



**STATEMENT SUPPORTING THE DRAFT  
CONDUCT STANDARD – REQUIREMENTS  
RELATED TO THE PAYMENT OF PENSION  
FUND CONTRIBUTIONS**

**DATE OF ISSUE: MAY 2020**

## 1 PURPOSE OF THE STATEMENT

- 1.1 This Statement relates to the publication by the Financial Sector Conduct Authority (the Authority) of the draft Conduct Standard on requirements related to the payment of pension fund contributions (draft Conduct Standard) for public comment. The Authority intends to make the draft Conduct Standard under section 106(1) of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017) (FSRA).
- 1.2 This Statement is published in accordance with Section 98(1)(a) of the FSRA and is intended to support and give context to the draft Conduct Standard that is published for public comment. The Statement explains the need for, the expected impact of, and the intended operation of the draft Conduct Standard and includes a notice inviting submissions in relation to the draft Conduct Standard, stating where, how and by when submissions are to be made.

## 2 INVITATION TO COMMENT ON THE DRAFT CONDUCT STANDARD

- 2.1 The Authority, in accordance with section 98(1)(a)(iv) of the FSRA, invites submissions in relation to the draft Conduct Standard, attached as Annexure A, which the Authority intends to make under section 106(1) of the FSRA.
- 2.2 Submissions on the draft Conduct Standard must be made using the submission template attached as Annexure B, and submitted in writing on or before **31 July 2020** to the Authority, at [FSCA.RFDStandards@fsca.co.za](mailto:FSCA.RFDStandards@fsca.co.za). The comments template consists of four sections. Section A relates to the details of the commentator, Section B is for comments on the draft Conduct Standard, Section C relates to questions on the expected impact of the Conduct Standard and Section D is general comments.

## 3 STATEMENT OF NEED - POLICY CONTEXT AND PROBLEM DEFINITION

- 3.1 Regulation 33 of the Regulations made under section 36 of the Pension Funds Act, 1956 (No. 24 of 1956)<sup>1</sup> (Regulation 33) sets requirements relating to the payment of contributions by employers to pension funds. Regulation 33 supports the requirements contained in section 13A of the Pension Funds Act, 1956 (No. 24 of 1956) (Act). In supervising compliance with Regulation 33, the Authority has identified:
- a need to standardise the manner and format of reporting by principal officers and/or authorised persons, and boards of funds, insofar as it relates to various matters falling within the ambit of section 13A of the Act and Regulation 33;
  - undesirable practices and/or outcomes where the board of a fund outsources its responsibility to recover outstanding contributions from an employer to an attorney or third party. Issues identified include the following:
    - In many instances attorneys make use of their trust accounts and would therefore earn interest on the amounts they recovered from an employer on behalf of a fund whilst the amounts recovered are in the possession of the attorney. Often the funds so recovered are not paid over to the fund in a timely manner, potentially with the objective of maximising interest earned on such funds.
    - Various instances were identified where a fund does not provide any instructions to the attorney regarding what action the attorney should take when dealing with employers that refuse to pay outstanding contributions. The lack of instruction and

<sup>1</sup> As published in GN R98 in *Government Gazette* 162 of 26 January 1962 and amended from time to time.

clear agreed on processes between the fund and attorney often results in delays in taking appropriate action to address outstanding contributions.

- In some instances, actual or potential conflicts of interests and/or exorbitant fee arrangements exist where the recovery function is outsourced to an attorney; and
    - potential drafting improvements that can clarify various of the requirements contained in regulation 33.
- 3.2 The Authority believes the requirements contained in Regulation 33 should be revised to address the issues highlighted in paragraph 3.1 above.
- 3.3 However, it might be noted that the FSRA empowers the authority to, amongst other things, make conduct standards.<sup>2</sup> Section 106(2) of the FSRA set out the objectives at which a conduct standard must be aimed at, which includes ensuring that financial institutions treat financial customers fairly.<sup>3</sup> The making of conduct standards will play a critical role in informing the future regulatory framework architecture that will be overseen by the Authority.
- 3.3 Considering the fact that the Authority is empowered to make conduct standards aimed at ensuring fair treatment of financial customers, the fact that in future the regulatory framework overseen by the Authority will place a large reliance on conduct standards, and the fact that the requirements contained in Regulation 33 are largely aimed at the fair treatment of members, the Authority is of the view that it would be practical to replace Regulation 33 with a conduct standard.
- 3.4 As a result, the Authority has engaged National Treasury to request that Regulation 33 be repealed, on the understanding that it will be replaced by a conduct standard to be made by the Authority under section 106(1) of the FSRA. National Treasury has, in principle, agreed to the mooted approach and for this reason the Authority is proceeding to publish the draft conduct standard, that is to replace Regulation 33, for public comment.

