Financial Sector
Conduct Authority

CONSULTATION REPORT

CONDUCT STANDARD - MINIMUM SKILLS AND TRAINING REQUIREMENTS FOR BOARD MEMBERS OF PENSION FUNDS

PENSION FUNDS ACT, 1956 (ACT NO. 25 OF 1956)

FINANCIAL SECTOR REGULATION ACT, 2017 (ACT NO. 9 OF 2017)

1. Purpose

The purpose of this document is to set out, as required in terms of section 104(1) of the Financial Sector Regulation Act, a report on the consultation process undertaken in respect of the draft Conduct Standard - Minimum skills and training requirements for board members of pension funds.

2. Definitions

In this consultation report -

"Authority" means the Financial Sector Conduct Authority as defined in section 1 of the Financial Sector Regulation Act;

"Financial Sector Regulation Act" means the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017);

"**the Act**" means the Pension Funds Act, 1956 (Act No. 24 of 1956); and

"Trustee Starter Toolkit" means the Trustee Starter Toolkit facility provided for by the Authority on the following website: www.trusteetoolkit.co.za.

3. Summary of public consultation process

3.1 This consultation report must be read with the *Statement supporting the draft conduct standard – Minimum Skills and Training Requirements for Board Members of Pension Funds.*

3.2 In May 2019, the Authority published, in accordance with section 98 of the Financial Sector Regulation Act, a draft Conduct Standard for a six (6) week public consultation period until 15 July 2019. The draft Conduct Standard was published together with accompanying documents as required under section 98(1)(a) of the Financial Sector Regulation Act and the Authority invited submissions in relation to the draft Conduct Standard in accordance with section 98(1)(a)(iv) of Financial Sector Regulation Act. The following documents were published as part of the public consultation process:

- draft Conduct Standard relating to *Minimum Skills and Training Requirements for Board Members of Pension Funds* (draft Conduct);
- Statement Supporting the draft Conduct Standard – *Minimum Skills and Training Requirements for Board Members of Pension Funds; and*
- Comments Template for submission of comments.

3.3 At the close of the public consultation period, the Authority received a total of 41 comments from 8 industry representative bodies.

4. General account of the issues raised in the submissions made during the consultation

4.1 All comments received as part of the public consultation process were considered and are set out in the table as per the Schedule below, together with the Authority's response to the all comments received.

4.2 The main issues raised during the public consultation for clarification purposes were –

4.2.1 the concern that it would be impractical for the assessment to be completed under the supervision of the Principal Officer as most of the board members were based in different location across the country and that requiring the Principal Officer to travel to all the board members in order to supervise assessment would pose challenges of a financial nature creating unjustifiable cost implications. The Authority has amended this requirement to the extent that should it be impractical for the Principal Officer to supervise the completion of the assessment by a board member, then the board member would be required to sign a declaration that the board member completed the assessment without the assistance of another individual and that it was completed in good faith; and

4.2.2 the lack of procedural clarity when new modules are included in the Trustee Toolkit. The Conduct Standard has been amended to clarify issues regarding procedure.

4.3 The Authority is of the opinion that the comments received during the consultation period did not raise any significant policy concerns and has not necessitated any material changes to the draft Conduct Standard. As such, the Authority did not publish the draft Conduct Standard for another round of public consultation and proceeded to submit the draft Standard to Parliament in terms of section 103 of the Financial Sector Regulation Act. The draft Conduct Standard and the supporting documentation was tabled with Parliament on 12 May 2020 for a period of 30 days as is required in terms of section 103.

4.4 This consultation report is drafted in fulfilment of section 104 of the Financial Sector Regulation Act and provides an account of the issues raised in the submissions and sets out the Authority's response to the issues raised in the submissions made during

the public consultation period. All the comments received together with the Authority's responses thereto is set out in Annexure A attached to this report.

