FSCA

Financial Sector
Conduct Authority

CONSULTATION REPORT

CONDUCT STANDARD - CONDITIONS PRESCRIBED IN RESPECT OF PENSION FUND BENEFIT ADMINISTRATORS

PENSION FUNDS ACT, 1956 (ACT NO. 24 OF 1956)

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

1. Purpose

1.1 Section 104 of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017) (FSR Act) states that with each regulatory instrument, the maker must publish a consultation report which must include:

(a) a general account of the issues raised in the submissions made during the consultation; and

(b) a response to the issues raised in the submissions.

1.2 The purpose of this document is to set out, as required in terms of section 104(1) of the FSR Act, a report on the consultation process undertaken in respect of the Conduct Standard – Conditions prescribed in respect of Pension Fund Benefit Administrators.

3. Summary of public consultation process

3.1 On 29 July 2021, the Financial Sector Conduct Authority (Authority) published the following documents for public comment, with comments being due on 13 September 2021:

(a) Notice regarding the publication of the draft Conduct Standard - Conditions Prescribed in respect of Pension Funds Benefit Administrators (draft Conduct Standard;

(b) Notice on the Determination of Forms in respect of Pension Fund Benefit Administrators (draft Determination); and

(c) Statement supporting the draft Conduct Standard – Conditions Prescribed in respect of Pension Fund Benefit Administrators.

3.2 The Authority received over 350 comments from 12 different commentators. Following the public consultation process, where appropriate, certain comments resulted in changes being made to the draft Conduct Standard by the Authority. The changes were not deemed to be material. No comments were received on the draft Determination.

3.4 All comments received as part of the public consultation process were considered and are set out in Table A below, together with the Authority's responses to the comments received. To the extent that the Authority agreed with commentary received, amendments were made to the draft Conduct Standard accommodating such comments.

3.5 A general account of some of the issues raised during the consultation process and the responses of the Authority are tabulated below:

#		Issue	FSCA's Response
1.	**Definitions**	Commentators were concerned about some of the definitions in the Conduct Standard and requested	Clarification was provided on the various terms. Additional terms were also defined such as "fair value" and "umbrella fund". Definitions were also

		clarification on certain terms used in the Conduct Standard.	expanded on or streamlined in terms of the comments received.
2.	**Duplication of requirements**	There were views on the applicability of the Conduct Standard in circumstances where a benefit administrator is also a licensed insurer and there are overlapping regulatory requirements.	Where a benefit administrator is also, for example, a licensed insurer, there will have to be compliance with both sets of regulatory frameworks, noting that there is, in our opinion, no contradictions between the respective frameworks.
3.	**Business principles, culture and governance**	Comments were submitted on the business principles, culture and governance. More specifically how TCF principles embedded in the culture of the benefit administrator will be evidenced. Clarity was sought on whether the required policies may be achievable by way of group level policies.	This is not something that would necessarily only be documented but will be evidenced by the administrator's conduct and interactions with its customers and stakeholders in respect of claims, complaints, etc. The Authority will not be opposed to a group level policy, provided that it is clear to who the policy relates, and those policies are the same across all the different section 13B licenses.
4.	**Notifications pertaining to key persons and shareholders**	Commentators sought clarity regarding notifications on changes in information. Specifically clarity was sought on whether the Authority must be notified of a change in senior managers who have no involvement in the management of the benefit administration part of the company where the benefit administrator is also an insurer or asset manager. Clarity on whether a benefit administrator will be required to notify the Authority every time there is a change in shareholding in circumstances where a benefit administrator is listed on the JSE.	Further revisions have been made to the Conduct Standard which, in our opinion, clarifies the requirements. Notifications regarding shareholders have been removed from the Conduct Standard.
5.	**Responsible key person**	In respect of responsible key person, submissions were made that the provision of a police clearance certificate should not be a requirement as the requirement is inconsistent with other laws. Clarity as to whether there could there be a "deputy" responsible key person. Clarity regarding the format in which responsible key persons must report to the Authority. Clarity on the *rationale* for the reporting requirements by responsible key person was requested.	The concept of a 'responsible key person' has been removed from the Conduct Standard.
6.	**Fit and Proper Requirements**	Comments were submitted regarding Fit and Proper Requirements and specifically to	Paragraph 10(1) of the Conduct Standard clearly sets out to whom the fit and proper requirements apply.

		whom the fit and proper requirements apply. Clarity on how often disclosures had to be made relating to information which may be relevant in determining a person's fitness and propriety. Clarification on whether the Part on fit and proper requirements in the Conduct Standard is repealing section 13B(1A)(c) of the Pension Fund Act. Clarity with regard to the *prima facie* evidence that a person does not meet the requirements relating to honesty, integrity and good standing.	Paragraph 10(2) of the Conduct Standard requires that disclosure be made "promptly". The Conduct Standard must be read with and in addition to section 13B of the Pension Funds Act, 1956. Clarification was provided on the respective terms.
7.	**Administration agreements**	Comments were submitted in respect of administration agreements. It was submitted that the Conduct Standard must make provision/allow for one administration agreement where multiple funds are administered by the same benefit administrator, with the same Board of trustees. It was also submitted that administration agreements should allow for longer termination periods that what is currently provided for (i.e. 90 days. Finally, a number of suggestions were made regarding the drafting of the provisions.	Clarity was provided that section 13(1) of the Pension Funds Act, 1956 does not prohibit having one administration agreement for multiple retail funds provided that the administration agreement is clear in respect of the duties owed to each fund. Agree, the necessary changes have been made. Where the Authority agreed with the suggestions, amendments were made to the draft Conduct Standard.
8.	**Outsourcing**	Regarding outsourcing, it was proposed by some commentators that only "material" changes that affect the funds and/or its members to an outsourcing agreement, should be included in the provision that requires that the fund be advised of any changes to the outsourcing agreement.	The Authority agreed with the submission and the draft Conduct Standard was amended accordingly.
9.	**Communication and disclosure requirements**	Commentators requested clarity on the communication and disclosure requirements, where an employer participates in an umbrella retirement fund. Commentators also requested clarity on a variety of other aspects, e.g. relating to non-payment of contributions in terms of section 13A by a defaulting employer, "recourse options", communication duty of the benefit administrator towards the members of the fund, whether a complaints management framework may be contained in group level policies, etc.	The requirements will equally apply to both standalone funds and umbrella funds. The specific areas of uncertainty were responded to in the response matrix below and, where necessary, changes were made to the Conduct Standard.
10.	**Data Management and maintenance of records**	Regarding Data Management and maintenance of records, clarity was requested on a variety of aspects, e.g. which records are referred to and how long they must be kept, whether the benefit administrator	The specific areas of uncertainty were responded to in the response matrix below and, where necessary, changes were made to the Conduct Standard.

		must destroy the data after 5 years, why a benefit administrator should keep records for 5 years after it ceases to exist, etc.	
11.	**Auditing and assurance**	Various concerns were raised with the auditing requirements, and in particular the requirements pertaining to audit assurance.	The auditing and relevant audit assurance requirements were reconsidered as a result of the substantial number of comments received. As a consequence, the auditing requirements have been simplified substantially. Further, all the audit assurance related requirements have been removed. We believe that these changes will address all of the concerns raised by commentators.
12.	**Financial soundness**	Significant concerns were raised in respect of the proposed R3 million capital adequacy requirement.	This requirement was reconsidered and was subsequently removed.
13.	**Mergers, acquisitions, and termination or ceasing of business**	Commentators requested clarity on a variety of aspects related to mergers, acquisitions and termination or ceasing of business.	The specific areas of uncertainty were responded to in the response matrix below and, where necessary, changes were made to the Conduct Standard.
14.	**Alignment with the Conduct of Financial Institutions Bill**	Comments were submitted regarding implementation and timeline of the Conduct Standard in relation to the Conduct of Financial Institutions Bill, and potential inconsistencies between the Conduct Standard and the Bill.	Please refer to paragraph 3 of the Statement Supporting the Conduct Standard. We attempted to as far as possible limit any potential misalignment between the Conduct Standard and the COFI Bill transition work currently underway.
15.	**Transitional period**	Commentators were concerned with the transitional period and commentators contended that the proposed 6 months period is not sufficient.	It must be noted that many of the requirements proposed in the Conduct Standard are existing requirements with minor enhancements. A general 6-month transitional period will therefore not be appropriate. Notwithstanding, the transitional period has been reconsidered and a more structured approach has been proposed, taking into account the need to distinguish between completely new requirements and 'existing enhanced' requirements.

3.7 Full details of the commentators who made submissions and the full set of comments and FSCA responses thereto are set out in **Table A** below.

Informal consultation process

3.8 As explained in paragraph 3 of the Statement supporting the draft Conduct Standard, during August to September 2024 the FSCA also embarked on an informal consultation process on the revised Conduct Standard. The intention of the informal consultation process was to provide commentators who submitted comments on the draft Conduct Standard (that was published for public consultation) an opportunity to submit final comments on the Conduct Standard following the further revisions that were made to the Conduct Standard.

3.9 During the informal consultation process only three commentators made further submissions comprising a total of 14 comments. No substantial issues were raised and most of the comments were accommodated.

3.10 Full details of the commentators who made submissions as part of the informal consultation process, including the full set of comments and FSCA responses thereto, are set out in **Table B** below.

ANNEXURE A

PUBLIC COMMENTS AND RESPONSES:
DRAFT CONDUCT STANDARD – CONDITIONS PRESCRIBED IN RESPECT OF PENSION FUND BENEFIT ADMINISTRATORS

INDEX	
Section A	List of Commentators
Section B	Comments on the draft Conduct Standard
Section C	Questions relating to the anticipated impact of the Conduct Standard
Section D	General Comments

SECTION A - COMMENTATORS

No	Commentator	Acronym
1.	Association for Savings and Investment South Africa	ASISA
2.	Beacon Registrars (Pty) Ltd	Beacon
3.	Integrity Retirement Fund Administrators (Pty) Ltd	Integrity
4.	IRFA Legal & Technical Committee	IRFA
5.	Office of the Pension Funds Adjudicator	OPFA
6.	OUTvest (Pty) Ltd	OUTvest
7.	PriceWaterhouseCoopers	PWC
8.	PSG Konsult	PSG
9.	RFS Administrators (Pty) Ltd	RFS
10.	South African Institute of Chartered Accountants	SAICA
11.	The Banking Association South Africa	BASA
12.	Thuso Ndaba of Assupol (Carefree Life, Members Trust and Pension Preservation Fund)	Assupol

SECTION B - COMMENTS ON THE DRAFT CONDUCT STANDARD

Item	Entity	Section	Issue/Comment/Recommendation	FSCA Response
PART I - INTERPRETATION AND APPLICATION OF CONDUCT STANDARD				
1.	ASISA	General comment	It appears as if this Conduct Standard is written for a benefit administrator where the entire organisational structure is exclusively	It should be noted that it is the legal entity that is licenced as a benefit administrator by the FSCA and not the unit

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			focused on administration services under Section 13B of the Pension Funds Act (the PFA). This is not the case for many administrators that also provide insurance, investment management and/or consulting services in the same legal entity. In many cases the governing body of the legal entity has very little exposure to, or input into, the affairs of the Section 13B administration business unit. The responsibility is delegated to a business unit executive and management committee in terms of an approval framework. It is recommended that the Standard be expanded to include business units and management committees of these business units within a larger legal entity.	within the legal entity that performs the functions of the benefit administrator. The legal entity licensed by the FSCA as a section 13B administrator must ensure compliance with the draft Conduct Standard, regardless of the entity's internal structures.
2.	IRFA	(1) In this schedule "the Act" means the Pension Funds Act, 1956 (Act No. 24 of 1956) and any word or expression to which a meaning has been assigned in the Act shall bear the meaning so assigned to it, and, unless the context otherwise indicates-	• Is the intention that this Conduct Standard be implemented prior to COFI and is the intention that the current COFI Bill proposal that section 13B is to be repealed (as benefit administration supervision will no longer fall under the Pension Funds Act), will now be revisited? And if that is the case, will a sec 13B administrator have different requirements than the other financial institutions regulated under COFI and FSRA (e.g fit and proper; audit requirements; governance requirements)? • If there are conflicting provisions between this Conduct Standard and COFI Bill, which provisions will supersede? • Where the provisions of COFI and this Conduct Standard are aligned, will this Conduct Standard have to be amended every time something changes in the COFI Bill? We submit that to ensure there is not unnecessary duplication and/or conflicting provisions between this Conduct Standard and the final wording of the COFI Bill, all the repeated COFI provisions in this Conduct Standard rather be deleted and cross-reference to the relevant sections in COFI is made. • We submit that based on the submissions above, should the issuing/finalisation of this Conducts Standard not maybe be postponed until such time as the COFI Bill is enacted? And if	• The timeline for the finalisation and promulgation of the COFI Bill is not yet clear. The repeal of section 13B is not being revisited as far as we are aware. The intention is to publish this Conduct Standard as soon as the consultation and parliamentary processes have been concluded, which will likely be before COFI. If the COFI process overtakes the finalisation of this Conduct Standard, which is unlikely, the position will be reconsidered. Note that COFI states that a regulatory instrument issued under a provision of a law being repealed through COFI will remain in effect until replaced. Therefore, if the Conduct Standard is promulgated before COFI and COFI subsequently takes effect, the Conduct Standard will still apply. The Conduct Standard will, however, eventually be transitioned to the COFI Bill (please refer to the published FSCA Regulation Plan which gives context to the transition process). As per the nature of the COFI Bill and enabling framework thereunder, some requirements will apply to all financial institutions and some requirements will be financial institution specific. • We performed a review and are of the opinion that there are no conflicting provisions. • See response under first bullet.

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			not, please provide confirmation that it will be aligned once the COFI Bill is enacted. • Please note that all of our comments are based on the assumption that section 13B will not be repealed and thus will remain as is.	• Noted.
3.	OPFA	Section 1(1) – definition of "administration functions" and "administration services"	The draft definition cross-references section 13B(1) of the Pension Funds Act, 1956, which provides that administration relates to "*the receipt of contributions or the disposition of benefits provided for in the rules of the fund*". Insofar as the Conduct Standard aims to ensure the fair treatment of customers in respect of other functions that may be fulfilled by a benefit administrator (not set out in section 13B(1) of the Act) the Conduct Standard should define these as "additional functions" or "additional services". See also comment under item no. 21 below.	The Conduct Standard aims to prescribe conditions that the Authority may prescribe in terms of section 13B(1) and is therefore only applicable to the services as envisioned in section 13B.
4.	IRFA	Section 1 – definition of "annual expenditure"	The definition is different to what is in the BN in that it excludes "less staff bonuses, employees' and directors' shares in profits, other appropriation of profits to directors and emoluments of directors, partners or sole proprietor". Please clarify if this is the intention and if so, why would this now be excluded?	The deduction mentioned in your comment has been inserted.
5.	IRFA	Section 1 – definition of "benefit administrator"	• With reference to the proposed changes to the Pension Funds Act regarding section 13B and the proposed definition of administrator in COFI (i.e. *'**"administrator"** means a person **[approved by the Authority in terms of section 13B (1)]** licensed by the Authority under the Conduct of Financial Institutions Act for retirement fund self-administration as defined in Schedule 1 of that Act)* please clarify if the definition in the Conduct Standard includes self-administered funds and 3rd party administrators. • If the new licensing regime is to go ahead as envisaged in COFI and the FSRA, then the definition must rather refer to the specific "licensed activity" as per proposed Schedule to COFI, than referring to a specific type of entity/person. • To avoid confusion, the definition of "administrator" in the Pension Funds Act must be deleted as per this Conduct	• The definition of "benefit administrator" in the Standard does not include self-administered funds. The Standard seeks to address the relationship between the benefit administrator and the fund with whom it is contracted, as contemplated in section 13B(1). Should the COFI Bill be promulgated prior to this Standard coming into effect, the appropriate steps will be taken to transition this standard into the COFI framework and also to deal with self-administered funds. • Noted. However, the Standard has to be based on the current framework. The necessary changes will be made once COFI comes into effect. • The definition of "administrator" cannot be deleted in the Pension Funds Act by way of a Conduct Standard (i.e. subordinate legislation cannot amend primary legislation).

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			Standard *any word or expression to which a meaning has been assigned in the Act shall bear the meaning so assigned to it, and, unless the context otherwise indicates:*	
6.	IRFA	Section 1 – definition of "compensation payment"	• Please clarify what is meant with compensation "*in the form of a service*"? • Please clarify if "*where the benefit administrator accepts liability for having caused the loss concerned*" means that if the administrator did not accept liability, even if there is a proven loss, that the payments would not be a compensation payment? And if not, please amend wording. • We submit that "*financial product or financial service concerned*" should stay as defined in the Financial Sector Regulation Act - similar to the definition of *governing body* and *key person* as used in this Conduct Standard. • Please clarify how interest on (b) and (c) qualifies as a compensation payment, when the interest relates to an amount which is not a compensation payment?	• This would include any service rendered to a customer as compensation (i.e. instead of monetary compensation). • If it is a proven loss caused by the administrator, how would the administrator not accept liability? • See revised clause. • The amounts paid to the complainant in terms of paragraphs (b) and (c) are excluded from the definition of "compensation payment" as these are amounts that are legally owed to the complainant. The interest payable on the amounts referred to in paragraphs (b) and (c) is only payable to the complainant because of the benefit administrator's failure to timeously pay the amounts referred to in paragraphs (b) and (c) to the complainant. These amounts are therefore owed as a result of the fault of the benefit administrator and is therefore included in the definition of "compensation payment".
7.	ASISA	Section 1 – definition of "complainant"	What is the intention of including the word 'specific' before complaint? And what is the word 'specific' in relation to?	See deletion of word "specific" (this aligns with insurance and FAIS frameworks)
8.	ASISA	Section 1 – definition of "complainant"	Typo: "has submitted a *compliant* on behalf of…" should read "has submitted a complaint on behalf of…" It is submitted that the complaint should be submitted to the Fund and not the benefit administrator. See our comments under "complaint" below.	Agree. See amendments made to the Standard. Disagree. This framework places conditions, and accordingly the requirement for the complaints management framework, on the benefit administrator and relates to complaints submitted to the benefit administrator in relation to the administrator's conduct.
9.	IRFA	Section 1 – definition of "complainant"	• What is the basis for inserting a new definition when one exists in the Pension Funds Act? Please therefore clarify what will the link/inter-play be between this definition and definition of *complainant* in the Pension Funds Act. We submit that having two definitions of 'complainant' – in the Pension Funds Act and	"Complainant" is defined in the Conduct Standard in relation to benefit administrators specifically. The definition in the PFA is in the context of complaints against funds submitted to the Pension Funds Adjudicator.

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			the Conduct Standard, one for the Adjudicator and one for TCF reporting, will cause confusion. • Should the word 'person' not be replaced with 'customer'? • Please clarify what is the intention of including the word 'specific' before complaint? And what is the word 'specific' in relation too? • See correction : (b) has submitted a **complaint** ~~compliant~~ on behalf of a person referred to in item (a);	 No. See deletion. Agree. See amendments made to the Standard
10.	SAICA	Section 1 – definition of "complainant"	Complainant definition in paragraph (b) states "(b) has submitted a compliant…" , the word compliant should be complaint.	Agree. See amendments made to the Standard
11.	ASISA	Section 1 – definition of "complaint"	Clarity is sought on who is ultimately accountable for complaints where: • there is an overlap between the benefit administrator and the Fund (board of trustees); • there is an overlap between the benefit administrator, who is also an insurer and needs to meet the requirements of PPR Rule 18, and the Fund (board of trustees). Section 30A(1) of the PFA requires the board of trustees to consider a complaint (as per the PFA definition) lodged by a complainant (as per the PFA definition) and section 30A(2) requires the Fund (board) to respond to that complaint. The definition of complaint and complainant in the Conduct Standard differs to the definitions in the PFA. The benefit administrator's processes and procedures may facilitate or act as a conduit for complainants to submit their complaints to the board of trustees, however, this does not mean the benefit administrator is accountable for the complaint. It is submitted that Boards have responsibility for all aspects of Fund management and administration. Service providers such as benefit administrators and	This will depend on the context of the complaint. The Standard seeks to address complaints relating to the conduct of the benefit administrator. The requirements relating to the complaints management framework of the Standard was aligned to those of the Policyholder Protection Rules issued under the insurance frameworks, to the extent that it was appropriate. Each framework provides for the allocation of responsibilities. The context of the complaint (i.e. whether it relates to the conduct of the entity as a benefit administrator, fund or as an insurer) will determine which forum is responsible for effective complaints management and resolution. Also see response to item 8 above.

