymakers since it is focused on financial services consumers and would therefore effectively provide for financial education and the promotion of financial inclusion, thus enhancing consumer protection in South Africa. Nonetheless, the effective enforcement of the CoFI Bill remains to be seen once it becomes an Act.

3 The need for the promotion of financial education and financial inclusion in enhancing consumer protection post the COVID-19 pandemic in South Africa

Understanding the need and role of the promotion of financial education and financial inclusion in enhancing consumer protection post the COVID-19 pandemic is of paramount importance to the policymakers in South Africa.[80] This follows that there is much to be gained from having a coordinated regulatory framework for the promotion of financial education and financial inclusion to strengthen consumer protection.[81] Most financial consumers in South Africa, especially the poor and low-income earners, have low levels of financial education and face financial exclusion in great proportion.[82] The low savings and investment rates, high levels of financial illiteracy, and low sign-up for financial products and services are some of the key factors indicating that more still needs to be done by the government, financial regulators, and other relevant stakeholders to promote financial education and financial inclusion to enhance consumer protection in South Africa.[83]

79 See related comments by Chitimira and Magau 2021 *PELJ* 13-15.

80 Mukumbang, Ambe and Adebiyi "Unspoken Inequality: How COVID-19 has Exacerbated Existing Vulnerabilities of Asylum-Seekers, Refugees and Undocumented Migrants in South Africa" 2020 *International Journal for Equity in Health* 2.

81 See related comments by Nanziri and Leibbrandt 2018 *SAJEMS* 1; also see more related comments by Sharrock (2016) 63; Chitimira and Magau 2021 *PELJ* 6.

82 See Ssebagala "Relieving Consumer Over Indebtedness in South Africa: Policy Reviews and Recommendations" 2017 *Journal of Financial Counseling and Planning* 237; also see Visagie and Van Schalkwyk 2020 *Management Dynamics: Journal of the Southern African Institute for Management Scientists* 3; Engelbrecht 2008 *Social Work Journal* 254; Chummun 2017 *African Journal of Science, Technology, Innovation and Development* 798.

83 See related comments by Chummun "Emerging Practices of Consumer Financial Education (CFE) in the Microinsurance Industry: A Case of South Africa" 2016 *International Journal of Education Economics and Development* 3.

Most of the challenges relating to low levels of financial education and financial inclusion in South Africa usually emanate from the failure of financial consumers to plan their finances better as well as the lack of understanding and access to various financial products at the disposal of financial consumers.[84] To this end, the importance of financial education and financial inclusion in enhancing consumer protection cannot be overemphasised, especially given the impact of COVID-19 on the financial well-being of most financial consumers.[85] This follows that both financial education and financial inclusion allow for socioeconomic development to take place by encouraging prudent and sound financial decision-making among financial consumers in South Africa.[86] Some of the key issues and aspects which should form part of the financial education framework include providing information to consumers on how to budget, save, invest, plan for, and manage finances in both the short-term and long-term to enhance consumer protection in South Africa.[87]

Most poor and low-income earners rely on the informal and semi-formal sectors to access financial services and products through loans from micro-lenders and stokvels.[88] This is because most financial services offered in the informal sector are easily accessible without complex requirements and documentation as is the case with the formal financial sector in South Africa.[89] Notwithstanding the ease of access to financial services in the informal sector, most of the financial services providers in the informal sector charge exorbitant fees and interests on financial consumers.[90] Consequently, the informal sector financial services constitute a factor affecting financial inclusion due to the high fees and interest rates charged to financial consumers.[91] In this regard,

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84 See Ssebagala 2017 *Journal of Financial Counseling and Planning* 237; also see Chitimira and Magau 2021 *PELJ* 9.

85 See related comments by Igwe "Coronavirus with Looming Global Health and Economic Doom" 2020 *African Development Journal of Research Methodology* 2; also see related comments by Chitimira and Animashaun "The Adequacy of Nigeria, South Africa and Other Sub-Saharan Countries' Response to the COVID-19 Pandemic and Unemployment" 2021 *Acta Universitatis Danubius Juridica* 38.