ANNEXURE A

RESPONSE TO COMMENTS ON THE DRAFT CONDUCT STANDARD FOR MINIMUM SKILLS AND TRAINING REQUIREMENTS FOR BOARD MEMBERS OF PENSION FUNDS

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No.	COMMENTATOR
1.	ALEXANDER FORBES
2.	ASISA ACADEMY
3.	ASISA MEMBER 1
4.	ASISA MEMBER 2
5.	ASISA MEMBER 3
6.	Batseta Council of Retirement Funds for South Africa (BATSETA)
7.	Financial Intermediaries Association of Southern Africa (FIA)
8.	Institute of Retirement Funds Africa (IRFA)

Section A - Comments on the draft Conduct Standard

Item	Reviewer	Reference/ Section/ Paragraph	Comment/ Issue	Response
1. Definitions				
1.	ASISA Academy	1	PF Circular 130 should also be defined, as it should be included as a reference document (see No. 2 below) critically relevant.	Please note that there are broader developments currently underway which might result in the repeal of PF Circular 130. It is therefore not appropriate to cross-reference this Circular.
2. Purpose				
2.	ASISA Academy	2	The word “minimum” should be inserted between “the” and “skills”. The purpose should also proceed to state that as the Toolkit is a basic minimum, trustees should not regard completion of the Toolkit assessments as a final end goal but rather a first building block of trustee education and competence, and accordingly trustees should continually strive to improve skills and especially governance competence. The principle of continuing development as articulated in PF Circular 130 paras 30 – 32 should be emphasised in this Purpose section. It is respectfully suggested that Toolkit be renamed, the ‘trustee starter kit’ and then stipulate that further training which includes more robust knowledge assessment be built on the foundations provided by the starter toolkit.	Please note that the purpose clause has been deleted ✎
3.	ASISA Member 1	2	The purpose is stated to include all trustees of boards. This includes independent or professional trustees and other trustees who have extensive experience gained over many years in retirement funds. This does not accord with the statement of need and the policy context and problem	See comment above. In addition, please note that section 7A(3)(a) of the Pension Funds Act (PFA) refers to both

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			definition where it states that “Section 7A provides that members of funds have the right to elect , and employers have the right to appoint, their respective representatives to the board of a fund. However, board members so appointed or elected do not have the necessary and relevant retirement fund knowledge or expertise. 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.” Technically Section 7A does not mention those trustees appointed by the employer, only those elected by members. As a result there appears to be a discrepancy between what is stated in the statement of need and what is drafted in this part. It should be clarified whether this is to apply to every trustee or only member elected trustees. The current wording is a blunt instrument, by using the term “board member” and thus requiring experienced and competent trustees to undergo training which, with respect, will not add in any meaningful way to their knowledge or skills. We propose that a permanent exemption should be provided to Trustees who have had previous experience in a retirement fund together with professional qualifications which should exempt them from the trustee toolkit requirement. (For example: 5 years’ experience as a trustee together with any post-graduate degree in the fields or law, finance, actuarial, or a degree in commerce or is a member of the FPI – there should be consultation on such requirements including that each board member is required to meet with certain training needs that the Principal officer should keep a record of training which can be provided to the FSCA annually). Alternatively, the purpose in the draft should	appointed and elected members. To exclude “non-elected” board members could also be viewed as being discriminatory towards elected board members. For purposes of consistency and standardisation this Conduct Standard must apply to all board members. The purpose of this toolkit is to provide a basic minimum education to all trustees, experienced, unexperienced, qualified and unqualified.

Item	Reviewer	Reference/ Section/ Paragraph	Comment/ Issue	Response
			be limited to certain board members, such as those that the members, elected by members of the fund.	
3. Prescribed Requirement				
4.	Alexander Forbes	3	Clarity is required on what the consequences are for a newly appointed trustee who fails to attain the qualification within the prescribed 6 months period of such appointment? Does such trustee automatically become ineligible to retain his/her trusteeship role? Does the board have discretion to extend this period where a trustee fails to qualify within the prescribed six months period?	No the trustee would not automatically become ineligible. Please note that the purpose of this training toolkit is to identify gaps in knowledge of the trustees. And where such gaps exist, trustees are expected to obtain the requisite knowledge to exercise their statutory fiduciary duties. Where a board member fails to comply with section 7A(3), section 26(2) of the PFA would apply. Each case would be assessed on its own merits. The Board does not have the discretion to extend the period. The Board may, however, apply for an extension in terms of 279 of the Financial Sector Regulation Act (FSRA).