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			insurers should be required to provide the Boards with all appropriate information, and to put into place such complaints management frameworks and other processes to bring about and facilitate the TCF Outcomes on behalf of the Boards. They should be required to satisfy Boards that their processes and systems are adequate. However, the ultimate responsibility is that of the Boards, and the other players are merely service providers. ASISA members submit that the benefit administrator's accountability for complaints in respect of this Conduct Standard should be limited to complaints related to “administration functions” and “administration services", and the Conduct Standard needs to be clear in this regard. The contractual relationship is between the Fund and the Administrator - the customer will not be in the position to evaluate whether the Administrator has complied with the agreement. Recourse should be against the Fund who is responsible for governance and oversight. Where the outsourced party, such as the benefit administrator, does not meet the requisite standards, the Fund should ensure corrective measures are in place. Ultimately the Fund must take responsibility and must take ownership for outsourced arrangements. The agreement between the Fund and Administrator should incorporate fair treatment of customers as well as recourse against the Administrator if standards are not adhered to. If all entities (the benefit administrator, insurer and the Fund) are held primarily accountable for complaints under various pieces of legislation, in the same context, who has ultimate responsibility and accountability to the complainant? How does the complainant know where to turn to for his/her complaints management and resolution? In the ASISA submission to the FSCA on the <u>second draft of the COFI Bill</u> and dealing with complaints, the following was included – “*In ASISA’s previous submission we expressed our concern that having both the Board of the retirement fund and the product supplier primarily accountable to the member for the same issue, is not conducive to satisfactory outcomes for consumers. Apart from*	Agree. This is already clear from the definition of “complaint” in the draft Conduct Standard. Members of the fund will be able to lodge a complaint against the benefit administrator where it concerns the conduct of the benefit administrator as set out in the definition of “complaint”. The administrator remains responsible for conduct which gives rise to such a complaint. The administration agreement can provide for instances of breach of the agreement by the benefit administrator. There are clear requirements in the draft Conduct Standard for the disclosure to customers of the processes and procedures to lodge a complaint against a benefit administrator. The comments have been considered, but we disagree with the suggestion that only funds should always be held accountable. The context of the complaint must be considered, and which breaches have happened as a result of the conduct.

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			the fact that different ombuds /adjudicators could rule differently on the identical issue, there could be disagreement between the board of the fund and product supplier on the resolution of an issue. Whose view would prevail in law? Legislative clarity is not only essential for retirement funds, but also for retirement fund members." *By way of example: if a member has a complaint about the investment performance of the portfolio his/her retirement savings are invested in:* • *The member directs the complaint to the retirement fund (usually via the appointed administrator)* • *The retirement fund obtains the necessary information to address the complaint from the applicable product provider* • *The member will have right of recourse against the retirement fund if there was failure on the part of the retirement fund's appointed provider* • *The retirement fund will have right of recourse against the product provider if there was a failing on their part in terms of the contract between the fund and the product provider.* In addition, in a previous ASISA submission to the FSCA on the <u>Guidance to Benefit Administrators and to Boards of Retirement Funds for the Implementation of TCF Outcomes, and the TCF Complaints Management Requirements for Administrators approved in terms of Section 13B and Retirement Funds</u>, the following was submitted in respect of complaints*:* *"The proposed TCF guidelines imply that there will be four different entities that will, under the above regulatory frameworks, have primary accountability for the complaints management in respect of the same person for the same complaint. This will in all probability lead to duplication and confusion of accountability for boards, administrators, FSPs and insurers, and also for the complainants themselves.*	

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			In the draft "Guidance to Boards of Retirement Funds for the Implementation of the TCF Outcomes" and "Guidance to Benefit Administrators for the Implementation of the TCF Outcomes" the following is stated: *"Confusion regarding TCF accountability* *A noteworthy finding of the TCF baseline study for the retirement funds industry is a lack of clarity regarding allocation of TCF accountability across the retirement fund value chain. It is evident from the baseline responses that administrators, trustees, product suppliers and others in the value chain have inconsistent views on their respective responsibilities toward the member."* *It is submitted that the proposed Draft Notices do not give much-needed clarity but will in fact contribute to this "lack of clarity regarding allocation of TCF accountability across the retirement fund value chain".* *Similarly, the Guidance documents potentially add to the current confusion in that they do not adequately set out where primary accountability lies. It is submitted that Boards have responsibility for all aspects of Fund management and administration. Service providers such as benefit administrators, FSPs and insurers, should be required to provide the Boards with all appropriate information, and to put into place such complaints management frameworks and other processes to bring about and facilitate the TCF Outcomes on behalf of the Boards. They should be required to satisfy Boards that their processes and systems are adequate. But the Boards should have the final say as to whether such processes are acceptable to them, given that the ultimate responsibility is that of the Boards, and the other players are service providers giving advice, recommendations or outsourced services to those Boards."* ASISA members respectfully submit that these comments are still very much appliable to this Conduct Standard and appeal to the Authority to take such comments into consideration. ASISA members are concerned that these comments are being	

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			disregarded and will result in negative consequences for funds, members and service providers alike, if not heeded.	
12.	IRFA	Section 1 – definition of “complaint”	• What will be the link/inter-play between this definition and definition of *complaint* in the Pension Funds Act? Please clarify. We submit that having two definitions of ‘complain’ – in the Pension Funds Act and the Conduct Standard, one for the Adjudicator and one for TCF reporting, will cause confusion. • Reference to "substantial inconvenience" under paragraph (b) is extremely broad and very subjective and could lead to an increase in complaints that don’t necessarily have merit. We submit that this rather be removed from the definition.	See responses to comments in items 8 and 11 above. Disagree. It refers to substantial inconvenience that was caused by the benefit administrator’s maladministration or wilful or negligent action or failure to act. This has also been aligned with regulatory frameworks relating to complaints of other sectors.
13.	OPFA	Section 1(1) – definitions of “complainant” and “complaint”	These terms are defined differently in the Pension Funds Act, 1956. The OPFA is concerned that this will lead to confusion on the part of potential complainants as their ‘complaints’ may be rejected by the OPFA if it does not fall within the definition provided for in the Act. The Authority should consider using alternative terminology to alleviate any confusion that may arise. The terms “internal complainant” and “internal complaint” are suggested for consideration.	Disagree. Whether the Pension Fund Act or the draft Conduct Standard is applicable to a compliant will depend on the nature of the complaint: where complaints are made to the OPFA in terms of section 30A of the Pension Funds Act, the complaint and complainant must fall within the definitions of the Pension Fund Act. These terms are defined in the draft Conduct Standard with specific reference to the conduct of a benefit administrator and, if a complaint and complainant falls within the definitions of the draft Conduct Standard, the complaint must be directed to the benefit administrator in terms of the complaints management framework established by that administrator.
14.	ASISA	Section 1 – new definition of “conflict of interest”	There is no definition of ‘conflict of interest’ in the Conduct Standard, nor is there a definition in the COFI Bill. Therefore, it is unclear how a benefit administrator is required to identify conflicts of interest and give effect to Part VIII of the Conduct Standard. A suggestion is to consider the definition found in the King IV Code and to adapt it where necessary to make it fit for purpose within this Conduct Standard. ASISA members suggest the following definition in this regard: *“**Conflict of interest** arises in relation to members of the governing body, the key persons (including responsible key person) and*	Disagree. The Conduct Standard follows what is already contained in section 13B(5) of the Pension Funds Act, which also uses the term without defining it. We are reluctant to define this term since it is already used on the Pension Funds Act without a definition informing the term.

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			employees of the benefit administrator, where there is a direct or indirect conflict, in fact or in appearance, between the interests of such person and that of the benefit administrator and the pension fund/s which has contracted with a benefit administrator to perform administration services on its behalf. It applies to financial, economic, and other interests in any opportunity from which the person may benefit due to their position within the benefit administrator. A conflict of interest could arise for instance, in situations where the person has direct or indirect competing interests which could influence his/her judgement and objectivity to the benefit administrator and the pension fund/s which has contracted with a benefit administrator to perform administration services on its behalf."	
15.	ASISA	Section 1 – definition of "customer"	For clarity and ease of interpretation, there should be a distinction between the Fund and the members of a Fund. These are currently used interchangeably, however, this definition does not represent the true legal relationship between the parties by including an end member as the customer of the Administrator. The Fund is the customer of the Administrator, not the end member. ASISA members propose using the reference to "Fund", "member" and/or "the Fund on behalf of its members" in order to avoid confusion. Similarly, it is recommended that the definition of "member" be such that it includes former members, beneficiaries, nominees, potential beneficiaries and nominees. In addition, the definition of customer should be extended to include an employer who participates in an umbrella retirement Fund. The concept of the participating employer is contemplated with the proposed definition of 'sub fund' in the PFA through the COFI consequential amendments (*"sub-fund" means that section of an umbrella fund that is defined in terms of a set of special rules applicable to that employer that participates in the umbrella fund.)*	Disagree. See amendment made to the definition of "customer" to include beneficiaries. The definition now includes the fund, its members and the beneficiaries. The Authority is of the view that the use of the definition is sufficiently clear throughout the Standard. Also note that – (a) "member" is already defined in the Pension Funds Act and includes former members; and (b) "beneficiaries" are defined in the Pension Funds Act and includes nominees. The Authority further disagrees with the inclusion of "potential beneficiaries and nominees" as the relationship that is being governed by the Standard only becomes applicable once a person is a member or a beneficiary of the fund with whom the benefit administrator is contracted. Disagree and is of the view that employers should not be included in the definition of customer. The Standard seeks to address the relationship between the benefit administrator and the fund with whom it is contracted, including the fund's member's and beneficiaries, which would include the employees of the employer.

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16.	BASA	Section 1 – definition of "customer"	1) BASA notes that beneficiaries are not currently included in this definition. 2) In our view, the definition of "customer" should include the beneficiaries, to ensure the rights of beneficiaries, specifically when administered in beneficiary funds are recognized and included.	Agree. See amendment to definition of "customer" to include beneficiaries of a fund.
17.	IRFA	Section 1 – definition of "customer"	• We submit that *Customer* should include beneficiaries/any person to whom a benefit is paid in terms of the rules of the fund. Must be changed throughout Conduct Standard please. • Please confirm if *client* has the same meaning as *customer* in this Conduct Standard and if not, please replace all references to *client* with *customer*.	See response directly above. Client has the same meaning as customer. See amendments replacing references to "clients" with "customers".
18.	OUTvest	Section 1– definition of "customer"	"**customer**", in relation to a benefit administrator, refers to a pension fund which has contracted with a benefit administrator to perform administration services on its behalf, as well as its members; Does the definition of "customer" only refers to a pension fund or its members as well. It seems that "customer" only refers to a pension fund who has contracted with an administrator but would like just to get clarity.	The definition includes members of funds. See amendment to the definition that also provides clarity in this regard.
19.	ASISA	Section 1 – definition of "customer query"	ASISA members suggest the following amendment for clarity: "means a request to the benefit administrator by the fund or one of its members, for information regarding the benefit administrator's functions, or to carry out a transaction or action in relation to any such function for such fund or one of its members;"	Disagree. This must be read with the definition of "customer". It is implied and need not be explicitly stated.
20.	IFRA	Section 1 – definition of "customer query"	See proposed wording: *"customer query"* means a request to the benefit administrator by **a customer** ~~the fund or one of its members~~, for information regarding the benefit administrator's **administration** functions, or to carry out a transaction or action in relation to any such **administration** function	Agree with the first suggestion. See amendments made to the Standard. The insertion of the word "administration" is superfluous.
21.	ASISA	Section 1 – definition of "director"	It is not clear why there is a separate definition for 'director' as the Conduct Standard includes the definition of 'key person', and the definition of 'key person' in the FSR Act includes "*(a) a member of*	Different requirements apply to different key persons. Since there are specific requirements that apply to key

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			the governing body of the financial institution; and 'governing body' in turn includes *(iv) the board of directors of a company;"*	persons that are directors, a definition for directors is necessary.
22.	IRFA	Section 1 – definition of "director"	• Para (a) refers to "*a member of the governing body of the financial institution*", would it thus not be better to say "*director means a member of the governing body of a benefit administrator*"? • See proposed wording. Reference required to the relevant Act where the definition is found: "*director*" means a person referred to in paragraph (a) of the definition of key person **in the Financial Sector Regulation Act**;	The definitions of "director" and "key person" must be read together and directors are a specific type of key person, as per the latter definition. For this reason, the current definition will be retained. It is not necessary to refer to the Financial Sector Regulation Act in the definition of "director" as it is referenced in the definition of "key person".
23.	IRFA	Section 1 – definition of "Financial Sector Regulation Act"	This definition can be deleted because already defined in the Pension Funds Act→ "*and any word or expression to which a meaning has been assigned in the Act shall bear the meaning so assigned to it"*	Agree. See amendments made to the Standard.
24.	ASISA	Section 1 – definition of "fit and proper requirements"	Part V of the Conduct Standard addresses the ongoing Fit and Proper requirements of the benefit administrator. We assume the Fit and Proper requirements in the Conduct Standard will be the same criteria applied by the FSCA in terms of section 13B(1A)(c) of the PFA which deals with the fit and proper requirements when an application to become a benefit administrator is made. Please confirm.	This is correct, these are requirements that must be met upon application to be registered as a benefit administrator and must continuously be complied with. Please also refer to section 13B(1A)(c) of the PFA.
25.	IRFA	Section 1 – definition of "fit and proper requirements"	• Is this definition and Part V of this CS now repealing sec 13B(1A)(c) fit and proper requirements? Would have made sense if sec 13B was to be repealed by COFI but now does not make sense? Also the sec 13B Pension Funds Act requirements much wider and refers to *operational ability* and *financial soundness*? • What exactly is meant with "*good standing*" (is understood to mean something different than "*financial standing*", i.e. wider)?	No, a conduct standard (subordinate legislation) cannot repeal a provision in primary law. Section 13B(1A)(c) allows the Authority to prescribe information to satisfy the Authority that an applicant that seeks registration as a benefit administrator complies with prescribed fit and proper requirements. The ordinary meaning of the concept of "good standing" would apply. It goes wider than "financial standing" and, amongst others, the factors set out in paragraph 11(3) of the conduct standard will be used to determine whether a benefit administrator is in good standing.

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26.	IRFA	Section 1 – definition of "goodwill payment"	What is meant with payment "*in the form of a service*"?	Any beneficial service that is provided to a complainant that an administrator is not contractually bound to provide as compensation to a complainant.
27.	ASISA	Section 1 – definition of "liquid assets"	The Conduct Standard only recognises bank deposits as liquid assets, it does not consider other asset classes such as CIS in money markets and other asset classes which are capable of being converted to cash within 30 days. ASISA members propose that this definition should align with the definition found in the FAIS Fit and Proper BN in paragraph 47, amended for this Conduct Standard as follows: "**liquid assets"** means– (a) cash; or (b) a participatory interest in a money market portfolio; (c) provided that– (ii) the assets referred to in paragraphs (a) and (b) are capable of being converted, without any penalty on capital in terms of the conditions of the asset, into cash as follows– (aa) 50% within 7 days; and (bb) 50% within 30 days."	Agree. Amendment made.
28.	IRFA	Section 1 – definition of "liquid assets"	This definition differs from the definition in the current conditions under the Board Notice in that it seems to expand on what is included in current asset. Current assets by definition does include deposits and cash balances with banks, please clarify what then is intended by using the word "including"? Does "liquid assets" include assets as set out in the definition of current assets?	Please see response directly above.
29.	IRFA	Section 1 – definition of "outsourcing contract"	See correction: *"outsourcing contrac*t" means a documented contract between a benefit administrator and ~~a~~ **its** service provider that gives effect to an outsourcing arrangement	Definition has been deleted.
30.	OPFA	Section 1(1) – definition of "ownership interest"	• The term "fair value" is used in the definition and should be defined.	Agree. See inserted definition for "fair value" in the definitions section. Unclear what is being proposed.

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			• The definition does not cater for an ownership interest that may arise as a result of starting up a business.	
31.	ASISA	Section 1 – definition of "plain language"	Typo: "…taking into account the factually established or reasonably assumed level of knowledge…"	Noted. See amendment made to Standard.
32.	IRFA	Section 1 – definition of "plain language"	See correction: (c) is adequate and appropriate in the circumstances, taking into account the factually established or **reasonably** ~~reasonable~~ assumed level of knowledge of the person or average persons at whom the communication is targeted	Noted. See amendment made to Standard
33.	IRFA	Section 1 – definition of "potential customer"	We submit that the inclusion of "*or has received advertising material in relation to the business of the benefit administrator*" is too wide and should be narrowed down. Is seeing a TV ad, or receiving a newspaper with an ad 'receiving'?	Disagree that the definition of "potential customer" is wide. The definition should be read as a whole and refers to instances where a fund has been approached by a benefit administrator.
34.	ASISA	Section 1(1) – definition of "rejected"	Typo: "…benefit administrator 's proposals…" should read "…benefit administrator's proposals…" It should be noted that the Administrator does not have authority in all instances to summarily dismiss a complaint without referring the matter to the Fund.	Noted. See amendment made to Standard.
35.	OPFA	Section 1(1) – definition of "rejected"	It is proposed that the definition of the term "rejected" should include the duty of the benefit administrator to inform the complainant of their right to escalate the matter to the OPFA or other relevant ombud scheme such that a matter may not be considered to have been properly rejected in the absence of same.	Agree with the comment regarding disclosure of the escalation process. The Authority does not agree that it should be included in the definition of "rejected" as this disclosure has already been provided for in paragraph 23(2) of the draft Conduct Standard.
36.	IRFA	Section 1 – definition of "suspense account"	We submit that *unclassified payments* be defined for clarification purposes.	Disagree. When read with the relevant paragraph 34 of the draft Conduct Standard, its meaning is clear.
37.	IRFA	Section 1(1) – definition of "upheld"	c) all undertakings made by the benefit administrator to resolve the complaint have been met or the complainant has explicitly indicated **its** satisfaction with any arrangements to ensure such undertakings will be met by the benefit administrator within a **timeframe** ~~time~~ acceptable to the complainant	Agree. See amendments made to the Standard.
38.	OPFA	Section 1(1) – definition of "upheld"	• Typing error in the brackets for subparagraph (b). Should be "(b)" instead of "{b)".	Noted. See amendments made to Standard.

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			• Grammatical error in subparagraph (c). The word "Its" should be in lower case.	
39.	ASISA	Section 1(2)	Should reference to "pension funds" not be reference to "customers"?	No. The services rendered by a benefit administrator are rendered to pension funds. The definition of "customer" includes members of pension funds, which should not be included in this context.
40.	IRFA	Section 1(2)	See question above about whether it is intended that self-administered funds (under the new licensing regime) are to comply with this Conduct Standard and please clarify if that is the intention with the inclusion of this subparagraph?	See response to item 5.
41.	OPFA	Section 1(2)	The phrase "administrative functions" should be replaced with "administration functions or administration services".	Agree. See amendments made to the Standard.
PART II - BUSINESS PRINCIPLES, CULTURE AND GOVERNANCE				
42.	ASISA	Part II General Comment	As per ASISA members' comments above the Conduct Standard needs to address the scenario where the benefit administrator is also a licensed insurer, as there are overlapping requirements in this Conduct Standard and the regulatory framework that applies to insurers, such as: • PA Guidance Note GOI GN 2.1: Corporate Culture • Prudential Standard GOI 2 Governance of Insurers • Prudential Standard GOI 1 Framework for Governance and Operational Standards for Insurers, read with Chapter 5 of the Insurance Act. • Prudential Standard GOI 3 Risk Management and Internal Controls for Insurers • PPR 1.4, 1.6 and 1.7 The following two alternative wordings are proposed: *1. Business principles* ***Application of Chapter*** The requirements relating to business principles, culture and governance contained in this Chapter do not apply to a benefit	Disagree. Where a benefit administrator is also a licensed insurer, there will have to be compliance with both sets of regulatory frameworks. Most of the requirements set out in this Part are aimed at the promotion of TCF principles, which are applicable in both sectors. As far as we are aware there are no inconsistencies or direct contradictions between this Conduct Standard and the other pieces of legislation referenced. Notwithstanding, we have included your alternative proposal.

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			administrator who is also a licensed insurer in terms of the Insurance Act, 2017. Alternative proposal: *1. Business principles* ***Application of Chapter*** *Where a benefit administrator is also a licensed insurer in term of the Insurance Act, 2017, in the event of any inconsistency between a provision of this Conduct Standard and a Prudential Standard issued in terms of the Insurance Act, the latter will prevail.*	
43.	IRFA	Part II	Benefit administrator is defined as the juristic entity but for some entities, the benefit administration function is one of many business units within the juristic entity. Please clarify if the principles under this Part II apply to the whole juristic entity or only the business unit actually performing the benefit administration functions?	The requirements of the draft Conduct Standard are imposed on benefit administrators and only pertains thereto. It will therefore be applicable to the entity that is licensed as a benefit administrator performing the administration functions. Approval granted in terms of section 13B(1) is granted to the entity, not to a business unit within the entity.
44.	OPFA	Sections 2, 3 and 4	The conditions contained in Part II of the draft Conduct Standard are couched in general terms and are open to subjective interpretation (more appropriate for a Guidance Notice). The OPFA is concerned about the enforceability of such conditions especially if same becomes the subject of a complaint submitted to the OPFA for determination.	The conditions are couched as principles-based requirements, which is generally accepted and forms a key strategy of the FSCA's regulatory framework going forward. Principles-based requirements will always contain an element of subjectivity, but it does not mean it is not enforceable. Objective judgement can still be applied to determine whether the requirement is met.
45.	SAICA	Section 2(1)	This section embodies how funds aim to run their business and the culture embed in staff, however as much as this applies on a daily basis it is not necessarily documented. Fund management has experienced a number of these items form part of their unconscious operations on a daily basis. What evidence is required that these matters are performed and on what regularity would this need to be documented in order to satisfy the Authority during reviews (and to provide the auditors with comfort when performing the annual certification).	Note that this provision has been removed from the Conduct Standard.
46.	IRFA	Section 2(1)(b) & (c)	See correction and proposed wording:	See amendments made to the Standard.

