



**STATEMENT SUPPORTING THE DRAFT
CONDUCT STANDARD – MINIMUM SKILLS AND
TRAINING REQUIREMENTS FOR BOARD
MEMBERS OF PENSION FUNDS**

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Financial Sector
Conduct Authority

1 PURPOSE OF THE STATEMENT

- 1.1 This statement relates to the publication of the Conduct Standard prescribing the minimum skills and training required for board members of funds (draft Conduct Standard) to be made in terms section 7A(3)(a) of the Pension Fund Act, 1956 (the Act) read with sections 106(1)(a) and 108(1) of the Financial Sector Regulation Act, 2017 (FSRA).
- 1.2 The purpose of this statement is to explain the need for, expected impact and intended operation of the draft Conduct Standard as required by section 98(1)(a) of the FSRA.

2 DRAFT CONDUCT STANDARD

- 2.1 In terms of section 98 of the FSRA, before a regulator makes a regulatory instrument,¹ it is required to publish the following documents:
 - (a) a draft of the regulatory instrument;
 - (b) a statement explaining the need for and the intended operation of the regulatory instrument;
 - (c) a statement of the expected impact of the regulatory instrument; and
 - (d) a notice inviting submissions in relation to the regulatory instrument, stating where, how and by when submissions are to be made.
- 2.2 In fulfilment of the above-mentioned requirements under the FSRA, the Financial Sector Conduct Authority (FSCA) have prepared a statement of the need for, intended operation and expected impact of the Conduct Standard prescribing minimum skills and training requirements for board members of pension funds (Statement).
- 2.3 The Statement takes into account, the responses received on the draft Conduct Standard on minimum skills and training requirements for board members of pension funds that was published for public comment on 22 May 2019.

3 STATEMENT OF NEED - POLICY CONTEXT AND PROBLEM DEFINITION

- 3.1 Section 7A(1) of the Act provides that members of a fund have the right to elect a certain percentage of board members. However, board members so elected often do not have the necessary and relevant retirement fund knowledge or expertise. Lack of relevant retirement fund knowledge or expertise is, however, not necessarily always limited to board members that have been elected by members and this issue can extend to fund elected board members as well. In general, board members may therefore be unable to perform their fiduciary responsibilities or to contribute positively to the governance and management of the relevant fund to which they are appointed or elected.
- 3.2 All board members are expected to understand their duties and responsibilities and what is required of them to be regarded as a fit and proper person. Experience shows that, at times, board members face challenges in discharging their duties and responsibilities given the complex nature of retirement funds. In certain instances, the Authority had to intervene to remove board members from the boards of funds or take appropriate regulatory action. The challenges board members experience include, for example, not understanding conflict of interest, failing to implement and monitor controls and processes to ensure proper management

¹ In terms of the FSRA, a “regulatory instrument” includes a conduct standard.

and administration of the fund and failure to objectively assess financial statements and proposals made by service providers.

- 3.3 Section 7A(3)(a) of the Act requires that members of the board of a pension fund must attain such levels of skills and training within six months after the board member's appointment, as may be prescribed by the FSCA. Section 7A(3)(b) further determines that board members must maintain their skills and training throughout their term of appointment.
- 3.4 The purpose of section 7A(3) is to address the risks highlighted above. However, to date the FSCA has not prescribed any minimum levels of skills and training. For this reason there is a need to prescribe a minimum set of criteria that board members must comply with in order to ensure that they have appropriate knowledge and expertise to perform their functions as board members.