## 4 SUMMARY OF THE DRAFT CONDUCT STANDARD

- 4.1 The draft Conduct Standard is intended to replace Regulation 33 (with necessary drafting improvements) by providing for the following matters that are currently provided for in Regulation 33:
- The minimum information to be furnished to a fund by an employer with regards to payments of contributions made by an employer in terms of section 13A of the Act;
  - Notification and reporting obligations on the board of a fund, principal officer or other authorised person where there is a contravention of or non-compliance with sections 13A(2)(b) or 13A(3)(a) of the Act by an employer; and
  - the rate of interest payable on arrear contributions.
- 4.2 In addition, the draft Conduct Standard also proposes to:
- set a standard format in which a fund must inform a participating employer of its duties and obligations under section 13A of the Act;

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<sup>2</sup> See section 106(1) of the FSRA.

<sup>3</sup> In addition, section 106(3) and 108 of the FSRA sets out a variety of matters that conduct standards can be made on.

- set out the format in which a request by a fund to an employer, as referred to in section 13A(9) of the Act, must be made;
- prescribe the manner and format of reporting by principal officers of pension funds or any other authorised persons as referred to in section 13A(6) of the Act to the board of a fund regarding compliance with, or non-compliance with, the provisions of sections 13A(2)(b) and 13A(3)(a) of the Act by an employer;
- impose standard notification and reporting obligations on the board of a fund where there is a contravention of or non-compliance with sections 13A(2)(b) or 13A(3)(a) of the Act by an employer;
- set requirements for a board a fund, and participating employers, when the board of a fund outsources the collection of outstanding contributions to attorneys; and

## 5 STATEMENT OF IMPACT OF THE CONDUCT STANDARD

- 5.1 It is envisaged that the majority of the draft Conduct Standard will not have any significant impact on industry participants as most of the requirements have been law for an extended period through Regulation 33.
- 5.2 It is expected that the implementation of standardised reporting formats will only have a minor operational impact on funds, principal officers and/or authorised persons, and boards of funds and the Authority believes that a 90 day transitional period is sufficient to facilitate implementation.
- 5.3 The implementation of the draft Conduct Standard will have positive outcomes for funds and for the members of funds as boards will be required to consider potential conflict of interest between members of the board and potential attorneys before outsourcing the collection of outstanding contributions and any collection costs will not affect member contributions.
- 5.5 The Authority acknowledges that this is a preliminary desktop assessment of the impact of the draft Conduct Standard and that, subject to additional input that may be submitted by impacted stakeholders as part of the comments process, this Statement as well as the draft Conduct Standard may need to be revised. Commentators should therefore clearly identify the risks, benefits and potential impact of the draft Conduct Standard in **Section C** of the comments template.
- 5.6 The responses will be analysed to understand the anticipated cost and other impacts of implementing the draft Conduct Standard once it becomes effective. This includes the extent to which transitional provisions are required in respect of some of the requirements proposed in the draft Conduct Standard.

## 6 STATEMENT OF INTENDED OPERATION OF THE CONDUCT STANDARD

- 6.1 The draft Conduct Standard is consistent with the objective of the FSRA, and specifically the mandate of the Authority to protect the interests of members of funds and hold the boards of funds, authorised persons and contractors accountable.
- 6.2 The Conduct Standard is intended to come into operation 90 (ninety) days from the date of publication of the final Conduct Standard. It is critical that the repeal of Regulation 33, to be given effect to by National Treasury, coincides with the effective date of the Conduct Standard. The Authority and National Treasury will work together in this regard to ensure that these dates coincide.

## 7 WAY FORWARD

- 7.1 The draft Conduct Standard is published in terms of section 98(1)(a) of the FSRA for a period of 6 weeks for public comment, and comments are due to the Authority on or before **31 July 2020**. After careful consideration of all submissions received on the draft Conduct Standard, the Authority will make any necessary changes to the draft Conduct Standard and will either submit the updated draft Conduct Standard to Parliament for a period of at least 30 days while Parliament is in session or, depending on the materiality of any such changes, publish the draft Conduct Standard for another round of public comments.
- 7.2 Please note that this statement supporting the publication of the draft Conduct Standard may be updated to better reflect the expected impact of the draft Conduct Standard based on the comments received **under Section C** of the submissions template.