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			(b) conduct its business **fairly and** with integrity, **honesty** ~~honestly, fairly,~~ and ~~with~~ due skill, care and diligence (c) identify and promote a culture that supports ethical behaviour and aims to ensure that the **matters** ~~matter~~ referred to in items (a) and (b) are central to the values of the **benefit administrator** ~~financial institution~~	
47.	IRFA	Section 2(2)	See correction: (2) The fair treatment of customers by a benefit administrator referred to in subparagraph (1**)(a)** encompasses achieving, inter alia, the following outcomes	Agreed.
48.	IRFA	Section 2(2)(e)	An administrator is only providing admin services/functions thus "*including barriers relating to changing products"* should be deleted or the intention must be explained.	Although we do not entirely agree, we are comfortable removing that reference as that is merely an example of a barrier. The overarching outcome, i.e. "customers should not face unreasonable post-contractual barriers", will still apply notwithstanding the specific examples provided.
49.	ASISA	Section 4(1)	Typo: "A benefit administrator must … and supports the achievement of sub-paragraph 2."	Disagree. The governance arrangements must also support the achievement of the business principles referred to in paragraph 2(1) of the draft Conduct Standard.
50.	IRFA	Section 4(1)	See correction: (1) A benefit administrator must adopt, document and implement governance arrangements that provide for the prudent management and oversight of its business and supports the achievement of **sub-**paragraph **(**2**)**	See response directly above.
51.	IRFA	Section 4(2)	Should subparagraph 4.2(b) not rather be included as a new subparagraph 3.2(b), i.e. does not deal with the achievement of the governance arrangements?	Paragraph 4(2)(b) has been deleted.
52.	IRFA	Section 4(2)(d)	There are words missing in the following requirement: "*promote accountability and roles, responsibilities and duties of the governing body, directors, senior management and heads of control functions (where relevant*);".	Disagree that there are words missing. The requirement is twofold: it must promote (1) accountability; and (2) roles, responsibilities and duties; of the governing body, directors, senior management and heads of control functions (where relevant).
53.	OPFA	Section 4(2)(e)	The phrase "necessary skills, knowledge and expertise" requires definition.	Disagree. These terms are self-explanatory and must be given their ordinary meanings. What would regarded as

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				"necessary skills, knowledge and expertise" would depend on the specific role of the particular person.
54.	IRFA	Section 4(2)(f)	We submit that "*or the funds*" should be replaced with "*or a customer of the benefit administrator*" to also include a member.	Agreed. See amendments made to the Standard.
55.	IRFA	Section 4(2)(g)	So wider reference to "*persons*" and not like in paragraph (h) "*its personnel*". Please clarify if this is the intention? Also, what is meant with "remove"? Should it not rather refer to "take corrective action"?	"persons" in this instance is not limited to "its personnel" as in subparagraph (h). this is because it also includes other persons that maybe contracted by the benefit administrator to service customers including outsourcings. No, it should not refer to "take corrective action". "remove" refers to the removal of such persons from their role which leads to the increase of the risk.
56.	OPFA	Section 4(2)(j)	Typing error – the hyphen mark appearing after the word "risk" should be deleted.	Agreed. See amendment made to the Standard.
57.	IRFA	Section 4(2)(m)	Please clarify how this requirement must be applied in the case of a financial services company that is not only a benefit administrator, but also, for example, an insurer and an asset manager? Does this requirement only apply to employees working for the benefit administration part of the company?	Yes, it applies in the context of providing benefit administration services.
58.	SAICA	Section 4(3)	Some funds' policies are set at a group level, also a number of policies are similar/are the same across the different S13B administrators within the Group. Would a Group level policy be sufficient or would the Regulator require separate policies per S13B administrator.	This section refers specifically to a benefit administrator's policies and not fund policies. The Authority will not be opposed to a Group Level policy, provided that it is clear to who the policy relates, and those policies are the same across all the different section 13B licences.
59.	ASISA	Section 4(5)(b)	Typo: "it" in the second line should be "its".	Agreed. See amendments made to the Standard.
60.	IRFA	Section 4(5)(b)	See correction: b) the integrity of the benefit administrator's practices, including the effectiveness of **its** ~~it~~ practices in relation to ensuring fair outcomes for customers	Agreed. See amendments made to the Standard.
PART III - NOTIFICATIONS REGARDING CHANGES IN INFORMATION				

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61.	ASISA	Part III General comment	The Conduct Standard needs to address the scenario where the benefit administrator is also a licensed insurer, as there are overlapping requirements in this Conduct Standard and the regulatory framework that applies to insurers, such as section 17 (Change of control) and section 14 (appointment of Key Persons) of the Insurance Act. In terms of the Insurance Act the appointment of certain Key Persons of an insurer requires prior approval from the PA. The following wording is proposed: ***PART III*** ***Application of Chapter*** *The requirements relating to notification regarding changes in information contained in this Chapter do not apply to a benefit administrator who is also a licensed insurer in terms of the Insurance Act, 2017.*	Disagree. Where the benefit administrator is also a licenced insurer, it will have to comply with both the Standard and the insurance regulatory framework. To our knowledge there are no contradictions between what is being proposed here and the insurance regulatory framework. Also see comments above at item 42
62.	IRFA	Section 5(2)(a)	See correction: a) In the case of the benefit administrator being a company or close corporation, proof that the name of the company or close corporation has been approved as required in terms of the Companies Act, No. 71 of 2008 or the **Close** ~~Closed~~ Corporation Act, No. 69 of 1984	Noted, see amendments made to the Standard.
63.	SAICA	Section 5(2)(a)	The paragraph refers to Closed Corporation Act instead of Close Corporation Act.	Noted, see amendments made to the Standard.
64.	ASISA	Section 6	Currently there is no information in the public domain to check records against those with the FSCA, some of the information could be at inception of the benefit administrator's business, this could then result in enforcement actions where some information may not be updated as some of these may not have been a requirement before? ASISA members propose that the FSCA consider giving an opportunity for administrators to reconcile their records with those of the FSCA within the allocated transitional period.	Although the wording is not exact, this was already a requirement in terms of paragraph 12 of BN 24 of 2004 and the Authority's records should therefore be up to date. The Authority has recently attempted to obtain updated information through various requests for information across the various industries. The Authority will not be opposed to benefit administrators approaching it to ensure that the Authority has updated information.
65.	ASISA	Section 6	A "senior manager" includes a person "*who makes or participates in making decisions that affect the whole or a substantial part of the business of the financial institution*", which would presumably, at least, include all the members of the executive committee. What	No, the Authority should only be notified in relation to changes in senior managers that relate to the benefit administration part of the business. See amended definition of "senior manager" which now clarifies this.

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			would the situation be in the case of a financial services company that is not only a benefit administrator, but also, for example, an insurer and an asset manager? Must the Authority also be notified of a change in senior managers who have no involvement in the management of the benefit administration part of the company? ASISA members submit that this would be unnecessary and may even be prohibited under the Protection of Personal Information Act, 2013.	
66.	IRFA	Section 6	• A "senior manager" includes a person "*who makes or participates in making decisions that affect the whole or a substantial part of the business of the financial institution*", which would presumably, at least, include all the members of the executive committee. What would the situation be in the case of a financial services company that is not only a benefit administrator, but also, for example, an insurer and an asset manager? Must the FSCA also be notified of a change in senior managers who have no involvement in the management of the benefit administration part of the company? • The shareholders of a company listed on the JSE change on a daily basis. It would not be practical for such a company to notify the FSCA every time there is a change in shareholders and further, the shareholders would be unknown and can change without the entity being aware of it. It is submitted that this paragraph should be amended so that there is only an obligation to notify the FSCA in the case of a change in shareholding that results in a change of control of the benefit administrator company. This requirement should therefore only apply to unlisted entities. • With regard to senior managers, please clarify if the 30 days notification period starts to run once the person has been appointed or promoted to that role? • Will the format or the notification be prescribed on the FSCA's website? • Please note that the definitions of key person/senior manager will require a review of existing staff grades/titles/contracts of employment. This process can be quite time consuming and so	• See response directly above. • See amendment made to the Standard- shareholder notifications have been removed. • Paragraph 6 is clear: the Authority must be notified within 30 days of the change taking place, regardless of whether it has been an appointment or a promotion. • Yes. The final version of the forms will be published simultaneously with, or shortly after, the publication of the Conduct Standard. • Disagree. We believe that the concern raised is overstated and does not justify a longer transitional period. Notwithstanding, the transitional period has been extended due to other impacts highlighted through comments.

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			sufficient time period needs to be factored in for the HR process and we submit that the 6 months' transitional period will not be sufficient	
67.	SAICA	Section 6	A change needs to be notified within 30 days, including the details of the new individual. E.g. for the responsible key person a significant amount of information needs to be provided to the Regulator, including references, police clearance etc. plus, as this is a senior position the entity may need to appoint a new staff member (which can easily take more than 30 days due to the nature of a recruitment process). Can a "caretaker" be advised (e.g. the CEO or other head of a control function) with less onerous submission requirements until a new responsible key person is appointed (that will then obtain and submit the references, police report etc) or can the 30 day period be extended? Or does an extension need to be applied for where e.g. a new responsible key person needs to be recruited?	See proposed change to the conduct standard. This should address your issue.
PART IV - RESPONSIBLE KEY PERSON				
68.	ASISA	Section 7(1)	ASISA members submit that a benefit administrator, due to its nature, size and complexity, may appoint more than one responsible key person. The following wording is proposed: *"A benefit administrator must appoint ~~a~~ at least one person to manage and oversee the performance of administration functions by the benefit administrator"*	The clause has been deleted.
69.	IRFA	Section 7(2)	• Members of the executive committee of a large financial services company that does not only do benefit administration, are not involved in the management of the day-to-day administration functions performed by the benefit administration part of the company. If the intention is that the responsible key person must be a member of the executive committee, it is accordingly submitted that this would not be practical. It is submitted that the responsible key person should rather be a senior employee in the benefit administration part of the company. e.g. the Head of the Operations area or Chief Operating Officer. OR we submit that the RKP should be	See response directly above.

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			allowed to delegate the administration functions to another (less senior) person within the benefit adminsiatrtor • It is submitted that by introducing this requirement, the FSCA is unduly empowered to interfere with an administrator's labour relations arrangements	
70.	ASISA	Section 7(3)	The current requirements for approval of a responsible person (responsible key person) are to also submit a police clearance (as set out in Annexure 2 of the forms). Police clearances in SA currently take an inordinately lengthy time and will cause unnecessary delays in the application process. ASISA members submit that this not be a requirement. Further, It is also inconsistent with other financial sector laws for approval of key persons, such as with the FAIS requirements for appointment of KIs and CISCA for appointment of directors, which only require Managed Integrity Evaluation checks to be done.	See response directly above.
71.	IRFA	Section 7(5)	Please clarify if 'terminate' relates to employment or appointment as the responsible person?	See response directly above.
72.	IRFA	Section 7(5)(c)	Under what circumstances would the appointment of the responsible key person be contrary to public interest?	See response directly above.
73.	IRFA	Section 7(6)	• Is the intention to then also have to appoint a new responsible key person within the 30 day period? If that is the case, we submit that this period be extended to 90 days in light of the fact the fit and proper requirements for KRP is quite onerous and unlikely that the administrator will make another appointment within 30 days. • Please clarify if there could there be a "deputy" responsible key person? Especially for the interim period (i.e. the 90 days) whilst the administrator is looking for new KRP when his appointment has been terminated by the FSCA to fulfil the functions as prescribed in this Conduct Standard. • We submit that it should be allowed that a benefit administrator may appoint more than one KRP as many 'benefit administrators' have more than one person in charge of administration of funds. They may then report to one person ultimately.	See response directly above.

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			• Also, benefit administrators who are also insurers usually have a large retail business and corporate business which operates separately under the S13B license. With this is mind, please clarify if there could there be more than one responsible key person appointed for a benefit administrator in respect of different areas of the business.	
74.	OPFA	Section 8	The Conduct Standard should state that the protection afforded to persons under section 254 and 255 of the Financial Sector Regulation Act, 2017 applies to the responsible key person. It should further provide for reports that can be provided under the protection of anonymity which should be guaranteed by the Authority.	Although we disagree that this is necessary as sections 253, 254 and 255 of the Financial Sector Regulation Act are not limited and applies to a “person”, which would include a responsible key person, please note that the clause has been deleted.
75.	ASISA	Section 8(1)	It is unclear what this clause is trying to achieve? The definition of customer refers to both the Fund and its members. Is the intention to refer to the Fund in its entirety or rather the impact on the Fund’s members? Separate definitions as suggested in comments above would resolve this. The words: “*any matter relating to the affairs of a member of the administration of a fund…*” do not make sense. See amendment below. In addition, the wording in section 8(1) of the Conduct Standard is much broader than the requirements set out in s13B(10) and is not limited to a *material matter relating to the affairs of a Fund, which in the opinion of the Administrator may prejudice the Fund or its members, the Administrator must inform the registrar of that matter in writing without undue delay*. ASISA members would prefer that the requirements in the Conduct Standard align with the requirements of the PFA. Please see proposed wording related to the above comments: *“The responsible key person of a benefit administrator must in writing report to the Authority any matter relating to ~~the affairs of a member of~~ the administration of a Fund which, in the opinion of the*	The clause has been deleted.

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			responsible key person, may ~~unduly~~ materially prejudice a customer or impede fair outcomes to customers of the benefit administrator." Please clarify.	
76.	ASISA	Section 8(1)	Is there a prescribed format for the reporting? What are the consequences for the responsible key person if they fail to report to the Authority? What does the Authority intend doing once such matters are reported?	See response directly above.
77.	IRFA	Section 8(1)	• The reference to the "affairs of a member" – is this with reference to a member of a fund? This cluse is very vague? This could overlap with complaints reporting? See proposed wording: 1) The responsible key person of a benefit administrator must in writing report to the Authority any matter relating to the ~~affairs of a member of~~ the administration of a fund which, in the opinion of the responsible key person, may unduly prejudice a customer or impede fair outcomes to customers of the benefit administrator • What is link/inter-play between this paragraph and the requirement under sec13B(10), i.e. report on "*material matters*" (not **any** matter) that "*may prejudice fund/members*" (not **unduly** prejudice or impede fair outcomes)? • This requirement is overly broad and may result in every prejudice or impediment, however small, being reported to the FSCA. Furthermore, by stating it will be "in the opinion of the responsible key person" creates a subjective test. What one 'benefit administrator' believes to possibly unduly prejudice a customer or impede fair outcomes to customers may not be the belief of another. It is therefore submitted that the FSCA should provide examples or elaborate on what constitutes a reportable matter. • Is there a prescribed format for the reporting? • What are the consequences to the responsible key person if they fail to report to the FSCA? • What does the FSCA intend doing once such matters are reported?	See response directly above.

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			• Surely this would be very difficult, i.e. conflict between being snr employee (in trust relationship with benefit administrator as his ER) and now expected to whistle blow on his ER? Responsible key person cannot be treated same way as provided for in the Pension Funds Act in respect of auditor, valuator, trustees, or even jnr employee of administrator, for purposes of whistle blowing. • Please clarify to what extent will such whistle-blowers be protected from disciplinary action being taken by their ER against them • Should the reporting be about the "administration of a fund" or about "the business of the benefit administrator"? Certain contraventions of the law by an administrator may not have anything to do with the administration of a fund by the administrator but with the administrator's business e.g. failing to comply with the prudential requirements. • What is the difference between "unduly prejudice" and "prejudice" as both have been used in the Conduct Standard? • Does reporting "unfair outcomes for customers" go one step too far as it will cover too much ground? It may be better to stick to suspicion about contraventions of the law. For example, most complaints would fall within the description of unfair outcomes for customers (and the same may apply to prejudice) and thus would trigger notifications. Over-reporting could lead to real problems not receiving the attention they deserve. • Are these issues to be reported by the responsible key person those that 'the responsible key person became aware of in the performance of his or her duties' (similar to what is required below)? Or is this a positive obligation to find out about these issues in order to report them? • Has the FSCA done research into this type of reporting and what works in other jurisdictions in relation to the type of issue that should be reported? If yes, please share the rationale behind reporting required in relation to issues over and above suspected or actual contraventions of law.	

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78.	SAICA	Section 8(1)	All matters need to be reported that may cause prejudice – are there further guidelines to this? E.g. an error may have occurred that prejudices the member, the error is in the process of being corrected and the member is being put in the correct position. Does this need to be reported? Or is there a timeline where if this is not corrected within a certain period of being identified where it will then need to be reported? Also if the impact is R1 would this need to be reported (i.e. is there a materiality consideration)?	See response directly above.
79.	ASISA	Section 8(2)	Typo: "… as soon as reasonably possible…"	See response directly above.
80.	IRFA	Section 8(2)	See correction: (2) A report referred to in subparagraph (1) must be submitted to the Authority by the responsible key person as soon as reasonably **possible** ~~possibly~~ after becoming aware of a matter referred to in that subparagraph	See response directly above.
81.	SAICA	Section 8(2)	Whilst most reporting requirements have specified reporting timelines, this paragraph which seem to be a significant reporting role for the responsible key person does not detail reporting timeframes. Will detailed reporting guidelines be provided?. It would also be beneficial for the Authority to specify what internal managerial or board of fund obligation the key person has in this regard as well. This seem to relate to section 252 of the FSR Act and thus further guidance is required.	See response directly above.
82.	ASISA	Section 9	Section 9(1) requires the benefit administrator to notify the FSCA within 30 days of termination while 9(3) requires 21 days notification by the outgoing responsible key person. It is not clear why there is a discrepancy in the number of days to report. ASISA members propose alignment of days for ease of monitoring and supervision.	The clause has been deleted.
83.	IRFA	Section 9(1)	Please clarify if this is 30 days from the person giving notice of resignation or 30 days from the actual termination of employment as a result of resignation?	
84.	IRFA	Section 9(2)	See proposed wording. As the notice must be given by the benefit administrator, not the responsible key person, reasons for resignation can only be given if they are provided by the responsible key person to the administrator (i.e. the administrator may not know why the responsible key person has resigned if the responsible key person does not tell it):	See response directly above.

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			(2) A notice of termination or resignation referred to in subparagraph (1) must include reasons for the termination or resignation **(if known to the benefit administrator)**, and a notification relating to the appointment of a new responsible key person in accordance with paragraph 7(3).	
85.	IRFA	Section 9(3)	Consider aligning wording between (1) and (3): is it resignation of the responsible key person or resignation of the appointment of their appointment that must be notified? Or both?	See response directly above.
86.	IRFA	Section 9(3)(b)(i)	Some of the same issues would arise as referred to in section 8.	See response directly above.
PART V - FIT AND PROPER REQUIREMENTS				
87.	ASISA	Part V – General comment	The Conduct Standard needs to address the scenario where the benefit administrator is also a licensed insurer, as there are overlapping requirements in this Conduct Standard and section 13 of the Insurance Act (Fit and proper requirements for key persons) read with Prudential Standard GOI 4 Fitness and Propriety of Key Persons of Insurers. The following wording is proposed: ***PART IV*** ***Application of Chapter*** The fit and proper requirements contained in this Chapter do not apply to a benefit administrator who is also a licensed insurer in terms of the Insurance Act, 2017.	It is unclear why the requirements should not apply to a benefit administrator that is an insurer. The fact that it is also addressed in the prudential framework is not a sufficient reason. Note that the FSCA does not have jurisdiction to take action in terms of the Insurance Act and prudential standards. Excluding such benefit administrators from this Conduct Standard will therefore mean that the FSCA cannot enforce should an individual be found to lack fitness and propriety. Proposal therefore not accepted.
88.	IRFA	Section 10(1)	• Is this Part V of the CS now repealing sec 13B(1A)(c) fit and proper requirements? Would have made sense if sec 13B was to be repealed by COFI but now does not make sense? Also the sec 13B PFA requirements much wider and refers to *operational ability* and *financial soundness.* Please clarify. • Please confirm if the fit and proper requirements apply only to sec 13B administrators or if it extends to a benefit administrator's associates as well.	• No, a conduct standard (subordinate legislation) cannot repeal a provision in primary law. The draft Conduct Standard must be read with and in addition to section 13B. Section 13B(1A)(c) provides that the applicant (for registration as a benefit administrator) must comply with the fit and proper requirements prescribed by the Authority, including information as listed in that section. This section therefore empowers the Authority to prescribe fit and proper requirements, which is one of the purposes of the draft Conduct Standard. • Paragraph 10(1) clearly sets out to whom the fit and proper requirements apply.

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			• Will additional detail be provided of what constitutes fit and proper in this environment, so that if necessary, training can be provided. This would involve additional compliance oversight, which would increase compliance costs.	• No additional detail will be provided, the draft Conduct Standard prescribes the fit and proper requirements.
89.	IRFA	Section 10(2)	• How often must the disclosure be made? • What are the consequences of non-disclosure? • Please clarify what type of information the benefit administrator must disclose to the FSCA and if there will be a prescribed format for such disclosure to be made. • Please clarify if an administrator must now, once this Conduct Standard is effective, assess all its current personnel's past behaviour to ensure they comply with the fit and proper requirements?	Clause has been deleted.
90.	OPFA	Section 11(1)(b)	The phrase "of good standing" requires definition.	Disagree- see response with regard to "good standing" in the response in item 25.
91.	IRFA	Section 11(2)	Will there be a public register of persons who are deemed by the FSCA to be "not fit and proper" so an administrator can ensure that it does not appoint someone that is on that list?	No. The duty is on the benefit administrator to ensure that persons that are appointed by it are fit and proper, similar to how financial services providers must ensure that representatives are fit and proper.
92.	IRFA	Section 11(3)(b)	There are administrators, currently, that have been convicted or pleaded guilty to crimes in the past (and in addition there may be a civil liability component). Is this to be taken into account on an ongoing basis going forward for fit and proper purposes? Or please clarify if this may perhaps be considered as part of sub paragraph (4)?	Yes, it will have to be considered on an ongoing basis. Also see the response under item 89. Bear in mind that the factors referred to in paragraph 11(5) should also be taken into account when doing this assessment. It is not clear why the commentator is referencing subparagraph (4). The relevant circumstances are covered under subparagraph (5).
93.	OPFA	Section 11(3)(b)	The phrase "significant fine" requires definition or quantification.	Disagree. The ordinary meaning of the word would apply.
94.	ASISA	Section 11(3)(c)	Typo: "an" in the second line should be deleted.	Noted, see amendment made to the Standard.
95.	IRFA	Section 11(3)(c)	See correction:	Noted, see amendment made to the Standard.