86 See s 1 of the NCA; also see Kessler et al "Improving Financial Inclusion in South Africa" 2017 *The Boston Consulting Group* 5; see also Coetzee 2018 *THRHR* 609.

87 See related comments by Chummun "Emerging Practices of Consumer Financial Education (CFE) in the Microinsurance Industry: A Case of South Africa" 2016 *International Journal of Education Economics and Development* 3.

88 Matuku and Kaseke "The Role of Stokvels in Improving People's Lives: The Case in Orange Farm, Johannesburg, South Africa" 2014 *Social Work* 505. It is important to note that stokvels have since been identified as a semi-formal financial sector in terms of the Common Bond Regulations and the requirements for common bond institutions. In this regard, see s 1 of the Banks Act 94 of 1990 (Banks Act).

89 See Financial Intelligence Centre Act 38 of 2001 (FICA); also see Chitimira and Ncube 2020 *Journal of African Law* 352; see also Karlan, Ratan and Zinman "Savings by and for the Poor: A Research Review and Agenda" 2014 *Review of Income and Wealth* 36.

it is important to promote financial education through awareness programmes aimed at discouraging the reliance on the informal sector for financial services.[92] As indicated above, another part of the informal sector is the stokvel practice which is mostly used by the poor and low-income earners to save money. Although this paper argues for the discouragement of the informal sector for the provision of financial services, it is submitted that stokvels should not be discouraged due to some of the benefits that users of these savings schemes gain.[93] For instance, there are no bank fees in stokvels, the users benefit from the use of their preferred languages and stokvels are relatively trusted by the users as opposed to the formal banking sector.[94] To this end, it is suggested that stokvels should be regulated, at a lesser tone, to enhance consumer protection.[95] This can be done by ensuring that stokvel users, who are mainly the poor and low-income earners, are integrated into the economic activities of the country to ensure that they are not financially excluded post the COVID-19 pandemic.[96] This could be done by promoting financial education to empower stokvel users on how to manage themselves and members of these common bonds. Moreover, financial education should also be consistently promoted to empower stokvel users to build their resilience against the risks associated with utilising stokvels.[97] Empowering stokvels users through financial education will assist in safeguarding and promoting the rights of

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90 De Koker "Money Laundering Control and Suppression of Financing of Terrorism: Some Thoughts on the Impact of Customer Due Diligence Measures on Financial Exclusion" 2006 *Journal of Financial Crime* 26.

91 Ouma, Odongo and Were "Mobile financial services and financial inclusion: Is it a Boon for Savings Mobilization?" 2017 *Review of Development Finance* 29; Chitimira and Ncube 2020 *Journal of African Law* 349.

92 See related comments by Chitimira and Magau 2021 *PELJ* 18; Kessler et al 2017 *The Boston Consulting Group* 5.

93 Van Wyk "Stokvels as a Community-based Saving Club aimed at Eradicating Poverty a Case of South African Rural Women" 2018 *International Journal of Community Diversity* 15; Lappeman, Litkie, Bramdaw and Quibell "Exploring Retail Orientated Rotating Savings and Credit Associations: Festive Season "Stokvels" in South Africa" 2020 *The International Review of Retail, Distribution and Consumer Research* 335.

94 See related comments by Matuku and Kaseke 2014 *Social Work* 508; also see related comments by Nkem and Tengeh "Immigrant-operated Informal Financial Associations in South Africa: Problems and Solutions" 2018 *Acta Universitatis Danubius: Oeconomica* 86; Nyandoro "Defying the Odds, Not the Abuse: South African Women's Agency and Rotating Saving Schemes, 1994-2017" 2018 *Journal of International Women's Studies* 183.

95 Van Wyk 2018 *International Journal of Community Diversity* 15; Lappeman, Litkie, Bramdaw and Quibell 2020 *The International Review of Retail, Distribution and Consumer Research* 335.