Item	Reviewer	Reference/ Section/ Paragraph	Comment/ Issue	Response
5.	ASISA Academy	3	Pension Fund Act section 7A(3)(a) requires that a board member must attain such levels of skill and training as may be prescribed by the registrar. By referencing the Conduct Standard to this paragraph, the Conduct Standard implies that completion of the Toolkit attains, *in toto*, the levels of competence as stipulated in that section. The wording of the Prescribed Requirement then continues (and seemingly confirms the assertion that the Toolkit is all that is required) that the Toolkit will be " in addition to further skills and training…as deemed necessary by the board". In the view of the ASISA Academy, such further skills and training should be prescribed by the Authority, not the board of fund. A fund board in which every member has completed the Toolkit may be tempted to believe (justifiably) that they are now compliant without any further need to pursue further skills development	Please note that the words "in addition to further skills and training from credible providers as deemed necessary by the board" has been deleted.
6.	ASISA Member 2	3	Will the Standard also apply to alternative trustees?	The Conduct Standard includes within its ambit all board members contemplated in section 7A(3)(a).
7.	IRFA	3	Clarity is required on what the consequences are for a newly appointed trustee who fails to attain the qualification within the prescribed 6 months period of such appointment? Does such a trustee automatically become ineligible to retain his/her trusteeship role? Does the board have discretion to extend this period where a trustee fails to qualify within the prescribed six months period? Is there a restriction on the number of times that a trustee is allowed to do the Toolkit? If he/she does it ten times and passes on the tenth attempt and it is within the 6 months then is that fine? In our view this would probably defeat the	See item 4 above. No there are no restrictions on the number of times that a trustee may complete the Toolkit. Please note that the Toolkit will be designed in such way that it facilitates appropriate learning.

Item	Reviewer	Reference/ Section/ Paragraph	Comment/ Issue	Response
			purpose of this standard because that shows poor understanding. Please clarify this position. This seems to also enforce further skills and training from credible providers as deemed necessary by the board. Is that correct? Is this something the FSCA will want to monitor? Reference is made to trustees completing "training from credible providers". Clarity is required as what criteria will be used to determine who qualifies as a credible service provider.	Please see response to item 5 above.
4. Assessment				
8.	FIA	4	Will the requirements also include management committee members of participating employers in umbrella funds?	The Conduct Standard includes within its ambit all board members contemplated in section 7A(3)(a).
9.	ASISA Academy	4(1)(a)	The term "complete" is open to wide and varied interpretation. The ASISA Academy believes that there has to be some form of credible, verifiable assessment of the board member's competence.	What is contemplated is the successful completion of the Toolkit.
10.	FIA	4(1)(a)	These would need to be carefully constructed to be relevant and also to provide adequate guidance to trustees to ensure that the summative assessment is not too much of a "hurdle".	Noted.
11.	Alexander Forbes	4(1)(b)	Reference is made to the PO or the chairperson supervising the assessment. As the chairperson is also a trustee and holds the chairperson role by virtue of him or her being a trustee, what happens in the event that he has to undergo the assessment himself or herself? Put differently, who	The PO must then oversee the process in such a case. The same will apply if the PO has to undertake the test

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			supervises the chairperson who has to undergo similar assessment?	The assessment must be completed under the supervision of the chairperson/ PO but where it is impractical to do so, a declaration may be provided by the trustee- see response to item 13 below.
12.	ASISA Academy	4(1)(b)	In context of the comment in 4 (1) (a) above, the use of the term "complete" here is ambiguous. A pass mark of less than 100% cannot be regarded as complete, which means (per the Cambridge on-line dictionary) "**to make whole or perfect**", that is, as a final accomplishment. This further re-enforces the risk of a minimum compliance mindset, and that completion of the Toolkit assessment means complete competence. In practical terms, the role required of a principal officer (who has as a key performance area the "completion" of the Toolkit by all the board members) presents an inherent conflict of interest in the prohibition to ensure absence of assistance with the summative assessment. The only credible result is for the summative assessment to be performed by external, independent and accredited industry bodies with no interest in candidates' pass or fail rates.	No grading or pass mark will be assigned to the Toolkit. The toolkit must merely be completed. The Toolkit will be designed in such way that it facilitates appropriate learning.
13.	ASISA Member 2	4(1)(b)	Some boards are scattered over the country and do not necessarily meet in person (for instance they meet via teleconference) - this requirement will mean that the principal officer and or chairperson of the board will have to travel and spend time to supervise the completion of the assessments. If physical presence is not required, then clarification is required what is envisaged by "under the supervision"?	Noted. To accommodate practical challenges an amendment has been made. The requirement now states that the assessment must be