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			(c) has accepted civil liability for, or has been the subject of a civil judgment in respect of, theft, fraud, forgery, uttering a forged document, perjury or ~~an~~ any conduct involving dishonesty, breach of fiduciary duty, misrepresentation, or negligent, dishonourable and unprofessional conduct	
96.	IRFA	Section 11(3)(f)	Should this not rather state "**has been proven to have** breached a fiduciary duty"?	Disagree. Also see response directly below.
97.	OPFA	Section 11(3)(h)	What if the refusal was as a result of an administrative requirement? Would this still constitute *prima facie* evidence that the person does not meet the requirements?	Yes. It is important to understand that *'prima facie'* as referred to in section 11(3) merely means that on the face of it, at first glance or before further examination, the evidence is sufficient to establish a fact or raise a presumption **unless disproved, refuted or rebutted**. The factors listed under section 11(3) are further limited by the qualifying criteria in 11(4). The above must further be seen in light of the fact that a decision by the Authority constitutes an administrative act and as such is subject to the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000) (PAJA). The Authority must therefore give an affected party the opportunity to make representations prior to making a decision that may adversely affect such person's rights.
98.	IRFA	Section 11(3)(h)(i)	The requirement that a person who has been denied registration or membership of any professional body will not meet the fit and proper requirements, is extremely broad and could result due to an administrative oversight or not meeting an arbitrary requirement and therefore cannot be considered in isolation. The denial must be on a material basis.	See discussion directly above.
99.	OPFA	Section 11(3)(j)	The phrase "*or any action to achieve one of the aforementioned outcomes has been instituted against the person*" presumes guilt without the completion of due process rendering the draft subsection unfair and potentially unconstitutional. It is proposed that the quoted phrase be deleted in its entirety.	See discussion above at item 97 on the meaning of "*prima facie*" and the effect of paragraph 11(4). The Authority is of the view that the requirements do not offend a person's Constitutional rights. In the event that the Authority fails to comply with the rules of natural justice or the prescripts of PAJA when

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				exercising a public power, an aggrieved party has the remedy of review available as contemplated in section 33 of the Constitution and section 6 of PAJA. An aggrieved person further has a right of appeal to the Financial Services Tribunal prior to approaching the Courts. The commentator's attention is also directed to section 22 of the Constitution that provides that every citizen has the right to choose their trade, occupation or profession freely. The requirements do not limit this right since it has no impact on the right to choose a profession. Most importantly, section 22 provides that the practice of a trade, occupation or profession may be regulated by law. This is precisely the intended purpose of the requirements. The requirements are intentionally not restricted to a person who, for example, was convicted or found guilty of an offence. Whether a person is fit and proper should not be dependent on it being criminally convicted. The purpose of paragraphs 10 and 11 is to assess whether a person is honest, has integrity and is of good standing. A proper assessment requires a consideration of all factors not only those factors on which a person was convicted.
100.	OPFA	Section 11(3)(k)	The phrase "business conduct" requires definition.	Disagree. This phrase will have its ordinary meaning.
101.	IRFA	Section 11(3)(m)	Please clarify what is meant with "willingness"? And when will this be the case for example, how will this be determined in practice?	"willingness" has its normal, grammatical meaning. A lack of willingness to comply may be established by repeated failure to comply with the relevant requirements and failure to take steps to rectify such non-compliance.
102.	IRFA	Section 11(3)(n)	Please clarify what would "fitness **and propriety**" refer to? We submit that it is rather replaced with "fit and proper" that is defined in this Conduct Standard	Disagree. 'Fitness and propriety' is correct in the context of the sentence.
103.	OPFA	Section 11(3)(o)	The period of one year is not long enough to provide an effective deterrent. It is proposed that the period be a default of five years or	Disagree. The time period must be read in the context of the provision. If an organisation is, for example, placed

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			such shorter period as may be allowed by the Authority on application by the relevant person.	under curatorship today, it would be unreasonable to say that a person who was connected to that organisation 5 years ago is regarded as not being fit and proper. However, if that person was connected to that organisation in the last year, the consideration should be very different.
104.	IRFA	Section 11(4)	We submit that it may be useful to include a paragraph (4)(d) which refers to the senior management of the business or directors of the business having substantially changed since the incident (crime, civil liability, etc) occurred.	Disagree and is of the view that paragraphs (a) to (c) are sufficient.
105.	IRFA	Section 12(1)(b)	Would details of relevant qualifications be provided by the FSCA?	No. The educational qualification must be relevant in respect of the function that the person performs.
106.	IRFA	Section 12(2)	• See correction: (2) Where a senior manager (including the responsible key person) or head of a control function (where relevant) of a benefit administrator does not comply **with** subparagraph (1), the Authority may direct the benefit administrator to make arrangements, to the satisfaction of the Authority, to address the non-compliance, which arrangements may include • Is the reference in subparagraphs 12(2)(b),(c) and (d) to "key person" a reference to "key person" as defined in paragraph 1(1), or does it refer to a responsible key person? Or should it refer to "person" so as to include "*Senior managers (including the responsible key person) and head of a control function (where relevant)*"?	Agreed. See amendment made to the Standard. It does not refer to the responsible key person in this context. "key person" in this context refers to "key person" as defined in section 1 of the Financial Sector Regulation Act. Note that the "responsible key person" concept has been removed.
PART VI - AGREEMENTS IN RESPECT OF ADMINISTRATION				
107.	Integrity	Part VI	The contents required to be included in a SLA are far too detailed, in particular in relation to the take-on procedures	Disagree and is of the view that the detailed content provides better guidance.
108.	PWC	Part VI – General comment	We propose clarity be provided in relation to the following: (1) Transitional provisions for administration agreements. (2) Would administrators be required to enter into new agreements with their customers if the existing agreements do not contain all the items required by this conduct standard?	(1) See transitional arrangements included in the conduct standard (2) Yes, new agreements will have to be concluded. However, transitional arrangements will apply.

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109.	BASA	Section 13	One of the BASA members raised an issue on clarity required whether administrators of death benefits be required to enter into a service level agreement with the pension funds? The relationship is continued with the beneficiaries not the pension fund.	This comment is not clear. Administrators of beneficiary funds are required to comply with the provisions of section 13 of the Pension Funds Act, 1956.
110.	ASISA	Section 13(1)	In order to be practical and avoid duplication of efforts, ASISA members recommend the Conduct Standard make provision for one administration agreement where multiple funds are administered by the same benefit administrator, with the same Board of trustees. This is found with the sponsor funds where there may be a sponsored retirement annuity fund, pension preservation fund and provident preservation fund - all three funds have the same board of trustees.	Section 13(1) does not prohibit having one administration agreement for multiple retail funds provided that the administration agreement is clear in respect of the duties owed to each fund.
111.	IRFA	Section 13(1)	• Please clarify if the service level agreement must be a separate agreement from the administration agreement and/or whether it can be included as an addendum to the administration agreement. • We submit that in order to avoid duplication of efforts, the Conduct Standard make provision/allow for one administration agreement where multiple funds are administered by the same benefit administrator, with the same Board of trustees. This is found with the sponsor funds where there may be a sponsored retirement annuity fund, pension preservation fund and provident preservation fund - all three funds have the same board of trustees.	The Conduct Standard envisages 2 agreements. However, we would have no objection if the service level agreement were an addendum to the administration agreement, provided that it meets the prescribed requirement. We do not believe that the conduct standard precludes such an approach. Please see response to item directly above.
112.	OPFA	Section 13(1)	This subsection is understood to mean that no services may commence until a written agreement setting out the terms and obligations has been concluded by the parties. In other words, agreements with retrospective effect will not be permitted. Please confirm.	Correct, these agreements must be entered into prior the rendering of the administration services. BN 24 of 2002 adopts this approach already, albeit in the context of the administration agreement only (and not also a service level agreement). We understand that existing arrangements might not have concluded a written service level agreement and we have accommodated this issue through transitional arrangements.
113.	IRFA	Section 13(2)	Please clarify if this means all admin agreements must be revised once this Conduct Standard is effected if not in compliance with all of these provisions? And will the 6 months grace period be enough time to do it? We submit that benefit administrators will require at	Please see response above regarding the entering into with new agreements. Agree to a transitional period of 12 months.

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			least 12 months to implement the changes envisaged in Part VI, as the revised administration agreements will need go through the necessary trustee meeting cycles.	
114.	OPFA	Section 13(2)	An additional requirement is proposed that the benefit administrator undertakes and warrants to the fund that it will at all times for the duration of the agreement comply with the requirements of this Conduct Standard or as amended from time to time.	It is not necessary to provide for this. An administrator is by law required to comply with this Standard, a commitment to the fund that it will comply therefore does not serve any meaningful purpose.
115.	PSG	Section 13(2)(b)	We request that FSCA provides more clarity on which Board responsibilities may be delegated to an Administrator to avoid inconsistency and uncertainty in the industry.	Please refer to section 7D of the Pension Funds Act, which prescribes the duties of the Board, and section 7D(2), which provides for delegation by the Board.
116.	IRFA	Section 13(2)(c)	Subparagraphs (a) and (c) do not appear to be significantly different. Please clarify if (c) is intended to be more detailed than (a)?	Agree. See amendment made to the Standard.
117.	IRFA	Section 13(2)(d)	Should the footnote not rather form part of the specific CS condition, i.e.*Such information must include information regarding the benefit administrator's complaints management processes and procedures.*	The footnote does form part of the Standard and is meant to serve as additional guidance.
118.	OUTvest	Section 13(2)(d)	Section 13(2)(d) provides that the administration agreement include "*the benefit administrator's duties and responsibilities in relation to communicating with members of the fund, **including the information** and circumstances in which the benefit administrator must communicate to the members of the fund and the level of expected standards when communicating to members;*" (Our emphasis) Footnote (1) also provides at "including the information" that: "*Such information must include information regarding the benefit administrator's complaints management processes and procedures.*" The reference to "*including the information*" (including the footnote) is very wide and we are not sure to what level of detail the administration agreement will need to make provision for this information.	It is up to the fund and administrator to agree under what circumstances communication must take place, and what information should be communicated. However, we agree with your proposal to change the wording to "type of information".

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			Also, the information that must be disclosed may change from time to time as the funds or the legislation and regulations changes. This might result in unnecessary changes to the administration agreement from time to time to ensure it refers to the correct information. Should the Authority believe that the agreement should set out the information we would suggest that the Standard rather refer to "*including the **type** of information*".	
119.	IRFA	Section 13(2)(e)	• See proposed wording: e) the remuneration to which a benefit administrator will be entitled to and the basis on which the ~~administration fee~~ **fees for the administration functions** and other remuneration or income **payable to the benefit administrator** will be calculated • For underwritten funds, specifically retail funds, the administration fee is embedded in the contribution that is paid to the underwriting insurer. For retirement annuity fund members, the member chooses the contribution paid. It is not always possible to calculate the specific administration fee. • Should the footnote not rather form part of the specific CS condition? *Including any income, directly or indirectly, earned by the benefit administrator from providing other services to a fund; or other divisions, subsidiaries or associates of the benefit administrator from performing certain administration or other functions for the fund.* • It is submitted that the wording under the footnote is too wide and is impractical and that it would be improper to disclose and include another entity's remuneration in the administration agreement of the administrator.	Agree. See amendment made to the Standard. The calculation of the fee should be agreed between the administrator and the fund. The footnote does form part of the Standard and is meant to serve as additional guidance. The requirement relates to the income earned by the benefit administrator in respect of the fund with whom that specific administration agreement is concluded. It is unclear why you state that the provision is too wide. See amendment of "*a fund*" to reflect as "*the fund*" in the footnote.
120.	OUTvest	Section 13(2)(e)	Section 13(2)(e) provides that the administration agreement include "*the remuneration to which a benefit administrator will be entitled to and the basis on which the administration fee and other remuneration or income will be calculated;*"	The comment is unclear but seems to infer that there is duplication. This is not the case. Section 13(2)(e) refers to remuneration due to the benefit administrator in respect of the administration services rendered. The footnote refers to income received for other services rendered the fund.

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			Footnote (2) also provides that: "*Including any income, directly or indirectly, earned by –* *(i) the benefit administrator from providing other services to a fund; or* *(ii) other divisions, subsidiaries or associates of the benefit administrator from performing certain administration or other functions for the fund.*"	
121.	ASISA	Section 13(2)(f)	Take-on procedures are often determined per fund, taking into account specific characteristics and factors relating to that fund. Therefore, the administration agreement cannot contain any particulars or specific details as they are unknown until such time as a benefit administrator is approached by a Fund for take-on. ASISA members propose that the wording be amended to more generic and principles-based wording such as: "13(f)(2) An administration agreement referred to in subparagraph (1) must at least provide for the following: … (f) an undertaking that the benefit administrator will provide information to a fund, at take-on, ~~the specific conditions~~ relating to the take-on procedures as well as the responsibilities of the relevant parties concerned, including the – …"	Agree in principle. See amended wording.
122.	IRFA	Section 13(2)(f)	This should be prefaced with 'where applicable", for example not all administrators are responsible for minutes books (vi)	Relevant item in clause 13(2)(f) has been removed.
123.	IRFA	Section 13(2)(f)(i)	An administration agreement does not set out the duties of a board. These are set out in law, in the fund's rules and governance docs. (f) should refer to "the duties and responsibilities of the board to ensure that the administrator can administer the fund effectively". For example, the fund must ensure that the administrator promptly receives the information it needs to administer the fund.	Relevant item in clause 13(2)(f) has been removed.
124.	IRFA	Section 13(2)(f)(ii)	Many administration agreements between funds and administrators do not include the employer as a party to the agreement. In these circumstances the requirement under (f)(ii) would mean that the agreement would then have to be renegotiated and concluded with the employer as a party. Depending on the number of employers (and their responsiveness) this could take a significant amount of	Relevant item in clause 13(2)(f) has been removed.

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			time. There would be no point in including the employers' duties if they are not a party to the agreement.	
125.	IRFA	Section 13(2)(f)(iv)	See correction: (iv) financial implications during the **take-on** transitional period	Relevant item in clause 13(2)(f) has been removed.
126.	ASISA	Section 13(2)(f)(vi)	This should be prefaced with 'where applicable", for example not all administrators are responsible for minutes books.	Relevant item in clause 13(2)(f) has been removed.
127.	IRFA	Section 13(2)(f)(vi)	Is (f)(vi) on take-over?	Relevant item in clause 13(2)(f) has been removed.
128.	IRFA	Section 13(2)(f)(ix)	• Does "upon termination" mean on giving notice of termination or on date of termination? If it means on date of termination this does not appear to make sense as once the appointment is terminated it can only be the fund that is responsible for statutory returns etc. Even if that clause survives the termination of the agreement, the administrator may not provide services to a fund without an administration agreement in place and thus it cannot be the party that is e.g. submitting statutory returns after termination. • Do the words 'upon termination of the administration agreement' apply to just 'contributions and/or benefit payments' or to the whole sentence?	Relevant item in clause 13(2)(f) has been removed.
129.	ASISA	Section 13(2)(g)	In certain circumstances 7 days may not be practical and depends on the information required. This is the case especially with historical records or information that must be configured based on data extracts from the administration system. ASISA members suggest that it be changed to reflect that the time period should be agreed upon between the Fund and the Administrator.	Leaving this to subject to an agreement between the fund and administrator might have unintended consequences. The fund should be in a position to determine by when the information must be provided. We have, however, changed the clause to be more flexible but still places the power to determine the period in the hands of the fund.
130.	IRFA	Section 13(2)(g)	What if records are kept off-site with a data storage facility, then it might not be available in 7 days?	See response directly above.
131.	IRFA	Section 13(2)(m)	See proposed wording: (m) requirements in respect of the outsourcing of administration **services** ~~duties~~ to another benefit administrator, including that such other benefit administrator must be approved in terms of section 13B of the Act to perform such administration services	Agree. See amendment made to the Standard.
132.	OUTvest	Section 13(2)(m)	Section 13(2)(m) provides that the administration agreement include, "*requirements in respect of the outsourcing of administration duties to another benefit administrator, including that*	See amendment made to the Standard.

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			such other benefit administrator must be approved in terms of section 13B of the Act to perform such administration services;" Does reference to "administration duties" refer to any duties the administrator might perform or only to administration functions or services under the definition in the Conduct Standard? If it only refers to functions referred to under Section 13B(1) of the Act we suggest that "administration duties" be replaced by "**administration functions**" to align with the definition in the draft Conduct Standard.	
133.	IRFA	Section 13(2)(n)	If the intention with the reference to "*calendar months*" is to refer to the periods in which a year is divided, like for instance January, February and March, it is submitted that the term "calendar month" would have to be defined as this is not the meaning of the term. The following is in this regard stated in paragraph 352 of LAWSA (Statute Law and Interpretation):"*In computing a certain number of calendar months, the so-called civil method of computation (computatio civilis) is invoked: the first day of the period is included and the last day excluded. One month after 10 May 2001 will therefore be 9 June 2001; three months will be 9 August 2001, and so on.*"	Agree that the term calendar month could be interpreted in different ways. To simplify the approach, we will rather not refer to calendar month.
134.	RFS	13(2)(n)	Longer termination periods should be allowed up to a maximum of 6 months or 180 calendar days. **Motivation**: Administrators are severely impacted if a sizeable fund client terminates. The administrator could have put in place resources and equipment to cater for this specific client in terms of the following conduct standard requirements: • Section 26 – Data management and maintenance of records • Section 27 – Maintenance of records • Section 37 – Operational ability A longer termination period would assist the administrator to plan the impact of the termination better and more reasonable, or could implement termination assistance clauses if these were included in the administration agreements.	Agree. Provision has been changed to read " at least 90 days".

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135.	ASISA	Section 13(2)(n)(ii)	ASISA members understand that this provision is to enable old/existing agreements that contain a 90-day termination period not to have to be redrafted to use calendar months in accordance with this Conduct Standard. However, if the intention with the reference to "calendar months" is to refer to the periods in which a year is divided, for example: January, February and March, it is submitted that the term "calendar month" would have to be defined as this is not the meaning of the term. The following is stated in paragraph 352 of LAWSA (Statute Law and Interpretation): "*In computing a certain number of calendar months, the so-called civil method of computation (computatio civilis) is invoked: the first day of the period is included and the last day excluded. One month after 10 May 2001 will therefore be 9 June 2001; three months will be 9 August 2001, and so on.*"	See response above regarding "calendar month" at item 133.
136.	ASISA	Section 13(2)(o)	Typo: "affected" in the second line should be "effected".	Item has been removed.
137.	IRFA	Section 13(2)(o)	See corrections: (o) that any amendment to the administration agreement shall be in writing and shall be **effected** ~~affected~~ by way of an addendum or a new **administration** agreement between the benefit administrator and the fund	Item has been removed.
138.	ASISA	Section 13(2)(p)	The word benefit is missing: *(p) details of whether the benefit administrator employs a head of the compliance function, compliance officer or person responsible to monitor compliance by the benefit administrator with the Act, Regulations, conditions and the rules of the Fund*; What conditions are being referred to?	Agree. See amendment made to the Standard. The conditions prescribed in the Standard. For clarity, "conditions" has been changed to "conduct standard".
139.	IRFA	Section 13(2)(p)	• See correction: (p) details of whether the **benefit** administrator employs a head of the compliance function, compliance officer or person responsible to monitor compliance by the benefit administrator with the Act, Regulations, conditions and the rules of the fund • What "conditions" are being referred to here?	Agree. See amendment made to the Standard. See response directly above.

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			• With reference to definition of "regulations", we submit that "regulations" should be replaced with "related regulations" (like in rest of Conduct Standard).	Disagree. References to "related regulations" amended to refer to "Regulations", which is defined.
140.	ASISA	Section 13(2)(q)	Clients should be replaced with customer, which is a defined term: *(q) adequate processes, procedures and controls to identify, manage, monitor and mitigate any risks to the benefit administrator or its ~~clients~~ customers;* The Administrator cannot manage risks of customers per se, only risks of customers insofar it relates to the administration of the affairs of the customer.	Item has been removed.
141.	IRFA	Section 13(2)(q)	"*client*" should be replaced with "*customers*".	Item has been removed.
142.	PWC	Section 13(2)(q)	The requirement in section 13 (2)(q) is ambiguous and could be open to interpretation. We propose that the FSCA revisit this requirement and provide clarity as to what would constitute 'adequate processes, procedures and controls to identify, manage, monitor and mitigate any risks to the benefit administrator or its clients'.	Item has been removed.
143.	OUTvest	Section 13(2)(r)	Section 13(2)(r) provides that the administration agreement include: "*details of how the benefit administrator will ensure proper governance, risk management and ethical behaviour;*" To what level of detail will a benefit administrator be required to go into? Will it be sufficient to only include in the agreement that the administrator will ensure proper governance, risk management and ethical behaviour? We are cautious to include too much details in an agreement that might change from time to time which might result in an amendment or addendum to the agreement. We believe that it would be sufficient to state that "*the benefit administrator will ensure proper governance, risk management and ethical behaviour.*"	Item has been removed.
144.	IRFA	Section 13(2)(s)	See proposed wording:	Item has been removed.

