



**STATEMENT SUPPORTING THE DRAFT
CONDUCT STANDARD - CONDITIONS
PRESCRIBED IN RESPECT OF PENSION FUND
BENEFIT ADMINISTRATORS**



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1. PURPOSE OF THE STATEMENT

- 1.1 The purpose of this document is to explain the need for, expected impact and intended operation of the draft Conduct Standard - Conditions prescribed for Pension Fund Benefit Administrators (draft Conduct Standard) as required by section 98(1)(a) of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017) (FSR Act).
- 1.2 The Financial Sector Conduct Authority (“FSCA”) is intending to make the draft Conduct Standard under section 13B(1) of the Pension Funds Act, 1956 (Act No. 24 of 1956) (“PFA”) and section 106(1), read with sections 106(2)(b) and 108(1) and (2), of the FSR Act.

2. STATEMENT OF NEED – POLICY CONTEXT AND PROBLEM DEFINITION

- 2.1 In terms of section 13B(1) of the PFA, the FSCA may prescribe conditions for persons that, on behalf of a pension funds, administer the receipt of contributions or the disposition of benefits provided for in the rules of a fund hereafter referred to as benefit administrators).
- 2.2 Currently, conditions in respect of benefit administrators are prescribed by Board Notice 24 of 2002, published by Government Notice No. 10505 in Government *Gazette* 23153 of 1 March 2002 (BN 24 of 2002).
- 2.3 Since the publication of BN 24 of 2002, there have been significant policy and regulatory developments impacting the broader approach to regulating the financial sector, for example:
 - The then Financial Services Board (FSB) initiated the Treating Customers Fairly (TCF) initiative, which is an outcomes-based regulatory and supervisory approach designed to ensure that regulated financial institutions deliver specific, clearly set out fairness outcomes for financial customers. A variety of work focusing on TCF was undertaken and concluded throughout the years,¹ and the TCF outcomes have been incorporated into certain financial sector laws as outcomes-based requirements.² From a supervisory perspective there has also been a strong focus on ensuring TCF is embedded in financial institutions even where the TCF outcomes were not explicitly captured in law as outcomes- based requirements.
 - The FSB’s 2014 Retail Distribution Review outlined a number of key risks inherent in the current distribution landscape, including distribution relationships and intermediary remuneration models that contribute to poor outcomes and mis-selling, and put forward a number of proposals aimed at addressing these risks. The RDR also outlined a more proactive and interventionist regulatory approach and proposed to shift away from a purely rules-based compliance approach to a more outcomes- and principle-based approach, including an approach that sees the introduction of a set of structural interventions designed to change incentives, relationships and business models in the market in a way that supports the consistent delivery of fair outcomes to customers. The RDR proposals have been implemented in a staggered manner through amendments to a variety of financial sector laws.
 - On 29 March 2018, the FSR Act became effective and created the Twin Peaks architecture which, amongst other things, established the FSCA as a dedicated conduct regulator for the financial sector. One of the objectives behind the Twin Peaks architecture was to shift away from the existing fragmented sectoral-based approach to a more consolidated and streamlined conduct framework that avoids fragmented supervision and regulatory

¹ E.g. see the FSCA’s Complaints Management Discussion Document published in 2014. <https://www.fsca.co.za/Regulatory%20Frameworks/Documents%20for%20Consultation/TCF%20Complaints%20Management%20Discussion%20Document.pdf>

² E.g. the Policyholder Protection Rules under the Long-term- and Short-term Insurance Acts, the Conduct Standard for Banks, 2020 and the like.

arbitrage, ensures more consistent outcomes across the sector and that facilitates a more proactive, forward looking and outcomes focused approach. In giving effect to the FSCA's mandate, one of the FSCA's strategic focus areas were to gradually start incorporating more outcomes- and principled based requirements (including the TCF outcomes as explained above) into the regulatory frameworks falling within its purview. Although progress has been made in this regard, various sectoral laws still require strengthening and improvement. In addition, another strategic focus of the FSCA in giving effect to its new mandate was to start harmonising requirements across the various financial sector laws as far as possible in order to ensure that more consistent outcomes are achieved across the whole of the financial sector.