96 See related comments by Chitimira and Magau "Synoptical Analysis of Debt Relief Intervention Measures for Low-Income Earners under the National Credit Amendment Act 7 of 2019" 2021 *Interdisciplinary Journal of Economics and Business Law* 287-288.

97 See related comments by Nyandoro 2018 *Journal of International Women's Studies* 183; see further Mishi, Vacu and Chipote "Impact of Financial Literacy in Optimising Financial Inclusion in Rural South Africa: Case Study of the Eastern Cape Province" 2012 *Economic Research Southern Africa* 2; also see Chitimira and Magau 2022 *EIRP Proceedings* 361.

consumers to provide the necessary mechanisms to ensure a fair, accessible, and sustainable marketplace for consumer products and services.[98]

The benefits of financial education and financial inclusion are important not only for enhancing consumer protection but also for increasing the confidence of financial consumers in the financial sector.[99] One of the factors necessitating the need for the promotion of financial education and financial inclusion in enhancing consumer protection post the COVID-19 pandemic is that financial consumers have little trust in the financial sector.[100] It is submitted that this is mainly due to financial illiteracy and this leads to financial exclusion.[101] Financial education, if properly promoted and provided, can assist consumers to become more aware of financial risks and opportunities in making financial decisions.[102] Financially educated consumers have the proclivity to participate effectively in the financial sector and plan better for their finances in comparison to those who have limited financial education or who have no financial education at all.[103] Put differently, financial consumers who are financially educated are less likely to engage in reckless and irresponsible choices and/or decisions regarding their finances.[104] Accordingly, it is submitted that financial education is important for enabling an environment where financial inclusion can take place without too much fear of financial risks and distrust in the financial sector, thus safeguarding the rights of the consumers.

98 See s 3 of the CPA; Woker 2010 *Obiter* 218; see further Woker 2016 *SA Mercantile Law Journal* 22.
99 See related comments by Visagie and Van Schalkwyk 2020 *Management Dynamics: Journal of the Southern African Institute for Management Scientists* 2-14.
100 See related comments by Maduku "The Effect of Institutional Trust on Internet Banking Acceptance: Perspectives of South African Banking Retail Customers" 2016 *South African Journal of Economic and Management Sciences* 533; Chigada and Hirschfelder "Mobile Banking in South Africa: A Review and Directions for Future Research" 2017 *South African Journal of Information Management* 1.
101 Schmulow "Curbing Reckless and Predatory Lending: A Statutory Analysis of South Africa's National Credit Act" 2016 *Competition and Consumer Law Journal* 8; also see Chitimira and Magau 2020 *PELJ* 13-14.
102 See Chitimira and Magau 2021 *PELJ* 9; Akpinar and Koch (2019) 21; see further Organisation for Economic Co-operation and Development (2005) 21.
103 See related comments by Lusardi and Mitchell "Baby Boomer Retirement Security: The Roles of Planning, Financial Literacy and Housing Wealth" 2007 *Journal of Monetary Economics* 207; Hauff, Carlander, Garling and Nicolini "Retirement Financial Behaviour: How Important Is Being Financially Literate?" 2020 *Journal of Consumer Policy* 548-547.
104 Lusardi and Mitchell 2007 *Journal of Monetary Economics* 207; Hauff, Carlander, Garling and Nicolini 2020 *Journal of Consumer Policy* 548-547.

South Africa had been battling with the challenge of unemployment and poverty before the advent of the COVID-19 pandemic.[105] This challenge was further exacerbated by the economic impact of the pandemic on the livelihoods of financial consumers.[106] Owing to unemployment and poverty, most financial consumers cannot participate effectively in economic activities because they do not have money to spend.[107] It is suggested that going forward, the government should strongly consider placing emphasis on financial education and financial inclusion programmes as part of building resilience in financial consumers post the COVID-19 pandemic.[108] This paper supports the view held by Chitimira, Magau, and Ncube who argued that emphasising financial education and financial inclusion will go a long way in terms of empowering financial consumers with the knowledge of how to survive and still be part of the formal economic activities with the limited resources and disposable income they have.[109]

Similarly, the promotion of financial education and financial inclusion is necessary to address the problem of overindebtedness among financial consumers in South Africa.[110] Notably, a majority of the poor and low-income earners in South Africa are overindebted and struggling to extract themselves from their overindebtedness.[111] Most of these consumers incur excessive debt due to the lack of adequate financial

105 Chibba and Luiz “Poverty, Inequality and Unemployment in South Africa: Context, Issues and the Way Forward” 2011 *Journal of Applied Economics and Policy* 307.