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			(s) the procedure to be followed for the renegotiation of ~~administration~~ fees **for the administration functions** and other fees or income payable to the benefit administrator	
145.	OPFA	Section 13(2)(t)	The current draft proposes that the fund provide the benefit administrator with relevant information. In reality, it is the administrator that collects the information and therefore the obligation should be in reverse i.e. the obligation should be on the administrator to provide the fund, on an ongoing basis, with the relevant information.	Item has been removed.
146.	IRFA	Section 13(2)(t)(ii) & (iii)	See proposed wording: (ii) information relating to **events giving rise to benefits in terms of the rules**, benefit claims, including procedures to be followed; and (iii) notification of any changes in membership data and/or the payroll **or significant events that may have consequences for the fund, for example may trigger a section 14 transfer**	Item has been removed.
147.	ASISA	Section 13(3)	The administration agreement must also make provision for complaints management between the Fund and the benefit administrator. This is a key procedure that must be monitored not only in line with the Conduct Standard but also in terms of the administration agreement between parties as they are concerned about fair outcomes for members.	This comment is noted. This This can be included as agreed to between the fund and the administrator, the clause does not prevent this. However, seeing that the conduct standard already places direct obligations on administrators in respect of complaints management and they will need to comply with those requirements, a provision in the agreement talking to complaints management will not serve any meaningful purpose. We do, however, encourage funds and administrators to agree on how complaints will be handled.
148.	OPFA	Section 13(3)(b)	See comment in item no. 1 above. The procedures referred to in sub-subparagraphs (ii), (iii), (iv), (v), (vi) and (vii) are not provided for in section 13B(1) of the Act and should constitute "additional functions" or "additional services" as proposed above.	See amendment made which should address your concern.
149.	IRFA	Section 13(3)(b)(II)	See proposed wording: (ii) housing loan **and guarantee** administration	Item has been removed.
150.	ASISA	Section 13(3)(d)	Client should be "customer".	Item has been removed.
151.	IRFA	Section 13(3)(d)	See correction: (d) procedures relating to the take-on by the benefit administrator of a fund as a **customer** ~~client~~	Item has been removed.

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152.	IRFA	Section 13(3)(e)	Why is (e) here? We submit that it should rather be included under paragraph 14.	Disagree. The mentioned paragraph deals with the notice of termination and the like, but the termination procedure must be recorded in an agreement. Note that this item has been moved from the SLA provisions to the administration agreement provisions.
153.	IRFA	Section 13(3)(f)	Why is (f) included? This would be a matter of law and this may be seen as an invitation to try and limit the remedies available upon breach.	Disagree. The consequences of not meeting the agreed service levels should be recorded in an agreement. Note that this provision has been moved to the administration agreement provisions.
154.	ASISA	Section 14(1)	The word benefit is missing *(1) A benefit administrator must, when notice of the termination of an administration agreement between a pension Fund and ~~an~~ a benefit administrator is provided, -*	Agree. See amendment made to the Standard.
155.	IRFA	Section 14(1)	• Please clarify why the detail of the termination must be provided to the fund/new administrator? We can understand why it must be provided to the FSCA but not why also to these parties? See new Annexure 6 for type of detail that is required. • The contribution schedule ito 13A is due by the 15th. Not in all circumstances will the updates relating to the previous month contributions have been updated on the administration system. The 15th is not practical and we submit it should be replaced with 30 days.	Your comment is not understood. Why shouldn't the detail of the termination be provided to the fund? Your comment is not clear. Paragraph 14(1)(b) requires transfer of the records to the fund or the new benefit administrator within 15 business days of the effective date of the termination. The submission of the reconciliation of contributions are required within 30 days from the effective date of the termination in terms of paragraph 14(1)(c) of the Standard.
156.	PSG	Section 14(1)	The reference to ''pension fund'' should change to ''retirement fund'' so that the application is not limited to pension funds.	Disagree. The Pension Funds Act does not currently define the term "retirement fund".
157.	ASISA	Section 14(1)(b)	The period of 15 days is not reasonable or practical. ASISA members would appreciate a longer period and request at least 30 days.	Disagree. This is not a new requirement - the current Board Notice 24 of 2002 requires this to be done within 14 calendar days and this period has been amended to 15 business days.
158.	IRFA	Section 14(1)(b)	See correction: (b) within 15 business days of the effective date of the termination, transfer to the fund and/or the newly appointed benefit administrator ~~with~~ all the information, records and data relating to the	Agreed. See amendment made to Standard.

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			administration of the fund that it has in its possession or under its control; and	
159.	ASISA	Section 14(1)(c)	Upon termination, the outgoing benefit administrator must also provide a log of pending/active complaints to ensure these are resolved by the new benefit administrator: (c) within ~~30~~ 90 days from the effective date of the termination, submit to the Fund and/or the new benefit administrator – (i) a reconciliation of the bank accounts, benefits and contributions as at date of termination of the administration agreement; ~~and~~ (ii) a report containing details of the termination in the form to be determined by the Authority by notice on the website of the Authority; and (iii) a report containing the details of unresolved complaints, containing the relevant data as set out in paragraph 24(3). The period of 30 days is not reasonable or practical. ASISA members would only be able to do this within 90 days and would appreciate this longer period.	Agree. See amendment made to the Standard include this subparagraph. Disagree. The new administrator requires the records as soon as possible in order to avoid prejudice to members and to ensure that benefit payments are not affected.
160.	IRFA	Section 14(1)(c)(i)	See correction: (i) a reconciliation of the **fund's** bank accounts, benefits and contributions as at date of termination of the administration agreement	Disagree. Some administrators receive contributions in their own bank accounts.
161.	RFS	Section 14(2)	The reason for the termination should be added as section 14(2)(c). **Motivation**: (1) Should the reason for termination not be according to normal business principles the administrator should be afforded to challenge the termination and be protected by the FSCA if the reason for termination is bogus. (2) It is still just too easy for a fund to terminate without a proper reason and it could have a severe impact on the operations of the administrator. (3) A lot of administrator changes in the industry still occurs where the fund, its trustees and benefit consultants, have conflict of interests influencing such termination decisions. (3) The reason for the termination could imply that certain sections of the service level agreement (SLA) kick in which could refer to termination assistance by the fund towards the administrator, if included in the SLA.	The reason for termination will be included in the format of the notification which the Authority will determine.

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162.	IRFA	Section 14(3)	Also, with reference to subparagraph 14(3), the hand-over of such accounting records, trial balance and other financial records and ledgers would be dependent on when the audited financials or TB of the fund can be finalized and released by the auditors. It would be impossible for a fund to hand over audited accounting records over within 15 days.	The section does not deal with the fund handing over audited accounting records to the new administrator within 15 days. It deals with the previous administrator handing over records to the fund or the new administrator within 15 business days.
163.	ASISA	Section 14(3)(a)(i)	Why should data be provided in an electronic format capable of manipulation? Suggest that it be changed to “provided in an electronic format, as agreed to with the Fund and/or the newly appointed benefit administrator, that can be assimilated into the Fund’s and/or the newly appointed benefit administrator’s system”.	Agree. See amendment made to the Standard.
PART VII - OUTSOURCING				
164.	ASISA	Part VII – General comment	Benefit administrators who are also licensed insurers have Prudential Standard GOI 5 Outsourcing by Insurers, which, while this applies to the outsourcing of insurance business, contains overlaps in requirements contained in this Conduct Standard and GOI 5. If there are any inconsistencies between the two, clarity is required on which requirements (this Conduct Standard or the GOI 5) will prevail. Please see proposed wording: ***Application of Chapter*** *Where a benefit administrator is also a licensed insurer in term of the Insurance Act, 2017, in the event of any inconsistency between a provision of this Conduct Standard and a Prudential Standard issued in terms of the Insurance Act, the latter will prevail.*	Disagree. Where a benefit administrator is also a licensed insurer, there will have to be compliance with both sets of regulatory frameworks. It would only become an issue if there were a contradiction between GOI 5 and this Conduct Standard. As far as we are aware there are no inconsistencies or direct contradictions between this Conduct Standard GOI 5.
165.	ASISA	Part VII – General comment	A transitional period should be provided in order to allow benefit administrators (who are not also licensed insurers) to bring their existing outsourcing arrangements in line with the requirements contained in the Conduct Standard. This would be in the interest of fairness and allows for a level playing field amongst benefit administrators. Please see below proposed wording, which is the wording used in GOI 5:	In our view two years is an unjustifiable long period to align agreements to the new requirements. We have, however, changed the transitional period from 6 months to 12 months.

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			"Any outsourcing arrangement entered into prior to the effective date of this Conduct Standard must comply with this Conduct Standard within two years from the effective date."	
166.	OUTvest	Section 15	We suggest that the word "*function*" be replaced by "*administration functions*" as per the definitions of the Conduct Standard throughout Section 15. Although the heading refers to "Outsourcing of administration functions", Section 15(1) for example states that a "*benefit administrator may only enter into an arrangement for the outsourcing of **any of its functions** to a third party…*" which, in our view, can lead to confusion. It is our view that certain responsibilities of an administrator (which a fund has delegated to the administrator and which is not considered to be a function under Section 13B(1) of the Act) may be outsourced to a third party who might not be a benefit administrator or performing "administrative functions".	All references to administration functions have been changed to administration services, as per the definition in the conduct standard.
167.	IRFA	Section 15(1)	See correction and proposed wording. Administrators may perform functions for the fund that are not benefit administration activities requiring licensing and the outsourcing requirements should not apply to these other functions: 1) A benefit administrator may only enter into an arrangement for the outsourcing of any of its **administration** functions to a ~~third party~~ **service provider who have been approved by the Authority as a benefit administrator** if the administration agreement between the benefit administrator and the fund as referred to in paragraph 13(1)	Agree with some of the proposals. See revised clause.
168.	IRFA	Section 15(1)(b)	• It is submitted that it should it be "remains **liable**"? Because if outsourced will not "remain **responsible**"? • See proposed wording: (b) confirms that the benefit administrator shall remain responsible for any of the duties, responsibilities and record keeping outsourced to ~~any other party~~ **the service provider.**	Agree. See amendment. See response to item 167.
169.	ASISA	Section 15(2)	It is submitted that only "material changes that affect the funds and/or its members" to an outsourcing agreement be included in this provision.	Agree. See amendment made to the Standard.

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170.	ASISA	Section 15(2)	In order to prevent a Fund unreasonably withholding consent, it is submitted that this paragraph should also state that consent may not be unreasonably withheld. Further, whilst ASISA members agree that benefit administrators require a Fund's consent to enter into an outsourcing arrangement, ASISA members do not agree that the Fund should be required to approve who is ultimately appointed. This will affect the benefit administrator's freedom to contract. Provided that the appointment meets the requirements of the Conduct Standard, and all benefit administrator provisions and compliance, this should be sufficient.	Disagree. A fund should be at liberty to withhold consent as the party that is outsourcing the function. Disagree. The Administrator cannot have the right to overrule a fund on matters affecting the affairs of the fund. The fund should have the right to object to the appointment.
171.	IRFA	Section 15(2)	• To prevent a fund refusing unreasonably to give consent, it is submitted that this paragraph should also state that consent may not unreasonably be withheld. Especially, for example, where only one of the admin functions is outsourced due to the other administrator being better equipped to perform the relevant function (thus outsourcing will be for the benefit of the fund?) • We submit that this subparagraph (2) be amended to provide that if this outsourcing took place before the Conduct Standard becomes effective and it has been notified to the fund in writing (for example in the agreement) or the fund is aware of it, then this consent should not be necessary. But once the conduct standard becomes effective and the grace period for the revised agreements is over, then this consent requirement would kick in.	See response to comment directly above. A transitional period of 12 months has been provided for. We trust that this should address your concern.
172.	IRFA	Section 15(3)	We understand the reasons for the requirement where the benefit administrator wish to enter into an outsourcing arrangement with a provider that such a provider must also be approved as a benefit administrator in terms of Section 13B of the Act. However, we believe that where such a provider is an authorised Administrative FSP in terms of FAIS that there would be sufficient grounds for this requirement to be waived for such an approved Administrative FSP. Authorised Administrative FSPs are required to comply with the	Disagree. Firstly, please note that a benefit administrator does not perform the functions of an administrative FSP as defined in the FAIS context. Secondly, this requirement is merely a reiteration of section 13B(1) Pension Funds Act, 1956, which requires approval of a benefit administrator as such by the Authority. The requirement cannot be waived. Lastly, it is not uncommon for a

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			relevant fit and proper requirements prescribed for Administrative FSPs in terms of FAIS, as well as the General Code of conduct and the Code of Conduct for Administrative FSPs. We submit that an Administrative FSP already must comply with very onerous requirements that is of a similar standard to those imposed in this proposed conduct standard. It is our view that to require an Administrative FSP to be approved in terms of Section 13B as a benefit administrator, in addition, would basically amount to an Administrative FSP to be regulated under more than one statute for essentially performing the same administrative functions. This is supported by Section 45(1)(a)(iii) of FAIS which states that "***The provisions of this Act (FAIS) do not apply to the rendering of financial services by a person performing the functions referred to in section 13B of the Pension Funds Act, 1956 (Act No. 24 of 1956), if such person complies with the requirements and conditions contemplated in that section;***". We propose that this requirement is suitably amended in order to give effect to the original intention of the legislator that a person should not be subject to regulation in terms of more than one statute.	financial institution to be subject to more than one piece of legislation.
173.	IRFA	Section 15(5)(b)	See correction: b) providing for access by the benefit administrator and the Authority to the **service provider's** ~~person's~~ business and information in respect of the outsourced function or activity	Agree. See amendment made to the Standard.
174.	IRFA	Section 16(1)(c)	Please clarify what is contemplated by "assessing"? May the administrator request the outsource service provider to confirm what is required without doing an assessment?	The word will have its ordinary, grammatical meaning. Regular assessment of performance is required in respect of the objectives mentioned in section 16(1)(c)(ii). Requesting a service provider to merely provide confirmation does not constitute an assessment, by the administrator, of the service providers governance etc. An administrator should take reasonable steps to ensure the service provider is able to meet the relevant criteria. See amendments made which provides more clarity on the criteria to be assessed.
175.	IRFA	Section 16(1)(c)(ii)	Please clarify what would "fitness and propriety" refer to? We propose that it is rather replaced with "fit and proper" that is defined in this Conduct Standard.	Agree. See amendment made to the Standard.
176.	IRFA	Section 16(2)(b)	See correction:	Agree. See amendment made to the Standard.

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			b) ensure that the termination of an outsourcing arrangement does not result in detriment to the continuity and quality of its provision of **administration** services to its customers	
PART VIII – CONFLICT OF INTEREST				
177.	SAICA	Section 17	Some fund administrator policies are set at a group level, also a number of policies are similar/are the same across the different S13B administrators within the Group. Would a Group level policy be sufficient or would the Regulator require separate policies per S13B administrator.	Group level policies would be sufficient only if those policies comply with the requirements of the draft conduct standard.
178.	IRFA	Section 17(1)	• "*conflict of interest*" is not specifically defined in the conduct standard or in COFI for that matter, but defined in the FAIS General Code of Conduct. Please clarify if that meaning will be carried over to this Conduct Standard? • Please clarify if it would be acceptable for the conflicts of interest policy to be in place at a Group level, i.e. it does not have to be bespoke for the administration function within the entity/group?	• Conflict of interest for purposes of the conduct standard must be read in the context of section 15B(5)(a) of the Pension Funds Act. Also see comment under the definition section above. • See response to the comment directly above.
179.	ASISA	Section 17(2)(a)	Only section 15B(5)(a) deals with conflicts of interests, and the rest of section 15B(5) deals with other aspects. As paragraph 17(2) deals with the aspects to be addressed in the Administrator's conflict of interest management policy, it is suggested that paragraph 17(2) should not refer to the entire section 15B(5), but only to section 15B(5)(a).The following is suggested: *(2) A conflict of interest management policy referred to in subparagraph (1) must – (a) demonstrate how the benefit administrator will comply with section 13B(5)(a) of the Act;*	Agree. See amendment made to the Standard.
180.	IRFA	Section 17(2)(a)	Only section 13B(5**)(a**) deals with conflicts of interests, and the rest of section 13B(5) deals with other aspects. As paragraph 17(2) deals with the aspects to be addressed in the administrator's conflict of interest management policy, it is suggested that paragraph 17(2) should not refer to the entire section 13B(5), but only to section **15B(5)(a).**	Agree. See amendment made to the Standard.
181.	OUTvest	Section 17(2)(a)	Section 17(2)(a) provides that the conflict of interest management policy must "demonstrate how the benefit administrator will comply with section 13B(5) of the Act.	See amendment made to the Standard.

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			Section 13B(5) of the Act also refers to other responsibilities of the administrators such as: • Administration of the fund in a responsible manner; • Keeping of proper records, • Employment of adequately trained staff; • Having compliance procedures; • Maintaining the prescribed financial resources Is the intention to address all of the responsibilities under Section 13B(5) in the conflict of interest management policy or only Section 13B(5)(a) which deals with conflicts between the interest of the administrator and the duties owed to the fund, and any conflict of interest or potential conflict of interest that must be disclosed by the administrator to the board?	
182.	ASISA	Section 17(2)(b)(ii)	Typo": "therefore" in the second line should be "therefor".	Noted. See amendment made to the Standard.
183.	IRFA	Section 17(2)(b)(ii)	See correction: ii) measures for the avoidance of conflict of interest and, where avoidance is not possible, the reasons ~~therefore~~ **therefor** and the measures adopted to mitigate and manage such conflicts of interest	Noted. See amendment made to the Standard.
184.	ASISA	Section 17(4)	The wording in 17(4) of the Conduct Standard is much broader than the requirements set out in s13B(10) of the PFA and is not limited to a *material matter relating to the affairs of a Fund, which in the opinion of the Administrator may prejudice the Fund or its members, the Administrator must inform the registrar of that matter in writing without undue delay*. It is preferable if the requirements in the Conduct Standard were aligned with the requirements of the PFA. The Responsible Key Person already has a reporting obligation in terms of paragraph 8 of the Conduct Standard, and it therefore makes sense that the Responsible Key Person also reports to the FSCA on any conflicts of interest. Please see our proposed wording: *"(4)* *(a) A director, senior manager (including the responsible key person), head of a control function (where applicable) or employee*	Section 13B(10) is a very general reporting requirement and the fact that it exists does not mean no other specific reporting requirements can be imposed. The FSR Act and PFA clearly empowers the FSCA to impose reporting requirements. Notwithstanding, we agree that reporting every instance of conflict of interest to the FSCA may be unnecessary. Please see amended provision.

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			of a benefit administrator must report to the responsible key person ~~the Authority~~ any incidents of conflict of interest observed, including where officials of a Fund or other officials of the benefit administrator (including their friends and families) are doing business with the Fund or benefit administrator. *(b) The responsible key person must, if the incident of conflict of interest observed may prejudice a Fund or its members, report this incident to the Authority."*	
185.	IRFA	Section 17(4)	• A concern is the wording in 17(4) which extends to employees of the benefit administrator being required to report to the FSCA any incidents of conflict of interests. Clarity is required on how far the net will be cast, only in respect of employees directly involved in the benefit administration or across the financial institution where for example the S13B is also an insurer etc.? • Please clarify how this subparagraph will be applicable where an employee, senior manager, etc of the benefit administrator is involved in administration of the benefit administrator's own staff fund and the benefit administrator earns a fee from doing so – will this falls under the definition of "doing business with?	See revised wording. Comment not clear.
186.	SAICA	Section 17(4)	Definitions to be provided for friends and family.	Disagree. These terms will have their ordinary meanings and judgement should be applied.
187.	SAICA	Section 17(4)	The Authority should provide guidance or format expected on the reporting requirements of conflict of interest incidents to ensure consistency.	Although we do not think that a prescribed format is necessary, we will consider this and if a need to prescribe a format is identified in future, we will do so.
PART IX – COMMUNICATION, DISCLOSURES AND COMPLAINTS MANAGEMENT				
188.	ASISA	Part IX – General comment	Clarity is sought on the communication and disclosure requirements where an employer participates in an umbrella retirement fund as this is not catered for in the wording, or is the intention that the benefit administrator may choose how to implement this? How will members determine whether complaints must be lodged with the retirement fund or with the Administrator? The section must make it clear when it is a fund complaint and an administration complaint. It is not clear how to differentiate between the two	These requirements will equally apply to both standalone funds and umbrella funds and yes, the benefit administrator must decide how to implement effectively. The benefit administrator must establish a complaints management framework, which must be accessible to the customers. If a complaint relates to the benefit

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			complaints in terms of the section. As set out in previous comments, ASISA members submit that the responsibility in this regard should rest with the Fund.	administrator or its functions, the complaint must be submitted in terms of that framework. However, the Authority believes that complaints can be submitted to both, and we do not foresee any challenges or possible negative outcomes by having dual channels for complaints. Furthermore, this is also dependent on the administration or service level agreement between the fund and the benefit administrator.
189.	OPFA	Section 18	The Conduct Standard should provide for how communication is to be effected in the event of non-payment of contributions in terms of section 13A by a defaulting employer. The industry practice has been to provide such communication to the employer for onward transmission to the affected members. This has proven to be ineffective because the defaulting employer is unlikely to assist in bringing their own non-compliance to the attention of affected members. In such an instance, the means of communication should be effected in a manner other than via the defaulting employer.	We are of the view that Conduct Standard 1 of 2022 (RF) deals with this sufficiently.
190.	ASISA	Section 18(1)	Contract should be replaced with administration agreement: *"Before, during and after the conclusion of an administration agreement ~~a contract~~ for the provision of administration services, … including –"*	Agree. See amendment made to the Standard.
191.	ASISA	Section 18(1)(a)	It is not clear what benefits and risks are being referred to? Is it meant to be in relation to the administration services? If yes, please see proposed wording: *" …related benefits and risks in relation to the administration services;"*	Item has been deleted.
192.	IRFA	Section 18(1)(b)	• See correction: (b) all costs to the fund or its members in relation to the supply of the **administration** service • Only the fund and the administrator are contracting parties in terms of the administration agreement. It is accordingly not clear on what basis the members of the fund can have contractual obligations towards the administrator.	Item has been deleted.