- 2.4 The regulatory framework governing benefit administrators as set out in BN 24 of 2002 is one of the frameworks that has, to date, not sufficiently evolved to adapt to the broader developments explained above. BN 24 of 2002 does not capture any of the TCF outcomes, nor does it address a variety of fundamental conduct focus areas which are addressed in many of the other financial sector laws, such as governance, fit and proper, outsourcing, conflicts of interest and the like.
- 2.5 This outdated framework results in a variety of conduct risks in the benefit administrator environment and outcomes that are not on par with the rest of the financial sector. For this reason, the FSCA has identified a need to strengthen the current regulatory framework governing benefit administrators and to ensure that the framework supports the delivery of outcomes that are consistent with the outcomes set out in other financial sector laws supervised by the FSCA.

3. CONSULTATION ON THE DRAFT CONDUCT STANDARD

- 3.1 In July 2021, the FSCA published a draft Conduct Standard - Conditions prescribed in respect of pension fund benefit administrators (draft Conduct Standard), for public consultation. Following the publication, the FSCA regulatory framework development plan was subject to significant re-prioritisation which included, amongst other things, identifying regulatory framework developments that overlap with various aspects that form part of the development of the future conduct framework that will be given effect to under the Conduct of Financial Institutions (COFI) Bill, and that will potentially create a risk of misalignment should these developments be progressed. The 2022 FSCA Regulation Plan explained this approach and stated that various regulatory framework developments will be collapsed into the COFI Bill transition work, including the draft Conduct Standard.
- 3.2 Subsequent to the publication of the 2022 FSCA Regulation Plan, the 2023 FSCA Regulation Plan highlighted that although the previous Plan indicated that the draft Conduct Standard will likely be collapsed into the COFI Bill transition work, this project was reprioritised as problems in the section 13B administrator environment persist and are exacerbated by the lack of an appropriate framework. The 2023 FSCA Regulation Plan further explained that as a result of these concerns, the FSCA is in the process of reconsidering the draft Conduct Standard and exploring whether it is possible to proceed with a slightly "watered down" version of the draft Conduct Standard that addresses critical deficiencies in the framework, but still avoids, as far as possible, potential misalignment with the future framework to be promulgated under the COFI Bill which is currently under development (i.e. the COFI Bill transition work).
- 3.3 Finally, the 2024 FSCA Regulation Plan indicated that the FSCA has concluded its assessment and has taken a decision to progress the draft Conduct Standard. The 2024 FSCA Regulation Plan also indicated that the FSCA is intending to embark on informal consultation on the revised Conduct Standard during the second half of 2024, after which the draft Conduct Standard will be submitted to Parliament.

- 3.4 Informal consultation on the revised draft Conduct Standard subsequently took place during August and September 2024.
- 3.5 Full details of both the formal and informal consultation processes is set out in the Consultation Report pertaining to the draft Conduct Standard.

4. SUMMARY OF DRAFT CONDUCT STANDARD

- 4.1 The draft Conduct Standard attempts to strengthen the existing framework governing benefit administrators in order to ensure that, amongst other things, specific fundamental conduct risk areas are addressed. The draft Conduct Standard also aligns the regulatory framework governing benefit administrators with other sector-specific regulatory frameworks supervised by the FSCA. The draft Conduct Standard also attempts to balance outcomes-, principles- and rules-based requirements to ensure that benefit administrators deliver fair customer outcomes in a disciplined and transparent and consistent manner.
- 4.2 The draft Conduct Standard repeats some of the conditions that are currently prescribed in BN 24 of 2002, such as conditions pertaining to administration agreements (including termination of such agreements), indemnity and fidelity guarantee insurance, maintenance of current assets and liquidity, trust accounts, safe custody of documents of title and ceasing, dissolution or liquidation of business. However, the requirements relating to these conditions have been revised as deemed appropriate.
- 4.3 The draft Conduct Standard also includes conditions that are not currently dealt with in BN 24 of 2002, these conditions include requirements relating to the following:
- *Business and governance:* The draft Conduct Standard places an obligation on benefit administrators to conduct their business in accordance with certain basic business principles, including achieving the relevant TCF outcomes. The draft Conduct Standard also provides for relatively detailed governance requirements and sets out the obligations of the governing body of a benefit administrator and the responsibility to, document, establish, implement and monitor the effectiveness of governance arrangements within the benefit administrator.
 - *Changes in certain business information:* The draft Conduct Standard requires notification to the FSCA where certain information changes, such as changes in the name or contact details of the benefit administrator and changes in key persons.
 - *Fit and Proper Requirements:* The draft Conduct Standard prescribes fit and proper requirements relating to directors, senior managers and heads of control functions (where relevant).
 - *Outsourcing:* The draft Conduct Standard prescribes conditions relating to outsourcing by benefit administrators, including the management, oversight and review of outsourcing arrangements.
 - *Conflicts of interest:* The draft Conduct Standard prescribes conditions relating to conflicts of interest. These requirements build on and supplements the requirements contained in section 13B(5) of the PFA. Amongst other things, benefit administrators are required to adopt, maintain and implement a conflict of interest management policy and ensure that its employees are aware of the content of such policy.
 - *Communication, Disclosures and Complaints management:* The draft Conduct Standard prescribes conditions relating to communication with and disclosures to the fund, as well as members of the fund, during and after contracting. The draft Conduct Standard also