106 Hamadziripi and Chitimira “The Socio-Economic Effects of the COVID-19 National Lockdown on South Africa and its Response to the COVID-19 Pandemic” 2021 *Acta Universitatis Danubius Juridica* 30; also see De Villiers, Cerbone and Van Zijl The South African Government’s Response to COVID-19” 2020 *Journal of Public Budgeting, Accounting and Financial Management* 1-15.

107 See related comments by Kostov, Arun and Annim “Access to Financial Services: The Case of the ‘Mzansi’ Account in South Africa” 2015 *Review of Development Finance* 34; also see more comments by Chitimira and Ncube 2020 *Journal of African Law* 341-342.

108 Zait and Bertea 2014 *Journal of Accounting and Management* 37; Dwiastanti “Financial Literacy as the Foundation for Individual Financial Behavior” 2015 *Journal of Education and Practice* 99.

109 See related comments by Chitimira and Magau 2022 *EIRP Proceedings* 361; also see Chitimira and Ncube 2020 *Acta Universitatis Danubius Juridica* 7-20.

110 See s 79(1) of the NCA; also see De Wet, Botha and Booyens “Measuring the Effect of the National Credit Act on Indebtedness in South Africa” 2015 *Journal of Economic and Financial Sciences* 83.

111 Chitimira and Magau “An Analytical Precis of Debt Relief Measures under the Insolvency Act 24 of 1936” 2020 *Euro Economica* 211; Coetzee and Roestoff “Consumer Debt Relief in South Africa: Should the Insolvency System Provide for NINA Debtors? Lessons from New Zealand” 2013 *International Insolvency Review* 188-210.

education to help them to make sound financial choices and decisions.[112] One of the disadvantages of debt relief measures is that they can encourage reckless and irresponsible lending and borrowing on financial consumers who incur debts with the expectation of getting debt relief from their creditors.[113] This misconception goes against the efforts of building financial resilience among financial consumers. Accordingly, financial education will play an important role in addressing the issue of overindebtedness to assist financial consumers to borrow responsibly and not rely too much on credit with the expectation of getting relief from their creditors.[114] On the converse, it is important to note that most over-indebted financial consumers end up trapped in their debts due to debt relief measures that are not easily accessible which also limits their financial freedom.[115] For instance, a consumer who is undergoing debt review is precluded from incurring more debts and in certain instances is not allowed to use credit or retail store cards as they are flagged in the credit bureaus.[116] Similarly, an unrehabilitated debtor who is under sequestration proceedings also has limitations on their status and financial freedom.[117] Although these limitations are aimed at protecting the interests of both the creditors and the debtor himself or herself, to a certain extent they contribute to financial exclusion. As such, financial education is important to discourage financial consumers from relying too much on credit to the extent that they find themselves affected by the limitations imposed on overindebted consumers who are placed on any of the debt relief measures.

Both financial education and financial inclusion are vital for safeguarding and promoting the rights of consumers to provide the necessary mechanisms to ensure a fair, accessible, and sustainable marketplace for consumer products and services post the COVID-19 pandemic.[118] Differently put, the concept of financial education cannot be understood outside the appreciation of the fact that it is directly related and linked to financial inclusion and the reverse is also true. Ignoring the interrelationship and synergies between financial education and financial inclusion will lead to various unfavourable outcomes such

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112 See Archuleta, Dale and Spann "College Students and Financial Distress: Exploring Debt, Financial Satisfaction, and Financial Anxiety" 2013 *Journal of Financial Counseling and Planning* 52; see also Ssebagala 2017 *Journal of Financial Counseling and Planning* 236.