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193.	ASISA	Section 18(1)(c)	Only the Fund and the Administrator are contracting parties in terms of the administration agreement. It is accordingly not clear on what basis the members of the Fund can have contractual obligations towards the Administrator. ASISA members suggest the following amendment: "(c) salient contractual obligations on the fund ~~or its members~~ and the benefit administrator…"	Item has been deleted.
194.	IRFA	Section 18(1)(d) & (e)	Why should (d) and (e) be **ongoing** requirements for reporting/disclosure to a fund (i.e. *during and after conclusion of a contract*) as surely this is then recorded and agreed upon in the written agreement that is binding on the parties?	Item has been deleted.
195.	IRFA	Section 18(1)(e)	• See correction: (e) recourse options for the fund or its members in the case of a dispute with the benefit administrator in relation to its ~~supply of the service~~ **performance of the administration services** • Please clarify what is meant by "recourse options"? Is this intended to mean e.g. dispute resolutions mechanisms like mediation and arbitration? Or legal option on breach (we do not recommend adding the latter as a compulsory aspect of the agreement).	Item has been deleted.
196.	ASISA	Section 18(2)	Members' rights are governed by the rules of the Fund. It is therefore not clear what information the Administrator must disclose to members "that could reasonably be expected to influence any decision that such members must take in respect of their participation in the relevant Fund". This obligation must be imposed on the Fund (for example PF86). This is not the responsibility of the Administrator but of the Fund. To require the benefit administrator to influence a member to join or not to join a particular fund is not possible considering that an employer, on the advice of an accredited financial services provider, will make the decision on the appropriateness of a particular pension fund organization. Employees do not have a choice to join a registered occupational retirement fund if their employer has one. They therefore cannot make decisions regarding their participation.	Although we do not agree that the benefit administrator has no obligation in terms of communicating to members, please note that this subclause has been deleted. Please see amendment to subclause (3) which links this obligation to the relevant requirement in the administration agreement.

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			Similarly, in the case of retail pension fund organisations (i.e. retirement annuity funds or preservation funds) the member will select a fund on the advice of a financial advisor. To expect an Administrator to influence a member and/or employer's decision to join or not join a pension fund organization may fall foul of the FAIS Act in terms of the provision of advice. Furthermore, members do not have a choice regarding who the benefit administrator is as the Fund appoints the Administrator. Administrators often do not have direct access to members. The communication with them is generally managed by the Fund, employer, union, etc.	
197.	IRFA	Section 18(2)	• Members do not enter into administration agreement with the benefit administrator directly. Furthermore, members do not have a choice regarding who the benefit administrator is as the fund appoints the administrator. Sub-section (2) should be reworded and (a) should be deleted. • Members' rights are governed by the rules of the fund and this communication duty is that of the trustees/fund (i.e. responsibility to inform members of any decision they need to make in terms of the fund rules, for example choosing a contribution rate or method of payment of a benefit). It is in view hereof not clear what information the administrator must disclose to members "*that could reasonably be expected to influence any decision that such members must take in respect of their participation in the relevant fund*" and we therefore submit that this subparagraph should be deleted as it is inappropriate. Also, too wide? What about RBC services for example that is not performed by administrator but that will influence decisions by members?	See response directly above.
198.	ASISA	Section 18(3)	As the Conduct Standard stands, "customer" is defined as including a fund and its members. This section is inappropriate insofar as members are concerned. It is not an Administrator's function to perform (d), (e) and (f) in respect of members. Sub-sections (d) and	See response directly above.

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			(e) are not the role of the Administrator. This is the role of the intermediary. Sub-section (f) - an Administrator is administering based on an agreement with a Fund and does not understand individual client needs. Benefit administrators are responsible for the receipt of contributions, or the disposition of benefits provided for in the rules of the Fund. The Administrator operates in accordance with the administration agreement. The Fund is responsible for communication with members and should ensure proper communication as laid out by this Conduct Standard.	
199.	IRFA	Section 18(3)	With reference to definition of "plain language", see proposed wording: (a) use **plain** language ~~that is clear, plain and unambiguous~~ (b) be ~~adequate, appropriate,~~ timely, relevant and complete	Agree. See amendment made to the Standard.
200.	OUTvest	Section 18(3)	Section 18(3) provides that "*All communications and disclosures to customers by a benefit administrator must - (a) use language that is clear, plain and unambiguous;* *(b) be adequate, appropriate, timely, relevant and complete;* *(c) be factually correct and not misleading or deceptive;* *(d) promote understanding of the financial service being provided;* *(e) promote comparison across similar financial services; and* *(f) take account of the needs and circumstances of the customers*." We suggest that the wording be changed to "*All communications and disclosures to customers by a benefit administrator must,* ***where applicable*** *– "* We agree that in all communications and disclosures that sub-sections a to c will be applicable, however, sub-sections d to f will depend on the communication or disclosures made at the time.	See amendment made to the Standard.
201.	IRFA	Section 18(3)(d), (e) & (f)	• It is not an administrator's function to perform (d), (e) and (f) in respect of members and thus we submit that these subparagraphs must be deleted as it is inappropriate. • See proposed wording to ensure that there is no doubt around the fact that it is not a comparison that is required but	See response in item 196.

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			communication/information that enables a comparison to be done by customers more easily. (e) **provide communication or information in a manner that enables customers to more readily compare benefit administration services across providers**	Item has been deleted.
202.	ASISA	Section 19	See ASISA members' previous comments regarding complaints above. There needs to be a clear distinction between the Administrator and the Fund's complaints management framework. This will ensure that the member understands where and how to direct complaints so that they are not confused and unsure who to direct the complaint to. It is recommended that a distinction be made between complaints against the Fund vs complaints against the Administrator.	See response in item 188.
203.	IRFA	Section 19(1)	The paragraph must make it clear when it is a fund complaint and an admin complaint. It is not clear how to differentiate between the two complaints in terms of the paragraph	See response in item 188 above.
204.	SAICA	Section 19(1)	Some fund administrator policies are set at a group level, also a number of policies are similar/are the same across the different S13B administrators within the Group. Would a Group level policy be sufficient our would the Regulator require separate policies per S13B administrator.	Group level policies will be sufficient only where such policies comply with the requirements of the draft Conduct Standard.
205.	IRFA	Section 19(1)(a)	See correction: (a) is proportionate to the nature, scale and complexity of the **administration** functions that the benefit administrator performs	Agree. See amendment made to the Standard.
206.	IRFA	Section 19(1)(b)	See correction: (b) is appropriate for the business model, policies, services of the benefit administrator, and the funds on whose behalf it **performs administration functions** ~~administers pension funds~~	Agree. See amendment made to the Standard.
207.	ASISA	Section 19(2)	Typo: "…review its complaints…"	Agree. See amendment made to the Standard.
208.	IFRA	Section 19(2)	See correction: (2) A benefit administrator must regularly review **its** complaints management framework and document any changes thereto	Agree. See amendment made to the Standard.

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209.	ASISA	Section 20	The Fund should take responsibility for requirements and reporting to the Authority, including regular monitoring of the complaints management framework.	Disagree. Unclear why you propose that the fund should report on complaints against the benefit administrator.
210.	ASISA	Section 20(1)(a)	It must be clear which matters fall outside of the business administrator responsibilities/jurisdiction and where to direct complaints.	See the response in item 188 above.
211.	ASISA	Section 20(1)(e)	The numbering needs to be corrected: *" appropriate complaint record keeping, monitoring and analysis of complaints, and reporting (regular and ad hoc) to the governing body of the benefit administrator –* *(i) identified risks, trends and actions taken in response thereto; and* *~~(vi)~~ (ii) the effectiveness and outcomes of the complaints management framework*	Noted. See amendment made to Standard.
212.	ASISA	Section 20(1)(g)	The numbering needs to be corrected *(g) a process for managing complaints …* *(i) …* *~~(vii)~~(iii) include effective referral processes between the benefit administrator and the person(s) to whom it has outsourced functions for handling and monitoring complaints that are submitted directly to either of them and require referral to the other for resolution; and* *~~(viii)~~ (iv) include processes to ensure that complainants are appropriately informed of the process being followed and the outcome of the complaint; and*	Noted. See amendments made to Standard.
213.	IRFA	Section 20(1)(g)	The numbering in this subparagraph is not correct.	See amendments made to Standard.
214.	IRFA	Section 21(1)	The board of directors and the executive committee of a large financial services company that does not only do benefit administration, are not involved in the management of the day-to-day administration functions performed by the benefit administration part of the company. It is accordingly submitted that it would not be practical for them to oversee the effectiveness of the implementation of the benefit administrator's complaints management framework. It is submitted that it would be more practical for this function to be performed by senior employees in the benefit administration part of the company.	Disagree. Ultimately, the governing body of the benefit administrator is responsible for the conduct of the benefit administrator and cannot negate this responsibility. It is important to note that the role of the governing body is to approve and oversee the framework. The provision also already provides for the responsibility of the responsible key person, who must be a senior manager, who is involved in the day to day business of the benefit administrator.

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215.	OUTvest	Section 21(1)	Section 21(1) currently reads: "*A governing body and key persons of a benefit administrator is responsible for effective complaints management and must approve and oversee the effectiveness of the implementation of the benefit administrator 's complaints management framework*." Does this section refer to a responsible key person or only a key person? Also, although we agree that the responsible key person should be responsible to oversee the effectiveness of the implementation of the complaints framework, we do not believe that it is necessary for the responsible key person to approve the policy. We suggest that the approval of the policy only be approved by the governing body similar to the Conflict of Interest Policy.	Agree. See amendment made to the Standard.
216.	ASISA	Sectio 21(2)(b)	There is a current amendment to PPR 18.4.2(b) to change customer to complainant, as complainant is defined and the change is aimed at ensuring consistency in terminology used. It is proposed that the same change be made here, *(b) have an appropriate mix of experience, knowledge and skills in complaints handling, fair treatment of ~~customers~~ complainants, the subject matter of the complaints concerned and relevant legal and regulatory matters;*	Agree. See amendment made to the Standard.
217.	ASISA	Section 22(3)(a)	Typo: "…legitimate interests of…"	Noted. See amendment made to the Standard.
218.	OPFA	Section 22(3)(a)	Grammatical error – the word "Interests" should be in lower case.	Noted. See amendment made to the Standard.
219.	IRFA	Section 22(3)(d)	(d) be allocated to an impartial, senior functionary within the benefit administrator or appointed by the benefit administrator for managing the **complaints** escalation **and** ~~or~~ review process of the benefit administrator.	Disagree. This is covered by the preceding line of subparagraph (3) which already refers to a "complaints escalation and review process". See amendment made to the Standard to include missing words.
220.	ASISA	Section 24	ASISA members reiterate their comments made above around who has ultimate responsibility for dealing with complaints. When does the complaint become a board of trustee issue, as opposed to a complaint against the Administrator?	Please refer to responses above in this regard.

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221.	OPFA	Section 24	The Conduct Standard should impose an obligation on benefit administrators to track the number of complaints referred to the Pension Funds Adjudicator, the status of such complaints, and whether the complaint has been timeously responded to within the time limits set by the Adjudicator.	See footnote insert in clause 21(3)(b).
222.	ASISA	Section 24(4)	Typo and definition: "…for its ~~clients~~ customers…"	Agree. See amendment made to Standard.
223.	IRFA	Section 24(4)	See corrections: (4) Complaints information recorded in accordance with this subsection must be scrutinised and analysed by a benefit administrator on an ongoing basis and utilised to manage conduct risks and effect improved outcomes and processes for **its customers** ~~clients~~, and to prevent recurrences of poor outcomes **for its customers** and errors.	Agree. See amendments made to Standard. Disagree with the last suggestion as this is implied and insertion of these words will be repetitive.
224.	ASISA	Section 24(5)	With larger benefit administrators, there is a governance framework for the Board and its subcommittees oversight requirements, and it may be appropriate in some instances that the reporting required in terms of 24(5) is first dealt with in a board sub-committee. Please see proposed wording: *"A benefit administrator must establish and maintain appropriate processes for reporting of the information in paragraph 24(4) to its governing body, its relevant sub-committee or executive management."*	Agree. See amendment made to Standard.
			PART X – DATA MANAGEMENT AND MAINTENANCE OF RECORDS	
225.	ASISA	Section 26(2)	Please note that the accuracy and completeness of member data is dependent on what is supplied by the employer as the supplier of the data.	Noted – the accuracy and completeness will depend on a number of factors including proper record keeping by the administrator and therefore not only dependent on the quality of the data received from the employer.
226.	IRFA	Section 27(1)	• Please clarify if "communications with members" include claims communication? • We submit that although this is a very useful requirement that it should be workshopped/discussed (especially given POPIA) so	Yes, it includes any communication with members. Disagree that this is necessary. Besides, the law cannot be too prescriptive in this regard as the scope of the

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			the following can be more precisely determined and defined: What records are being referred to; and how long they must be retained, etc.	information dealt with is too broad and it will not be possible to provide a finite list.
227.	IRFA	Section 27(1)(b)	See proposed wording: b) store and retrieve transaction documentation and all other material documentation ~~relating to~~ **processed as a result of the administration agreement** and customers, including former members of the relevant funds; and	Disagree with the reference to "processed". However, certain changes were made to the paragraph to deal with some elements of your comment.
228.	IRFA	Section 27(1)(d)	See proposed wording re destruction (i.e. new paragraph(d): d) **where records are destroyed or deleted deliberately and lawfully, that this is done in a manner that ensures that confidential records and information remains confidential.**	Disagree that the insertion of such a paragraph is necessary.
229.	SAICA	Sections 27(2) & (3)	Payment information to be retained 5 years after S13B licence terminates but transactional information 5 years after administration agreement ends – the information is usually quite closely aligned and stored in the administration system, it is therefore difficult to destroy the one without destroying the other (or vice versa), especially where the member (or beneficiaries) require proof that the full benefit has been paid (which may be difficult if the value build-up was not retained.	With regards to the period within which data must be retained, the Standard does not make a distinction between payment information and transactional information, both are governed by the administration agreement.
230.	ASISA	Section 27(2)(b)	Is the requirement that after 5 years, the Administrator must destroy the data? The provision should be amended to read that documents should be retained for five years or in line with the benefit administrator's data and document retention policy which was disclosed to the funds when the agreement was concluded.	The requirement in the draft Conduct Standard is that the information must be kept for (at least) a period of 5 years. What the benefit administrator does with the information thereafter is not prescribed. However, POPIA must be complied with, where applicable.
231.	IRFA	Section 27(2)(b)	• See proposed wording: b) subject to subparagraph (3), must be retained for a period of at least five years after the administration agreement came to end, or ~~where the record does not relate to~~ **with respect to communication to members** ~~the administration agreement~~, five years after the ~~communication concerned~~ **record came into being or the information was processed**; and • Please clarify if the requirement is that after 5 years, the administrator must destroy the data?	Disagree with the proposed wording. However, see changes to relevant paragraph(s). See response to item 230 above.

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232.	IRFA	Section 27(2)(c)	It could be that some of these requests may need to follow processes set out in PAIA or POPIA (including prescribed forms). Please clarify how these will interact with this requirement?	The benefit administrator may only provide the information to the Authority, customers or persons entitled to the information and must comply with PAIA and POPIA. It must be noted that the Authority is also bound by this legislation, as well as requirements relating to confidentiality in the Financial Sector Regulation Act. See insertion making the requirement subject to POPIA.
233.	ASISA	Section 27(3)	This section is not practical for benefit administrators. How does an administrator keep something for 5 years after it no longer exists? In other words, if a benefit administrator's approval is suspended, withdrawn or terminated, and the fund moves to another benefit administrator, the information relating to members of that fund belongs to the fund and will transfer to the new benefit administrator with that fund. This is in line with the current wording in BN24 which governs benefit administrators and states: "*4. Termination of administration agreements* *When notice of the termination of an administration agreement between a pension fund and an administrator is given, such administrator shall inform the registrar thereof within 30 days of receipt or giving of such notice of termination by the administrator, including in such communication the effective date of the termination and the name of the new administrator if known, and furnish a report to the registrar not later than 14 days after completion of such termination, confirming – (a) that all documents of title relating to assets, the assets register, minute books, members' records and other records pertaining to the fund have been delivered to the board or the new administrators, as the case may be, mentioning specifically the identities of such persons; (b) the date and address of such delivery ; and (c) what the name of the board or person at the new administrator is to whom the documents referred to in paragraph (a) have been delivered: Provided that if an administrator is for some or other reason unable to comply fully or partially with this Condition, the said report shall contain full particulars regarding which documentation have not*	The requirement is not that the records must be kept forever. Please also see amendment requirement which now provides that records must be kept for five year after the data has been transferred. We understand your argument in the context of a benefit administrator that ceases to operate completely. However, if an administrator continues to operate (with different funds) and merely terminate one fund/client relationship, there is no reason why the administrator should not keep the records of its previous client for the requisite period. We amended the clause to make provision for the situation where a benefit administrator ceases to operate as such.

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			been delivered, the reasons therefor as well as a plan with the dates on which compliance will take place." Section 27(3) is now taking a different stance to BN24 and implies that the information needs to be kept forever. Who will pay for that storage? How will this align to data protection provisions under the Protection of Personal Information Act, 2013? In addition, this clause contradicts 27(2) in terms of the running of the 5-year period. What is expected in circumstances where the retention period has passed, and the documents thereafter destroyed? It is recommended that the section also provides for retention/destruction of member personal information after termination of the Administrator's appointment or a completed Section 14 transfer/liquidation.	
234.	IRFA	Section 27(3)	• How does an administrator keep something for 5 years after it no longer exists? This basically means the information needs to be kept forever. Who will pay for that storage? We submit that this subparagraph contradicts subparagraph 27(2) in terms of the running of the 5 year period • Should an administrator not also retain "any information required on a contribution schedule"? • We submit that the FSCA must implement legislation which requires funds/employers/members to provide this information to the administrator, otherwise it is unenforceable and not feasible to require an administrator to take responsibility for this.	• See response in item 233. • Agree. However, see amendment clause which now reads a bit different compared to the previous clause. • If an employer refuses to share this information, then this should be reported to the FSCA. The FSCA is currently limited in terms of what it can (legally) prescribe in relation to employers. It is unclear why a fund would not share this information with the administrator, considering that the administrator will be administering the fund. Regardless, the requirement to share the information can be dealt with in accordance with the administration agreement.
235.	ASISA	Section 27(3)(a)	It is not always possible for benefit administrators to obtain this information. Employers do not always provide this as section 13A and Regulation 33 of the PFA are not prescriptive in providing this level of detail. Implementing legislation that requires funds/employers/members to provide this information to the Administrator would greatly assist benefit administrators. ASISA members note that the Conduct Standard on Requirements related to the Payment of Pension Fund Contributions is addressing this.	FSCA Conduct Standard 1 of 2022 (RF) – Requirements relating to the payment of pension fund contributions was promulgated on 19 August 2022 and should address this concern. Also see response to item 234.

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236.	ASISA	Section 27(3)(a)(iv)	Employers may not be applicable in retail retirement funds. The following amendment is suggested: "employers (if applicable)"…	Agree. See amendment.
237.	ASISA	Section 28(1)	The following wording is suggested to simplify the intention of the Authority: "A benefit administrator must make arrangements to ensure that all documentation held in custody on behalf of a Fund, at the benefit administrator's registered address, are continuously safeguarded".	The wording is similar to the wording in Board Notice 24 of 2004. See amendment of the paragraph for clarification.
238.	OUTvest	Section 28(2)(b)	Section 28 deals with "Documents of Title", however, Section 28(2)(b) states that a benefit administrator must maintain a register to identify ownership of fund assets. Does this register, to be maintained, refer to a register to identify ownership of "Documents of Title" or any fund assets?	This register refers to assets held on behalf of a pension fund in terms of section 5(2) of the PFA. Please refer to Annexure 7 to the draft Determination of Forms in respect of Pension Fund Benefit Administrators. See amendment of title of paragraph for clarification.
239.	SAICA	Section 28(2)(b)	Asset information is retained in the accounting records of the fund supported by portfolio statements received from the investment manager – why is an additional format required as specified by subsection (2)(b)? also due to the different natures of the funds' investments the format may not be appropriate for all investment types.	The requirement is intended to ease identification of fund asset ownership. Note that this is not a new requirement, it is already contained in BN 24 of 2004.
PART XI – FINANCIAL MATTERS				
240.	ASISA	Sections 29, 30, 31 & 35	Benefit administrators who are also licensed insurers already have stringent prudential and financial soundness requirements in terms of the Insurance Act and Prudential Standards, including: • Prudential Standard GOI 3 Risk Management and Internal Controls for Insurers • Section 46 of the Insurance Act requires the annual financial statements to be done in accordance with the Companies Act and International Financial Reporting Standards issued by the International Accounting Standards Board • Prudential Standard ARI – Audit requirements for Insurers. • The auditor of an insurer must be approved by the PA. • The PA has published the draft Standard on Public Disclosures for Insurers	Disagree. Each licensee will have to comply with legislative requirements applicable to them.