Item	Reviewer	Reference/ Section/ Paragraph	Comment/ Issue	Response
			The principal officer or chairperson will not necessarily know that a board member is attemting to complete the assessment unless there is some form of notification or confirmation required.	completed under the supervision of the chairperson/ PO, but where it is impractical to do so, a declaration may be provided by the trustee.
14.	ASISA Member 3	4(1)(b)	It may be unreasonable and impractical to require board members to complete the final assessment under the supervision of the principal officer or chairperson, as board members are sometimes spread across the country. The principal officer or chairperson should merely require proof of completion.	See response directly above.
15.	FIA	4(1)(b)	It may be impractical in some cases to expect that the trustees complete the assessment under the supervision of the PO or Chairperson. The summative assessment will have to be carefully constructed to ensure that it is relevant and set at an appropriate level.	See response above.
16.	IRFA	4(1)(b)	Reference is made to the PO or the chairperson supervising the assessment. As the chairperson is also a trustee and holds the chairperson role by virtue of him or her being a trustee, what happens in the event that he has to undergo the assessment himself or herself? Put differently, who supervises the chairperson who has to undergo similar assessment? On a practical level how is this going to be implemented? It might not be practical for each trustee to physically sit next to the PO or chairman and complete the assessment. Some guidance should be provided as to what can be considered as “done under supervision.” How much flexibility can be	See response above.

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			given? Can the supervision function be delegated to the deputy PO or such other authorised person? It seems to be severely onerous as the completion of the whole toolkit does take quite some time (a few hours or so). Could the trustees rather sign a letter (FSCA could provide a template) to confirm that they have done the assessment independently without assistance from anyone. FSCA could then build compliance checks into their general compliance visits they do on funds. How will the FSCA monitor that the assessment was indeed done under supervision of the PO or CP, i.e. will they have to sign some kind of certification that must be submitted to FSCA? The principal officer or chairperson will not necessarily know that a board member is attempting to complete the assessment unless there is some form of notification or confirmation required.	
17.	Alexander Forbes	4(2)	There is no timeframe specified for additional modules to the toolkit to be completed. Is it safe to assume that the prescribed six months also applies in respect of additional training?	The timeframe for completion will be determined as and when additional modules are included. Amendment made to clarify this.
18.	ASISA Member 1	4(2)	This section would benefit from further information relating to process. For example, how will each trustee know that there are additional modules prescribed. Certainly, around these issues will be required. Will there be a period be provided for comment on the additional modules? Will sufficient time be given for the module.	Amendment made to clarify the process.

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			Also will the amendments be subject to the same processes set out in part 4 dealing with assessments. In other words will it be a two step assessment ?	
19.	ASISA Member 2	4(2)	Each time that an additional module is prescribed, the principal officer or the chairperson will have to travel and spend time to supervise completion of the assessments.	See response to item 13 above
20.	ASISA Member 3	4(2)	See comment above, not reasonable / practical for modules to be completed under supervision of the principal officer or chairperson. No indication of time period within which additional prescribed models must be completed.	See response to item 13 above
21.	FIA	4(2)	How will trustees become aware that there are additional modules that need to be completed? What will the timeframe be for completion of these?	See response to item 18 above
22.	IRFA	4(2)	Additional modules to be completed under the supervision of the PO & chairman might be impractical / impossible as indicated on above. There is no timeframe specified for additional modules to the toolkit to be completed. Is it safe to assume that the prescribed six months also applies in respect of additional training? What mechanism will the FSCA utilise to inform Funds of an updated toolkit? Boards will need to be kept updated regarding the toolkit and any amendments made to it. Each time that an additional module is prescribed, the PO or the chairperson will have to travel and spend time to supervise completion of the assessments.	See response to item 13 above