113 Corden "Debt Relief and Adjustment Incentives" 1988 *Staff Papers* 628-643; Chitimira and Magau 2020 *Euro Economica* 211.

114 Gathergood "Self-Control, Financial Literacy and Consumer Over-Indebtedness" 2011 *Journal of Economic Psychology* 3.

115 Roestoff and Coetzee "Consumer Debt Relief in South Africa: Lessons from America and England; and Suggestions for the Way Forward" 2012 *SA Mercantile Law Journal* 53-76.

116 See s 86 of the NCA; also see Chitimira and Magau 2021 *Interdisciplinary Journal of Economics and Business Law* 287.

117 See ss 22-24 of the Insolvency Act 24 of 1936; also see related comments by Chitimira and Magau 2020 *Euro Economica* 221-223.

118 See s 3 of the CPA; also see Woker 2010 *Obiter* 218; Woker 2016 *SA Mercantile Law Journal* 22.

as continued financial illiteracy and financial exclusion thus leading to the failure to effectively enhance consumer protection in South Africa.[119] It is imperative to recognise the regulatory nexus between the promotion of financial education and financial inclusion in enhancing consumer protection in South Africa. This follows that the NCA, the CPA, and the FSR Act continue to be inconsistently applied for the regulation of financial education and financial inclusion in South Africa.[120] Recognising the synergies between financial education and financial inclusion is vital in revamping the regulatory framework, policy design, and implementation of these financial sector objectives as well as strengthening efforts to enhance consumer protection.

4 Conclusion

Both financial education and financial inclusion are equally vital for enhancing consumer protection in South Africa. The interrelationship between financial education and financial inclusion, if properly regulated and coordinated, could contribute significantly towards more robust consumer protection for financial consumers in South Africa. Financial education is significant for improving the financial well-being of financial consumers by empowering them with the knowledge and skills on how to make prudent decisions and choices regarding the management of their finances. On the same note, financial inclusion is essential for ensuring that financial consumers have access to and use financial services and financial products to improve their lives and benefit optimally in the economic activities of the country.

Nonetheless, both financial education and financial inclusion are poorly and inconsistently regulated on a piecemeal approach in South Africa. This poor and inconsistent regulation of the promotion of financial education and financial inclusion has resulted in various challenges such as financial exclusion, financial illiteracy, and financial instability. Consequently, these challenges continue to affect the advancement of consumer protection for financial consumers in South Africa.

In line with the above discussion, it is submitted that the regulatory framework for the promotion of financial education and financial inclusion needs to be revised in line with the challenges affecting financial consumers to enhance consumer protection in South Africa. In particular, the relevant provisions of the NCA, the CPA, and the FSR Act that deal with financial education and financial inclusion should be amended accordingly to recognise the synergies between these financial policy objectives to enhance consumer protection in South Africa.[121] In

119 See related comments by Emmons 2005 *Saint Louis University Public Law Review* 335; Zait and Bertea 2014 *Journal of Accounting and Management* 37.
120 See ss 3, 4, 60-66, and 72 of the NCA; also see ss 3-4, and 8-78 of the CPA; see further ss 57(b) and 58 of the FSR Act.

this regard, South African policymakers should consider adopting an in-tandem regulatory framework for the promotion of financial education and financial inclusion to enhance consumer protection. Moreover, policymakers should adopt adequate and practical policy measures. For instance, policymakers should consider adopting appropriate and clear statutory provisions to revitalise the role played by regulatory bodies to adopt appropriate measures to integrate financial consumers into the financial sector and to curb financial illiteracy as a way of rolling out consumer protection in South Africa. The establishment of a regulatory body whose only duty is the promotion of financial education and financial inclusion will go a long way in making consumers aware of their rights and empowering them to participate fully in the formal economic activities of the country.

121 See ss 3-4, 60-66, and 72 of the NCA; also see ss 57(b) and 58 of the FSR Act; also see ss 3-4, and 8-78 of the CPA; also see Chitimira and Magau 2021 *PELJ* 9.