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			ASISA members submit that where a benefit administrator is also a licensed insurer sections 29, 30, 31 and 35 of this Conduct Standard do not apply. Please see proposed wording: ***Application of Chapter*** The requirements contained in paragraph 29, 30, 31 and 35 in this Chapter do not apply to a benefit administrator who is also a licensed insurer in terms of the Insurance Act, 2017.	
241.	PWC	Section 29(1)	We propose the following change to section 29 (1) of the Draft Conduct Standard: *"A benefit administrator must record all its financial accounting transactions ~~procedures~~ to ensure that the benefit administrator and the relevant funds are able to report in terms of applicable accounting and reporting requirements."*	Agree. See amendment made to the Standard.
242.	PWC	Section 29(2)	We propose that references be included to the respective sections of the Act and the Draft Conduct Standard that deal with the management of bank and trust accounts.	Disagree that this is necessary.
243.	PWC	Section 29(4)	We propose that clarity be provided to benefit administrators, as to what would constitute a 'proper internal financial control system' for purposes of complying with the Draft Conduct Standard.	Disagree that a definition is necessary. The Authority is of the view that meaning is clear in the context of paragraph 29. A financial control system must be implemented to ensure compliance with the Standard.
244.	PWC	Section 30(1)	(1) We propose that 'independent auditor' be defined in section 1 as follows: *"independent auditor - has the meaning set out in the Auditing Professions Act, 2005 (Act No. 26 of 2005)"* (2) We don't believe that this section adequately addresses the requirements as it relates to the appointment of an auditor. We propose that a separate section be included that sets out the duties of the auditor as covered under sections 30(1)(a) – (e). (3) We propose that section 30 (1) read as follows as it relates to the appointment of an auditor:	(1) Disagree. "independent auditor" is not defined in the Auditing Professions Act, 2005. Reference to "independent" has, however, been removed. (2) Proposal not understood. (3) See amendment. Note that not all benefit administrators are companies and referring to section 90 of the Companies Act will therefore be problematic.

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			"*A benefit administrator must appoint an independent auditor in accordance with the requirements of section 90 of the Companies Act. This auditor should perform and audit as defined in the Auditing Professions Act, 2005 in order to express an opinion on the financial statements. ~~registered in terms of the Auditing Professions Act, 2005 (Act No. 26 of 2005) to on an annual basis~~*"	
245.	PWC	Section 30(1)(a) – (c)	We propose that paragraphs (a) to (c) be replaced with the suggested wording in line 15 above.	See response to comment directly above.
246.	SAICA	Section 30(1)(a)	We suggest that the section should be reworded as follows: "Audit its financial statements."	Agree. Amendment made.
247.	SAICA	Section 30(1)(b)	This section appears to be superfluous as section 30(1)(a) already requires an audit of the business of the benefit administrator. The reference to "examination" could create confusion: It is not clear what is required of the auditor or whether this is a separate engagement from the audit. We suggest that section 30(1)(b) should be deleted.	Agree. Amendment made.
248.	IRFA	Section 30(1)(c)	See corrections: (c) determine whether, in the auditor's opinion, the benefit administrator's annual financial statements fairly present, in all material respects, ~~;~~ the financial position of the benefit administrator at the year end and the results of its operations and cash flows ~~/~~for the year then ended in accordance with ~~or~~ the relevant International Financial Reporting Standards, and in the manner required by the Companies Act 2008 (Act No. 71 of 2008) or other applicable legislation	Note that item (c) has been deleted.
249.	SAICA	Section 30(1)(c)	The expression of an audit opinion on the financial statements is the primary outcome of an audit of the financial statements. This section therefore appears to be superfluous as section 30(1)(a) already requires an audit of the business of the benefit administrator. The reference to "fairly present" may be problematic: The auditor will only be in a position to express a "fairly presents" opinion if the annual financial statements were prepared in	Agree. Amendment made.

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			accordance with a “fair presentation framework” as defined in the International Standards on Auditing (ISA). Examples of such frameworks are IFRS and IFRS for SMEs. Section 31(1)(a) is not clear on the prescribed applicable financial reporting framework for the preparation of the annual financial statements of the benefit administrator. If the applicable framework is a “compliance framework” (as defined in the ISAs), the auditor will not be in a position to express a “fairly presents” opinion. The reference to “the relevant International Financial Reporting Standards (IFRS)” is problematic: • Sections 30(1)(c) and 31(1)(a) do not appear to be aligned with regard to the financial reporting framework that should be applied in the preparation of the annual financial statements. • The reference to “the relevant” International Financial Reporting Standards is ambigious – it could be understood to mean that an “IFRS-minus” financial reporting framework will be applied in the preparation of the annual financial statements. • The retirement funds do not prepare their financial statements according to International Financial Reporting Standards - they report as per the Regulatory reporting requirements for retirement funds, which is a “compliance framework” as defined in the ISAs. We suggest that section 30(1)(c) should be deleted.	
250.	IRFA	Section 30(1)(d)	See correction: d) review the appropriateness of the accounting systems and policies represented to the auditor as having been applied in respect of the preparation of the annual financial statements of the **benefit** administrator; and	Note that item (d) has been deleted.
251.	PWC	Section 30(1)(d)	A ‘review’ in the context of the auditing standards implies an independent review performed in accordance with International Standard on Review Engagements (ISRE) 2400/2410, that applies to independent reviews of historical financial statements. These standards cannot be applied to engagements where the auditor is required to provide a conclusion on the appropriateness of accounting systems and policies.	Agree. Item (d) has been deleted. Engagement with IRBA will first take place before this is made a requirement in law.

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			Providing assurance on accounting systems and policies is a complex and costly endeavour, and we do not have frameworks in the country outside of the public sector to do so. In order for auditors to provide such assurance, these frameworks would need to be developed specifically for benefit administrators, and would need to create suitable criteria to support auditors acceptance of any possible engagement in this regard. In the event that the FSCA wishes to undertake this endeavour, we recommend that the FSCA engage with the IRBA and relevant stakeholders in determining an appropriate form of engagement that will adequately meet the needs of the FSCA as it relates to the accounting systems and policies.	
252.	SAICA	Section 30(1)(d)	It appears that this section is requiring the performance of a limited assurance engagement by the auditor regarding the "accounting systems and policies represented to the auditor as having been applied in respect of the preparation of the annual financial statements of the administrator." This type of engagement is governed by the International Standards on Assurance Engagements (ISAEs). An auditor may only accept such a engagement if (amongst others) the preconditions for an assurance engagement are present. This includes that the auditor must establish that the underlying subject matter of the engagement is appropriate and that the criteria that the auditor expects to be applied in the preparation of the subject matter are suitable for the engagement circumstances. We question whether the auditor will be able to establish that the preconditions for an assurance engagement are present with regard to the engagement envisaged in section 30(1)(d). This section requires further discussion with the auditing profession, including the IRBA.	See response directly above.
253.	PWC	Section 30(1)(e)	The term 'determine' implies absolute assurance which cannot be provided in an audit/assurance engagement.	See response directly above.

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			We propose that this section reflect what would be reflected in the auditor's opinion. For example: "*determine whether, in the auditor's opinion, the ~~a~~ benefit administrator has complied, in all material respects in accordance ~~is conducting the relevant business in accordance~~ with the provisions of the Act, related regulations and this Conduct Standard.*" We also recommend that the FSCA engage with the IRBA and relevant stakeholders in developing an illustrative report to ensure that there is consistency in the market in the manner in which the auditors of benefit administrators report on compliance with the provisions of the Act, related regulations and the Conduct Standard. In addition, clarity would need to be provided as to whether this report would be required to be issued to each pension fund it administers, and who the intended users are. In addition, the requirement should be specific as to which regulations are to be considered by the auditor, as the administrative and operational compliance would not normally be considered in the scope of an audit.	
254.	SAICA	Section 30(1)(e)	Based on section 2 of Form B, it appears that the auditor is required to report certain agreed-upon procedures in relation to section 30(1)(e). Such engagements are not governed by the ISAs, but are governed by the International Standard on Related Services (ISRS) 4400 (Revised) – *Agreed-upon Procedures Engagements*. ISRS 4400 (Revised) is effective for agreed-upon procedures engagements for which the terms are agreed on or after 1 January 2022. For the sake of brevity we have only referred to the revised Standard in our comments. No assurance is expressed in an agreed-upon procedures engagement. An agreed-upon procedures engagement will therefore not enable the auditor to make a determination (i.e. reach	See response directly above.

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			a conclusion) on whether or not a benefit administrator is conducting the relevant business in accordance with the Act, regulations and the Conduct Standard. The agreed-upon procedures will be conducted for the purpose of enabling the Authority to make such a determination. Section 30(1)(e) should be redrafted to reflect as much.	
255.	IRFA	Section 30(3)	See correction: (3) Notification of an appointment of an auditor to the Authority as referred to in subparagraph ~~(1)~~ **(2)** must be accompanied by a letter of acceptance of the appointment by the new auditor	Agree. See amendment made to Standard.
256.	IRFA	Section 31	• Please clarify that presumable these accounting records are in relation to the administrator (rather than the fund)? • Please clarify is Form A to this Conduct Standard (Auditors report to members of the fund) must be issued individually to members or can it be posted onto the member's website, etc.? • Iro Form B to this Conduct Standard point 2.13, please clarify if the independent auditor could confirm compliance with system controls as required in paragraph (i.e. 37 operational ability) through a report from the system providers auditor, given that the auditing of paragraph 37 will be expensive?	• The requirements of the draft Conduct Standard relate to benefit administrators. It is also clear from paragraph 31 that it is the accounting records of the benefit administrator. • Note that Form A is no longer applicable. • Note that Form B is no longer applicable.
257.	PWC	Section 31(1)	In relation to accounting records, we propose that the Draft Conduct Standard also reference the requirements relating to maintaining accounting records as set out in other legislation, for e.g. the Companies Act of South Africa.	Disagree. Benefit administrators must comply with all legislative requirements applicable to them – it need not be stated in the Conduct Standard.
258.	SAICA	Section 31(1)(a)	The paragraph refers to accounting records and preparation of annual financial statements conforming with accounting practices generally accepted in South Africa, should this not refer to " accounting records and preparation of financial statements prepared as per the reporting framework prescribed by the Authority" to avoid any confusion with the South African Statements of Generally Accepted Accounting Practices (SA GAAP) which was discontinued in 2012.	We are not in a position to prescribe the reporting framework, and it is questionable whether we should do so as financial reporting is governed elsewhere. We also disagree that "accounting practices generally accepted in South Africa" can be misconstrued as referring to GAAP, which has a very specific reference. Further, the accepted accounting practices in South Africa might change from time to time and it will not be practical for the FSCA to

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Item	Entity	Section	Issue/Comment/Recommendation	FSCA Response
			If an administrator operates as a company, it would have to comply with the Companies Act's requirements regarding the financial reporting framework to be applied in the preparation of its financial statements. The section should be redrafted to clarify the financial reporting framework to be applied in the preparation of the administrator's financial statements.	keep changing the law to refer to the prevailing accounting practices. If an administrator operates as a company the Companies Act requirements will still apply. If not, the prevailing reporting framework (generally accepted in South Africa) will apply.
259.	ASISA	Section 32	In retail funds, the premiums are normally paid directly into the retirement fund account. It is proposed that the paragraph should be amended to: "A benefit administrator must, within one business day of receipt of funds into its account ~~any fund monies~~, pay those monies …"	Agree. See amendment made to the Standard.
260.	ASISA	Section 33(3)	Change 24 hours to 1 business day.	Agree. See amendment made to the Standard.
261.	IRFA	Section 33(3)	• What if the amount is, for example, received 17h00 on a Friday afternoon? It would then not be possible to allocate the amount within 24 hours. • We submit that 24 hours should be changed to one business day. • Also, the allocation may not be able to happen in the membership data and contributions received do not tie up and queries need to be addressed before the allocation can be done • What is meant with sub-fund, i.e. participating employer in umbrella fund? And if yes, why only reference made under this subparagraph to it?	Agree. See amendment made to the Standard. These will be exceptions, generally these can be made within 1 business day. We have made specific reference to "sub fund" in this case as it is applicable in this context. And this does relate to the participating employer in an umbrella fund.
262.	ASISA	Section 33(4)	Change 48 hours to 2 business days.	Agree. See amendment made to the Standard.
263.	IFRA	Section 33(4)	• What if the contributions are, for example, received 17h00 on a Friday afternoon? It would then not be possible to do the investigation as referred to in this paragraph within 48 hours. • We submit that the reference to 48 hours should be changed to *two business days*.	Agree. See amendment made to the Standard.
264.	SAICA	Section 33(4)	Change 48 hours to 2 business days as banks will not provide information on non-business days in order to investigate the nature.	Agree. See amendment made to the Standard.

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Item	**Entity**	**Section**	**Issue/Comment/Recommendation**	**FSCA Response**
265.	ASISA	Section 33(5)	Add in the word “basis” at the end of the clause.	Agree. See amendment made to the Standard.
266.	IRFA	Section 33(5)	See correction: (5) the responsible key person must ensure that all available actions have been taken to investigate any unallocated amounts, and any such unallocated amounts must be reported to the governing body of the benefit administrator on a quarterly **basis**	Agree. See amendment made to the Standard.
267.	PWC	Section 33(5)	We propose the following update to this section *“...reported to the governing body of the benefit administrator on a quarterly basis;”*	Agree. See amendment made to the Standard.
268.	SAICA	Section 33(5)	“basis” appears to be missing at the end of the sentence.	Agree. See amendment made to the Standard.
269.	ASISA	Sections 33(7) & (8)	Change 24 hours to 1 business day.	Agree. See amendment made to the Standard.
270.	IRFA	Section 33(7)	• See correction. (7) in the case where a benefit payable to a beneficiary is made through the **benefit** administrator’s trust account, such ~~a~~ benefit must be transferred or paid within 24 hours from when the deposit was made to the trust account • We submit that 24 hours should be changed to one business day	Agree. See amendment made to the Standard. Agree. See amendment made to the Standard.
271.	IRFA	Section 33(8)	We submit that the reference to 24 hours should be changed to *one business day*.	Agree. See amendment made to the Standard.
272.	ASISA	Section 33(9)	It is submitted that the obligation to perform daily reconciliations should be limited to business days.	The Authority if of the view that this is implied and not necessary to specify.
273.	IRFA	Section 33(10)	We submit that a period of 7 business days is insufficient time for resolving this.	Disagree. No reasons have been advanced as to why this will not be possible.
274.	ASISA	Section 34	Clarity is required in respect of the following: • Does the timeframe of 48 hours in Section 33(4) not conflict with the 72 hours as per Section 34(2)? • The draft does not define or stipulate the differences between “unallocated amounts” (Section 33(5)) and “unclassified payments” (Section 34(1)).	No. Section 33(4) relates to payments received by the benefit administrator that the benefit administrator can identify as being meant to be paid to the administrator, but the administrator is not immediately able to identify in respect of which pension fund payment was received. Section 34(2) relates to payments which are completely unidentifiable by the benefit administrator received in its own account.

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				Thus, the two accounts are different and not for the same purpose. The Authority is of the view that it is not necessary to define these terms.
275.	BASA	Section 34	Will it be compulsory to maintain a suspense account for unclassified payments? Currently this is catered for in the fund rule which states that, any unallocated deposits that cannot be allocated into a member account due to the fund not having received the necessary documentation, must be refunded with the full interest on that amount for the period it remained in the bank account less any admin charges. Any unclassified amounts in the trust account must be paid back within 90 days with accumulated interest. In instances where transactional volumes are low, maintaining a suspense account may result in additional administrative costs.	Yes. This refers to unclassified payments made into the bank account of the benefit administrator. This is to ensure the safeguarding of the payments in the event that it has to be repaid.
276.	BASA	Section 34	BASA will appreciate a definition of 'unallocated' or expand on the definition. Unallocated implies that it belongs to the entity in whose bank account it has been paid into and only requires allocation to a member record. 'Unclassified' would imply that it is uncertain if the deposit was correctly made to the entity, which means that it can never be allocated and only returned.	The Authority is of the view that it is not necessary to define these terms. Clause 34 does not refer to "unallocated" amounts but "unclassified" amounts. These are to be understood in the context of the clause.
277.	IRFA	Section 34(1)	• Please clarify the need for this account and under what name would this 'suspense account' be i.e. the fund or the administrator and why can it not just sit in the fund's bank account as was intended by law. We submit that this requirement may create unnecessary additional financial implications as opening of a separate bank account may add an unnecessary layer of complexity and add to the costs of the benefit administrator • With reference to definition of "suspense account" see correction: A benefit administrator must when it receives an unclassified **or doubtful** payment swiftly investigate the origins of such payment and allocate it correctly. • Please clarify if "swiftly" would thus mean less than 72 hours?	The suspense account is to be used by a benefit administrator for any payments received where the administrator does not know the origins of the payment. It cannot sit in the fund's bank account. We disagree with the addition of "doubtful" - before you classify a payment as "doubtful", you should have conducted the investigation referred in this subparagraph. Yes. The origin of the payment should be investigated without delay and if the origin has not been identified

Item	Entity	Section	Issue/Comment/Recommendation	FSCA Response
				within 3 days, the payment must be placed in a suspense account.
278.	PWC	Section 34(1)	We propose defining what would be considered to be "unclassified payment" as this is a broad term.	Disagree. This is not a broad term. It is money received in the account of the administrator where the administrator does not know the origins of the payment following the investigations alluded to in this section.
279.	ASISA	Section 34(2)	Typo: "subparagaph" in the first line should be "subparagraph".	Agree. See amendment made to Standard.
280.	BASA	Section 34(2)	1) This is not the current practice. Unallocated money remains in the product account until it has been allocated. 2) The proposed change to move the money to the suspense account may impact our ability to identify the funds.	Agree. This is a new requirement. Disagree. It is not clear how it would impact the ability to identify the funds.
281.	IRFA	Section 34(2)	• See proposed wording (2) If the correct classification of ~~a~~ ***an unclassified or doubtful*** *payment* ~~referred to in subparagaph (1)~~ has not been confirmed within 72 hours of receipt of the payment, the benefit administrator must place the payment in a suspense account • With reference to the definition of "suspense account" which says this will be a "temporary" account, please clarify if there is thus no time limit on how long it must be kept in the suspense account?	Please see the response to item 277.
282.	SAICA	Section 34(2)	Change 72 hours to 3 business days.	Agree. See amendment made to the Standard.
283.	IRFA	Section 34(4)	See correction: 4) The responsible key person must report any balances in the suspense account to the governing body of the benefit administrator on a quarterly basis together with the ~~balance and~~ age of the amounts in the suspense account	Disagree, Reason for the change not understood/explained.
284.	ASISA	Section 35(1)	It is submitted that auditors cannot assess the level of the PI cover to be taken. Auditors must express an opinion on the adequacy of the level of cover. The concern is that if the auditor determined the actual level of PI cover, this may impact the impartiality of their opinion. ASISA members suggest that this section be amended as follows:	Agree. See amendment.

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			"(1) a benefit administrator must maintain in force sufficient professional indemnity and fidelity guarantee insurance from and up to such an amount as determined by the benefit administrator ~~together with its auditors~~ and as is adequate relative to the complexity and size of its administration business."	
285.	PWC	Section 35(1)	We propose that clarity be provided in this regard as the proposed involvement of the auditors in determining whether the 'amount' as described, might not be within the ambit of an audit as defined in the Auditing Professions Act, 2005 and impact on auditor independence requirements.	See amendment made to the Standard for clarification.
286.	IRFA	Section 35(2)(a)	Please clarify that it will not be required, unless (i.e not to the extent that) that self-payment gap has itself been insured for example through a cell captive?	This is correct.
287.	IRFA	Section 35(2)(b)	• A fund's insurance does not affect a claim that a fund has against an administrator. A fund's claim against an administrator is not dependent on the administrator's insurance. Insurance is just one way for the administrator to recover the funding of the payment of a claim. We therefore submit that paragraph (2)(b) should be deleted. • See correction: b) any exclusions, limitations or restrictions contained in the professional indemnity and fidelity guarantee insurance which might affect any claim a fund may have against the **benefit** administrator	Agree. However, we retain that the fund should be aware of any material exclusion, restrictions, etc. See revised wording.
PART XII – FINANCIAL SOUNDESS AND OPERATIONAL ABILITY				
288.	BASA	Section 36	Is it intended that the minimum capital requirement will be either a) or c) – whichever is the higher tof the two, or is it combined?	The minimum capital requirement has been removed.
289.	Beacon	Section 36	The requirement to maintain capital of R3 000 000.00 is unreasonable for small and medium sized benefit administrators who are SMMEs with turnover less than R1 000 000.00pa, and a small staff compliment who do not own property within the company. This requirement should only be applicable based on rational and proportional critea, for example: Being a listed company, exceeding a certain turnover threshold or number of employees to avoid avoid unfair discriminatory regulatory practices against SMMEs excluding smaller benefit administrators and favouring large corporate	See response directly above.