4 SUMMARY OF THE DRAFT CONDUCT STANDARD

- 4.1 The draft Conduct Standard is aimed at prescribing the minimum skills and training requirements for board members of funds as provided for in section 7A(3)(a). This Conduct Standard proposes that the certification of the Trustee Starter Toolkit ("Toolkit") as provided for by the Authority on the website "www.trusteetoolkit.co.za", be prescribed as the minimum skills and training requirement as envisaged in section 7A(3)(a) of the Act. The Toolkit will consist of tutorials, case studies, formative (initial) assessments and a summative (final) assessment.
- 4.2 It is further proposed that board members who already attained the certification will be required to complete additional modules as and when such additional modules are added to the Toolkit by the Authority.
- 4.3 In addition, the completion of the summative (final) assessment must be done under the supervision of the principal officer or chairperson of the board (who must issue a declaration that the assessment was so completed), except where such supervision is impractical. Where it is impractical the board member can do the assessment without supervision, but must complete a declaration stating that the assessment was completed without assistance. The declaration must also be provided to the Authority on request.
- 4.4 The draft Conduct Standards also provided for a process in respect of how new modules may be determined by the FSCA.

5 STATEMENT OF IMPACT OF THE DRAFT CONDUCT STANDARD

- 5.1 As the Toolkit tutorials, case studies and formative (initial) assessments must be completed on-line on the website provided by the Authority, it is anticipated that there will be no financial impact as these assessments can be done anywhere at negligible cost. The Toolkit is currently not meant to be a form of qualification with a pass or fail outcome. Instead, it is meant to develop skills and provide training, and therefore should allow trustees to complete it within a reasonable period without having to pass or fail.
- 5.2 The summative (final) assessment must be completed under the supervision of the Principal Officer or Chairperson of the Board to ensure that the relevant board member completes the assessment without assistance. This summative assessment is important to enable verification of the trainee. There may be costs involved relating to the Principal Officer or Chairperson of the Board having to supervise board members completing the assessment (for example travel

costs in some instances). To alleviate some of these costs, the draft Conduct Standard provides for an exception to the requirement to supervise completion of the assessment where supervision in a particular instance is impractical. This will therefore provide an alternative solution where, for example, geographical challenges exist.

- 5.3 There may also be a cost implication in relation to time spent by board members to undertake the summative assessment. However, this cost is not deemed to be significant and such cost is justified in the context of the benefit derived from undergoing the training.

6 STATEMENT OF INTENDED OPERATION OF THE CONDUCT STANDARD

- 6.1 The Conduct Standard applies to all board members. The Conduct Standard proposes that –
- it will take effect on 1 June 2020;
 - a board member who was appointed before 1 June 2020 will be required to attain the certification by 31 December 2020;
 - a board member who successfully completed the Toolkit certification before 1 June 2020 is not required to complete the certification again; and
 - a person who has successfully completed the Toolkit certification and is subsequently appointed to a board of a fund is not required to complete the certification again.
- 6.2 Where board members are unable to complete the Toolkit within the prescribed time, an application may be made to the Authority requesting an extension of time to complete the Toolkit.
- 6.3 Further, where an individual board member's circumstances makes it impractical to complete the Toolkit, i.e. where the board member's tenure will terminate soon after 31 December 2020 and the board member will not make himself or herself available for reappointment or election, such board member may approach the Authority to be exempted from the requirement.
- 6.4 It is envisaged that the Toolkit will train and provide board members with basic knowledge relating to legislative requirements and information on fund governance, their responsibilities and obligations towards the fund and its members, as well as guidance on what is deemed to be fit and proper conduct. As a start, the Toolkit will provide practical guidance on governance matters. This will, in turn, contribute to board members being able to meet their fiduciary responsibilities and therefore ensure the fair treatment of, and the protection of financial customers.
- 6.5 To ensure and monitor compliance with the requirements of the proposed Conduct Standard, the Authority will maintain a record of the successful completion of the Toolkit and additional modules.

7 WAY FORWARD

The draft Conduct Standard is published in terms of section 98 taking into consideration all submissions received during the consultation process, the FSCA has updated the draft Conduct Standard and this statement accordingly. The draft Conduct Standard and accompanying documents are now being submitted to Parliament for a period of at least 30 days while in Parliament is in session before the Conduct Standard is subsequently made.