prescribes requirements relating to the management of complaints by benefit administrators, including requirements relating to the establishment of a complaint management framework, allocation of responsibilities for complaints handling, processes for escalating and reviewing complaints, complaints record keeping and communication with complainants.

- *Data management and maintenance of records:* The draft Conduct Standard prescribes conditions relating data management, including where the benefit administrator relies on third parties to retain data. The draft Conduct Standard also sets requirements relating to the maintenance of record, including a minimum period for retaining records.
- *Financial matters:* The draft Conduct Standard prescribes conditions relating to a variety of financial matters, including financial accounting, procedures and controls, auditing and statutory returns, management of trust and suspense accounts, and the like.
- *Operational procedures and controls:* The draft Conduct Standard prescribes conditions relating to operational procedures and controls which are aimed at ensuring a benefit administrator must have the operational ability (including adequate and appropriate human, technical and technological resources) to effectively perform its administrative functions and ensure that accurate and complete data and records are maintained. These conditions also include measures towards keeping the data secure and provides measures for accurate record keeping of member records to ensure accurate member accounts, benefit communications and compliance with reporting requirements.

4.4 The requirements in the draft Conduct Standard apply in addition to any other requirement already imposed on benefit administrators through the PFA or any other financial sector law. The conditions have been crafted in such a way so as to avoid inconsistencies with existing regulatory requirements.

Determination of forms

4.5 Section 108(2)(a) of the FSR Act provides that a conduct standard may provide for the FSCA to make a determination for purposes of the conduct standard, in accordance with procedures defined in the conduct standard.

4.6 In this context, in various places in the draft Conduct Standard provision is made for the FSCA to determine the form and manner in which a specific notification, application and the like must be submitted to the FSCA, or in the case of clause 26(2)(b), for example, the FSCA can determine the form of the “ownership of funds register” that must be maintained.

4.7 In terms of the draft Conduct Standard these “determinations” must be made by notice on the website of the FSCA. The determinations are purely administrative in nature and are proposed to be dealt with separately from the draft Conduct Standard for, amongst others, practical reasons.

4.8 The draft determinations the FSCA is intending to determine under the draft Conduct Standard by notice on the website of the FSCA was also published for public comment.

5. STATEMENT OF IMPACT OF THE CONDUCT STANDARD

5.1 It is envisaged that the draft Conduct Standard is likely to lead to improved administration services by benefit administrators would lead to better outcomes for their pension fund clients, and in particular members of such pension funds.

5.2 Through the consultation process, commentators expressed differing views in respect of the expected impact of the Conduct Standard. What made the impact responses difficult to analyse was the fact that commentators who claimed that the Conduct Standard will have a substantial impact, did not typically differentiate between what specific requirements in the conduct standard will result in this specific impact.

5.3 Below we set out what we understand as the specific requirements that will lead to notable cost implications, together with our responses:

Comment		FSCA response
Key person appointments	It was claimed that appointed key persons such as the head of control functions could lead to substantial increases in cost, as well as appointing internal and external audit to monitor compliance with the Conduct Standard.	In our view the expected impact communicated through this comment has been averted through amendments to the Conduct Standard: <ul style="list-style-type: none"> <i>Key person appointments</i>: It seems as if there was a misconception surrounding the key person requirements. The Conduct Standard did not require the appointment of certain key persons, it merely provides that the key persons (already appointed, or to be appointed), must meet the fit and proper requirements. Notwithstanding, to clarify the aforementioned a qualification has been inserted in clause 6(1) (through the addition of the words “where applicable”). <i>Appointment of external audit to monitor compliance with the Conduct Standard</i>: The requirement that external audit must monitor compliance with the Conduct Standard has been removed.
Duplication of requirements	It was submitted that the Conduct Standard will result in the duplication of requirements as some of these matters are already dealt with in Prudential Standards and the FAIS Act. This, it was claimed, will result in duplication of cost and effort.	We do not deny that there might be some duplication across frameworks, but we disagree that this duplication will result in duplicate costs. Processes and controls can be streamlined to ensure the same controls are relied on to meet the requirements in both frameworks. We reiterate that requirements contained in Prudential Standards are not enforceable by the FSCA, hence the reason why similar requirements have to be provided for in the conduct framework.
Auditing and assurance costs	Various commentators seemed to imply that the auditing and assurance requirements could have substantial cost implications, although it is difficult to quantify at this stage.	In our view this potential impact has been averted through amendments to the Conduct Standard. The auditing requirements have been substantially revised and simplified and should alleviate the concerns raised. The audit assurance requirements have been removed from the draft Conduct Standard.
Capital adequacy requirement	Various commentators claimed that the capital adequacy requirement of R3 million will affect the viability of administrators, especially smaller administrators. Once commentator claimed that this requirement will end the viability of certain administrators.	In our view this potential impact has been averted through amendments to the Conduct Standard- the R3 million capital adequacy requirement has been removed.
Complaints handling	One commentator submitted that one additional person will have to be appointed to attend to complaints handling and systems will have to change to handle and store complaints. The commentator claimed that this will amount to estimated costs of R500,000 per annum.	The FSCA notes this submission, but submits that complaints management is a critical component of a robust conduct framework and if not introduced for benefit administrators now, it will in any case be introduced in future (through the themed frameworks). Cost implications in this context is therefore inevitable. That being said, we do not necessarily agree that a new person has to be appointed. We would assume that administrators currently have complaints management procedures in place. If not, this in itself is a concern. A benefit administrator would therefore be able to leverage from existing structures and resources instead of having to appoint a new person.

5.4 In general, some commentators were of the view that the Conduct Standard will not have a substantial impact as the requirements are largely based on the existing Board Notice regulating

benefit administrators. Other commentators raised general impacts such as the new requirements translating into functions to be carried out by departments within the benefit administrator, which may require greater numbers of staff, push up labour costs as well as the costs of the systems needed for the staff to execute their work on.

- 5.5 In conclusion, it must be acknowledged that it is inevitable that legislative interventions will have a cost implication. The key is finding an appropriate balance between the expected costs and the envisaged benefits.
- 5.6 As explained above, in an attempt to try and mitigate the expected impact on benefit administrators, the FSCA amended the Conduct Standard by removing requirements that, in its opinion, has the potential of having the most significant impact on benefit administrators. This included the relaxation and simplification of the auditing requirements, and removal of the assurance and R3 million capital adequacy requirements.
- 5.7 Viewed holistically, the FSCA is of the view that the current draft of the Conduct Standard strikes an appropriate balance between mitigating key risks whilst not creating an excessive cost burden for benefit administrators.

6. STATEMENT OF INTENDED OPERATION OF THE CONDUCT STANDARD

- 6.1 The draft Conduct Standard is consistent with the objectives of the FSR Act, and specifically the mandate of the FSCA to protect financial customers by promoting the fair treatment of financial customers by financial institutions. After becoming effective, all benefit administrators will be required to comply with the draft Conduct Standard.
- 6.2 To manage compliance with the requirements of the draft Conduct Standard, benefit administrators will be expected to design and implement appropriate governance arrangements and other controls mechanisms that will ensure that fair treatment of customers is central to their organisational culture. Benefit administrators will be required to demonstrate to the FSCA that fair outcomes for customers are consistently delivered when providing their services.
- 6.3 The FSCA will monitor compliance with the draft Conduct Standard by using pro-active supervisory approaches in which potential areas of concern, with a greater emphasis on pre-empting negative customer outcomes where possible, are identified. This proactive approach will cover both emerging risks within a benefit administrator, as well as concerns at sector or business model level (macro conduct risks). Once risks have been identified, the FSCA will have engagements with the benefit administrator(s) concerned to try and remediate the situation and pre-empt consumer harm or seek redress where harm has occurred.
- 6.4 To operationalise the pro-active supervisory approach, the FSCA will develop a reporting framework and data obtained through this framework will be used as an offsite supervisory tool identify conduct risks and trends specific to a particular benefit administrator and for benchmarking purposes across the sector. On-site supervision will also be conducted to examine and assess processes and management information relating to the fair treatment of customers.