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5. Record of Compliance				
23.	ASISA Academy	5	This section introduces the concept of certification. Practically, the Conduct Standard is silent as to which regulatory body (or part thereof) issues such certificates, the means by which they are controlled, their accessibility from the industry and public domain, and their duration for the life of a board member.	This would just be certification to confirm completion, which will be issued by the system and the Authority will maintain a record thereof. No need to secure an external body to administer this process
24.	IRFA	5	The FSCA do not have record of the board members of funds and they will therefore not be able to monitor this, unless it is discovered as part of a fund review conducted by the FSCA.	A system is currently being developed to have this on record, and to have it regularly updated.
6. Short Title, Commencement and Transitional Arrangements				
25.	ASISA Academy	6(3)	The Conduct Standard is silent as to the implications for board members who fail to "complete" the assessments – that is, are they automatically removed from office, triggering quorate issues for board of fund meetings and related resolutions? A mechanism for extensions for compliance with the Conduct Standard should also be included, rendering the process more practical.	Section 26(2) of the PFA would apply. Each case would be assessed on its own merits.
26.	ASISA Member 1	6(3)	This section falls outside of the authority of the FSCA and is ultra vires. This is because sub-section 3(a) only allows the regulator to require a board member to attain such level of skills and training as may be prescribed by the Registrar by notice in the Gazette, within six months from the date of the board members appointment. To rectify this the wording should be amended to read: "A board member who was appointed on or after 1 January 2020 must complete the	See amendment wording which should address your concern regarding this clause being ultra vires.

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			trustee toolkit within 6 months of his or her appointment to the board".	
27.	Alexander Forbes	6(4)	It indicates those who completed the toolkit and got the certificate prior to Jan 2020 are recognised, no indication if these also have to have some verification/statement that it was completed without assistance, i.e. these were not completed necessarily under supervision/invigilation	The Standard has been amended to clarify that a declaration is required.
28.	ASISA Member 2	6(4)	Does this mean that if a board member completes it before 2020, the completion of the assessment does not have to be under supervision?	Correct. However, see response directly above.
29.	IRFA	6(4)	Please clarify whether this "exemption" will be applicable notwithstanding that assessment not done under supervision of PO or chairperson, thus as long as a trustee completed toolkit before 1 Jan 2010, no need to adhere to the requirement under clause 4(1)(b)	See response directly above.

Section B - General Comments

Item	Reviewer	Comment/ Issue	Response
1. Will the draft Conduct Standard impose additional compliance costs on the fund? If yes, please provide details including the expected costs.			
30.	ASISA Academy	Board members will have to spend time engaging with the Toolkit website. Chairperson and principal officer time is also required to be dedicated to the assessment processes. Costs of translation into other official languages also need to be considered.	Noted and agreed. This is the intention of the Conduct Standard. With regards to cost of translation, it is noted that there might be a cost implication but it is the view of the Authority that this cost will not be unreasonable.
31.	ASISA Member 2	Costs will probably be incurred should boards be scattered and principal officers or chairpersons have to travel and spend time to supervise completion of assessments	Noted. See dispensation referred to in item 13 under Section A. The assessment must be completed under the supervision of the chairperson/ PO but where it is impractical

			to do so, a declaration may be provided by the trustee.
32.	ASISA Member 3	Yes, travel costs & associated expenses if assessments are to be completed under supervision of the PO or chairperson.	See response directly above.
33.	FIA	All such additional requirements must have some kind of associated cost. However, in this case this is likely to be minor (possibly indirect costs linked to coaching assistance?).	Noted, and agreed.
2. How do you anticipate the Conduct Standard affecting the operational cost of the fund, if at all?			
34.	ASISA Academy	It will vary widely, depending on the prevailing level of board member competence and skill sets	Noted.
35.	ASISA Member 2	There is no anticipation of operational costs being affected	Noted.
36.	FIA	See above.	Noted.
37.	IRFA	Costs will probably be incurred should boards be scattered and principal officers or chairpersons have to travel and spend time to supervise completion of assessments.	See response to item 31 above.
3. Will the Conduct Standard result in termination of existing arrangements? If yes, please be specific and make reference to specific aspects of the draft Conduct Standard that will lead to such a termination.			
38.	ASISA Academy	It should not, being a minimum standard.	Noted.
39.	FIA	No.	Noted.
4. If the answer to question 3 is yes, how many arrangements will be impacted and what is the expected cost implication thereof?			
40.	FIA	No.	Noted.
5. Are any other transitional arrangements necessary to implement the Conduct Standard? If yes, what transitional arrangements do you propose and for which section of the Conduct Standard? (Please provide a justification for your response and details on timeframes to comply with the relevant section)			
41.	IRFA	Answered above ad (3)	Noted.