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			entities, which will result in many SMMEs being forced out of the industry by this irrational and unfair requirement, with consequent unemployment.	
290.	IRFA	Section 36	It is submitted that smaller benefit administrators or benefit administrators who only provide front office services and not full on administration in the industry may find it difficult to keep up with the new requirement for a benefit administrator to maintain a minimum capital of R 3 000 000.00 and the liquid assets equal to or greater than 13/52 weeks of annual expenditure. Please clarify if there will be exemption process in place especially for this requirement.	See response directly above.
291.	Integrity	Section 36	The required minimum capital is too high for small businesses. The previous format of linking the required capital to the business' own monthly income, irrespective of the size of the business, is more realistic and fair.	See response directly above.
292.	PSG	Section 36	The licence is used by our CAT II share portfolio managers in order to provide equity-based solutions to retirement funds. The current capital requirements for our CAT II licence is 8 weeks of capital. The new requirement will increase the requirement for pension fund administrators to 13 weeks. This is a significant amount of additional capital for this licence to hold. We do not believe that the risk posed by the additional licence increases the solvency or liquidity risk of the company in any way and therefore recommend that the liquidity requirement is set in line with that of a CAT II.	The requirement has been changed to revert back to 8/52 weeks of annual expenditure.
293.	SAICA	Section 36(1)	The understanding is that the R3m is reduced by the requirement in section 36(1)(c), does this mean that if the 13/52 weeks of annual expenditure exceeds R3m, and the administrator has that amount in liquid assets that no capital is required? Does this mean that an administrator could have R1 capital plus retained earnings as long as the liquid assets meet the 1(c) requirement where it exceeds R3 million? If this was not the intention the section needs to be clarified. The requirement to maintain capital of R3m is unfair for small and medium sized benefit administrators who are SMMEs with turnover less than R1m per annum, and a small staff compliment who do not own property within the company. This requirement should only be	See relevant comments directly above.

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			applicable based on rational and proportional critea, for example: Being a listed company, exceeding a certain turnover threshold or number of employees to avoid potentially (Guidance can be sought from PIE definitions or the systematically important financial institutions) unfair discriminatory regulatory practices against SMMEs by excluding smaller benefit administrators and favouring large corporate entities, which will result in many SMMEs being forced out of the industry with consequent unemployment. Although we understand the need to protect customers against any potential runs, there are unintended consequences for smaller funds in terms of the set amount, as opposed to using a metric as suggested above.	
294.	ASISA	Section 36(1)(b)	Clarity is required as to what constitutes "current liabilities" as it is not defined.	This term must be given its ordinary meaning. In accounting terms this concept is well understood.
295.	ASISA	Section 37	Benefit administrators who are also licensed insurers have similar requirements in the Prudential Standard GOI 1 Framework for Governance and Operational Standards for Insurers and Prudential Standard GOI 3 Risk Management and Internal Controls for Insurers. If there are any inconsistencies, ASISA members assume the more onerous provisions will prevail. Please see proposed wording: ***Application of Chapter*** *Where a benefit administrator is also a licensed insurer in term of the Insurance Act, 2017, in the event of any inconsistency between paragraph 37 of this Conduct Standard and a Prudential Standard issued in terms of the Insurance Act, the latter will prevail.*	The administrator must abide with all the conditions for each licence that it holds.
296.	ASISA	Section 37	ASISA members wish to draw attention to the draft Joint Standard – Information Technology Risk Management. This draft standard currently applies to insurers, Mancos, and Discretionary and Administrative FSPs. Should it not also include benefit administrators, particularly when considering the elaborate systems and data management required for administration services?	Benefit administrators will not be included in the Joint Standard – Information Technology Risk Management at this stage. Should the decision be taken to extend the scope of that Joint Standard to include benefit administrators at a later stage, there will be consultation with the industry.
297.	ASISA	Section 37(3)(a) & (b)	The term clients should be replaced with customers:	See amendment clause.

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Item	**Entity**	**Section**	**Issue/Comment/Recommendation**	**FSCA Response**
			(a) Taking on new funds as customers ~~clients~~; *(b) termination of funds as customers ~~clients~~;*	
298.	ASISA	Section 37(3)(d)	What is meant by 'information reporting'?	See amended clause.
299.	IRFA	Section 37(3)(d)	What is meant by 'information reporting'?	See amended clause.
300.	IRFA	Section 37(3)(s)	See correction: (s) housing loan **and guarantee** administration; and	See amended clause.
301.	IRFA	Section 37(5)	Please clarify if this notification is only required when the whole system is being replaced? We submit that the word "material" be inserted before "change".	The requirement is clear: the Authority must be informed if the benefit administrator intends to either replace its administration system or migrate from one system to another. That is the change that is being referred to. The insertion of "material" will therefore not make sense in the context.
302.	PWC	Section 37(5)	The term 'confirming' implies absolute assurance which cannot be provided in an audit/assurance engagement. In order for the auditor to provide assurance over the administration system, the requirements for the administration system as set out in section 37 (5) would need to constitute suitable criteria against which the administration system could be measured against. In its current form, the requirements set out in section 37 (5) do not constitute suitable criteria, and would not be opined on. We strongly recommend that the FSCA engage with the IRBA and relevant stakeholders in developing a framework to be used that meets the FSCAs needs and also to develop an illustrative report to ensure that there is consistency in the market in the manner in which the auditors of benefit administrators report on compliance with the provisions of the Act, related regulations and the Conduct Standard.	See amended clause.
303.	ASISA	Section 37(5)(b)	It is submitted that by implication an Administrator will assess the functionality of a new system as it is usually very expensive to change systems. It is doubtful whether an Auditor will be able to provide additional assurances. Also, to what extent must the Auditor provide assurances eg. must the Auditor certify all types of contributions (fixed, percentage of pensionable salary, percentage of risk salary, cost-to-company etc.) or just the basic functionality?	See amended clause.

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			ASISA members request that this section be deleted.	
304.	IRFA	Section 37(5)(b)	Could the system provider's auditor provide this instead of the administrator's auditor (given that it may be an expensive report)?	See amended clause.
305.	ASISA	Section 37(6)	Suggest insertion of the word "material" before change.	Agreed. See amended clause.
306.	PWC	Section 37(6)	"Any change" is a very broad terminology which would require continuous reporting to funds under administration. We propose providing clarity on specific changes that would need to be reported.	See response directly above..
307.	IRFA	Section 37(7)	• This often does not work as the 'old' system is usually not maintained and eventually, getting data out of these historical systems becomes a big problem. We submit that the data on the old system must rather be transferred to the new system so that it stays on a supported system for life. • Please clarify what does "secured" mean? Does it mean retained or kept safe?	The comment is noted but does not relate to paragraph 37(7). It means the information must be retained, transferred and kept safe and remains the property of the fund. Notwithstanding, clause has been deleted.
PART XIII – MERGERS AND ACQUISITIONS AND TERMINATION OR CEASING OF BUSINESS BY BENEFIT ADMINISTRATOR				
308.	ASISA	Section 38	Benefit administrators who are also licensed insurers are subject to s50 of the Insurance Act, which requires the PA approval in respect of mergers and material acquisitions. ASISA members therefore submit that paragraph 38 should not apply to a benefit administrator who is also a licensed insurer. Please see the proposed wording: ***Application of Chapter*** The requirements contained in paragraph 38 in this Chapter do not apply to a benefit administrator who is also a licensed insurer in terms of the Insurance Act, 2017.	The administrator must abide with all the conditions for each licence that it holds. We cannot see any reason why both the conduct standard (FSCA approval) and the Insurance Act (PA approval) should not apply.
309.	IRFA	Section 38(1)	See correction: 1) A benefit administrator may not merge with or acquire the business of another ~~approved~~ benefit administrator	Agreed. See amendment.
310.	IRFA	Section 38(3)	Why is subparagraph (3) included/necessary as already stated in subparagraph 1(c)? Could create impression that non-compliance with **other 2** conditions under subparagraph (1) would **not** make merger void?	Theoretically a merger can be concluded without the approval of the FSCA. Although it would be a contravention of law, contractually the merger will stand unless there is a provision declaring such merger void-this is the intention of subparagraph (1)(c). Technically non-compliance with subparagraph 1(a) and (b) will not result in the merger being void, however, the FSCA will

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Item	**Entity**	**Section**	**Issue/Comment/Recommendation**	**FSCA Response**
				not approve the merger unless the requirements of subparagraph 1(a) and (b) have been met, hence the reason why it is not necessary to state that the merger is void if subparagraph 1(a) and (b) was not complied with.
311.	ASISA	Section 39(2)	Typo and the word "benefit" is missing: *(2) A benefit administrator must ensure that its provides a report, compiled and signed off by its auditor, to the Authority, in the form of a letter and including any supporting documents, where applicable, within 90 days after the date of ceasing to perform benefit administration business, confirming that the requirements set out in paragraph 39(1) have been met*	This should refer to administration services- see amended clause.
312.	IRFA	Section 39(2)	• Please clarify, with reference to subparagraph (2), that in effect have 90 days to do this? • It is submitted that "*must ensure that its provides*" should rather be "*must provide*"	The report must be provided to the Authority within 90 days after the benefit administrator ceased to perform administration services. Agree. See amendment made to the Standard.
313.	PWC	Section 39(2)	The term 'confirming' implies absolute assurance which cannot be provided in an audit/assurance engagement. We strongly recommend that the FSCA engage with the IRBA and relevant stakeholders in determining the appropriate form of framework that should be applied in meeting the needs of the FSCA.	See amended clause.
314.	ASISA	Section 40	Should the reference not be to section 13B(6) instead of subsection(8)?	No. Section 13B(6) empowers the Authority to suspend or withdraw a benefit administrator's approval. Section 13B(8) refers to the notice that the Authority must give to the benefit administrator before doing so. It is upon receipt of the notice from the Authority contemplated in section 13B(8) that the benefit administrator must act in accordance with paragraph 40(1) of the draft Conduct Standard.
315.	IRFA	Section 40	Please clarify if the intention is that the Conduct Standard will be replacing Section 13(6) of the Pension Funds Act?	That is not the intention. A provision of the PFA cannot be replaced by way of a Conduct Standard.
PART XIV – MISCELLANEOUS				

	SECTION B - COMMENTS ON THE DRAFT CONDUCT STANDARD			
Item	**Entity**	**Section**	**Issue/Comment/Recommendation**	**FSCA Response**
316.	PSG	Section 41(1)	We request that the 6 month period be extended to 12 months to allow Administrators sufficient time to review and/or align agreements with Conduct standard requirements, align policies, procedures and processes.	See revised transitional arrangements.
317.	ASISA	Section 41(2)	Please see our comment under Part VIII - Outsourcing Benefit administrators who are also licensed insurers have Prudential Standard GOI 5 Outsourcing by Insurers, which, provides for a transitional period for implementing outsourcing arrangements. While this applies to the outsourcing of insurance business, there are many overlapping provisions contained in this Conduct Standard and GOI 5. ASISA members request that these provisions be aligned and all benefit administrators, whether insurance companies or not, be given the same transitional period: Please see below proposed wording, which is the wording used in GOI 5. *"Any outsourcing arrangement entered into prior to the effective date of this Conduct Standard must comply with this Conduct Standard within two years from the effective date."*	We agree to extend the transitional period to 12 months in respect of the outsourcing requirements, but we view 24 months as excessive given the nature of the changes.
318.	ASISA	Section 41(2)	Please refer to previous comments regarding outsourcing and the transitional period required in that respect. Bear in mind also, that it is not only the administrators that are impacted by this. This impacts on funds as well and so the timeframes need to be considered in light of the role they play in this – for example reviewing and signing of new services agreements. Insofar as Part VI Administration Agreements is concerned, benefit administrators will require at least 12 months to implement the changes envisaged in Part VI, as the revised administration agreements will need to go through the necessary board/trustee board meeting cycles. Generally speaking, a 6-month period is insufficient. These changes will require significant systems development to implement this	See response directly above.

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			Conduct Standard. Additional information in this regard is set out below in Part C.	
319.	IRFA	Section 41(2)	It is submitted that 6 months will not be sufficient time within which to comply with this Conduct Standard. Bear in mind also, that it is not only the administrators that are impacted by this. This impacts on funds as well and so the timeframes need to be considered in light of the role they play in this – for example reviewing and signing off new services agreements.	See response directly above.

SECTION B - QUESTIONS RELATING TO THE ANTICIPATED IMPACT OF THE CONDUCT STANDARD			
Entity	**Question**	**Comment**	**FSCA Response**
ASISA	Will the Conduct Standard impose additional compliance costs on the business? If yes, please provide details including the expected costs.	Yes, however, it is difficult to quantify all the applicable/potential costs at this point. In addition to appointing a key person and governing body, additional costs will be incurred by risk management, compliance officers, internal and external audits to monitor compliance with the Standard. Where there is termination of an Administrator, a recon of benefits/bank accounts etc. must be done. This may incur new costs due to the short turnaround time. If the legal entity that holds the Section 13B Administrator licence is also prudentially regulated or subject to other legislated governance requirements, additional costs may be incurred. For example, this Conduct Standard mimics the Prudential Governance Standards for Insurers to a certain extent, but not all. Subtle differences exist that will require additional compliance processes and monitoring activities to try and manage these differences. Costs relating to re-structuring of departments as well as training costs are foreseen. Costs relating to the additional reporting required, the development of policies and procedures and other incidental costs are anticipated. Costs are expected to be substantial.	Noted. It should be noted that the legal entity approved as a benefit administrator will already have a governing body (for example a board of directors). Benefit administrators already have Persons in Charge who will now be known as responsible key persons. Furthermore, the current Board Notice (Condition 13) already requires the reconciliations and audits referred to in the comment. It is difficult to make an assessment of the potential impact you raise lacking more concrete examples pertaining to specific requirements. The only example you provide is governance requirements, but even this example is positioned at a very high level and we are unable to understand whether the concern raised truly holds merit. The requirements in the Standard are positioned at a relatively high level and our initial view is that it will be possible to rely on existing governance arrangements established in the context of the Prudential Standard to also meet the requirements of

SECTION B - QUESTIONS RELATING TO THE ANTICIPATED IMPACT OF THE CONDUCT STANDARD			
Entity	**Question**	**Comment**	**FSCA Response**
		Similarly, where the specific entity is also licenced under the FAIS Act and is required to comply with those requirements as well, this may result in a duplication of cost and effort.	this Standard, without any signfiicant changes being necessary. We are also of the view that the concern you raise surrounding costs might be overstated. Again, it is difficult to assess this due to a lack of concrete examples. You also raised reporting, but it is not clear what additional reporting requirements you are referring to. Are you referring to financial reporting? If so, please note our comment above regarding financial reporting- the financial reporting process has been simplified significantly and this should alleviate any potential cost implications.
BASA	Will the Conduct Standard impose additional compliance costs on the business? If yes, please provide details including the expected costs.	We are not able to comment on this at this stage.	Noted.
Beacon	Will the Conduct Standard impose additional compliance costs on the business? If yes, please provide details including the expected costs.	Yes, drafting policy documents. R10 000	Noted.
PWC	Will the Conduct Standard impose additional compliance costs on the business? If yes, please provide details including the expected costs.	The requirements contained in the current Draft Conduct Standard are aligned to those prescribed in Board Notice 24 of 2002. In its current format, we do not believe this will result in any additional compliance costs. However, based on our comments above, we do believe that this question should be reconsidered once the FSCA has engaged with the IRBA and other relevant stakeholders as the outcome of those discussions would impact on the compliance costs.	Noted.

SECTION B - QUESTIONS RELATING TO THE ANTICIPATED IMPACT OF THE CONDUCT STANDARD			
Entity	**Question**	**Comment**	**FSCA Response**
RFS	Will the Conduct Standard impose additional compliance costs on the business? If yes, please provide details including the expected costs.	Yes, we foresee that one additional person be appointed to attend to complaints handling in terms of the proposed complaints management framework and reporting thereon. Also, system changes to handle and store complaints electronically. Estimated costs R500 000 per annum (estimation based on 2021 costs).	Noted. 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. However, we do not necessairly agree that a new person has to be appointed. We would assume that adminsitrators currently have compliaints management procedures in place. If not, this in itself is a concern. A benefit adminstrator would therefore be able to leverage from existing structures and resources instead of having to appoint a new person.
SAICA	Will the Conduct Standard impose additional compliance costs on the business? If yes, please provide details including the expected costs.	Yes, for small funds without internal legal staff the drafting of policy documents will necessitate additional compliance costs and the amounts will vary.	Noted, on the assumption the reference to "small funds" was intended to be to "small benefit administrators".
ASISA	How do you anticipate the Conduct Standard affecting the operational cost of the business, if at all?	Operational costs will increase substantially as the Conduct Standard imposes many new obligations on administrators. These obligations translate into functions to be carried out by departments within the Administrator, which may require greater numbers of staff and, therefore, push up labour costs as well as the costs of the systems needed for the staff to execute their work on. System development would be required to ensure the additional procedures and processes are in place, and to ensure appropriate reporting requirements. Additional governance and reporting requirements are imposed that will require additional focus and will increase overheads significantly.	Noted. Based on your comment it is difficult to estimate the extent of these cost implications. Many of the requirements are based on the existing BN, we therefore assume that your comment is largely focussed on the new requirements being introduced. It would have been helpful to understand exactly which requirements are expected to have the most significdant cost implication.
BASA	How do you anticipate the Conduct Standard affecting the operational cost of the business, if at all?	We are not able to comment on this at this stage.	Noted.
Beacon	How do you anticipate the Conduct Standard affecting	It will end the financial viability of the administrator.	Noted. However, the reason why you state this is unclear and not sufficient. We can therefore not place significant reliance on an arbitrary statement like this

SECTION B - QUESTIONS RELATING TO THE ANTICIPATED IMPACT OF THE CONDUCT STANDARD			
Entity	**Question**	**Comment**	**FSCA Response**
	the operational cost of the business, if at all?		and in our opinion, you overstate the potential implications.
PWC	How do you anticipate the Conduct Standard affecting the operational cost of the business, if at all?	In the event that appropriate frameworks are put in place to allow assurance on various matters discussed in the Draft Conduct Standard, these may impose additional operational costs for benefit administrators to develop operations that are mature enough to be assured.	Noted. Note that most (if not all) of the assurance requirements have been removed.
RFS	How do you anticipate the Conduct Standard affecting the operational cost of the business, if at all?	We expect the operational costs to increase.	Noted. It would have been helpful if you provided more information on the extent to which you expect it to rise and why. Lacking this context it is difficult to place significant reliance on this assertion.
SAICA	How do you anticipate the Conduct Standard affecting the operational cost of the business, if at all?	Large firms will incur minimal compliance costs, however small to medium funds without legal teams will have high legal or compliance costs with the capital adequacy and liquidity requirements reducing their investing opportunities.	Noted, on the assumption that the reference to “funds” in the comment to be referring to “benefit administrators”. It would have been helpful if you provided more information on the extent to which you expect compliance costs for small firms to rise and why. Lacking this context it is difficult to place significant reliance on this assertion.
ASISA	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.	It is not evident that the changes will have this effect.	Noted.
BASA	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.	None that members are aware of.	Noted.
Beacon	Will the Conduct Standard result in termination of existing arrangements? If yes, please be specific and	Yes. The administrator will cease operations due to the capital adequacy requirement of R3 000 000.00. Part XII	Please note that the capital requirement has been removed.

SECTION B - QUESTIONS RELATING TO THE ANTICIPATED IMPACT OF THE CONDUCT STANDARD			
Entity	**Question**	**Comment**	**FSCA Response**
	make reference to specific aspects of the draft Conduct Standard that will lead to such a termination.		
PWC	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.	Refer comments in line 7 “General” under Part VI - Agreements in respect of administration.	Please refer to the responses to those comments.
RFS	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.	No.	Noted.
SAICA	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.	Yes. The small administrators might be forced to cease operations due to the capital adequacy requirement of R3 000 000.00. Part XII.	Please note that the capital requirement has been removed.
ASISA	If the answer to question 3 is yes, how many arrangements will be impacted and what is the expected cost implication thereof?	It is not evident that the changes will have this effect, but this will depend on point 3 above.	Noted.
Beacon	If the answer to question 3 is yes, how many arrangements will be	All 3. The company will cease operations.	Noted. It would have been helpful if you provided more information on why you say this. Lacking this context it is difficult to place significant reliance on this assertion.

SECTION B - QUESTIONS RELATING TO THE ANTICIPATED IMPACT OF THE CONDUCT STANDARD			
Entity	**Question**	**Comment**	**FSCA Response**
	impacted and what is the expected cost implication thereof?		
PWC	If the answer to question 3 is yes, how many arrangements will be impacted and what is the expected cost implication thereof?	This is dependent on further clarity being provided by the FSCA in terms of the commentary provided in this response document.	Noted.
ASISA	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)	Please refer to our comments on time periods above. The proposed transitional period of 6 months is too short. ASISA members will require at least 12 months to do the necessary changes to systems and processes, specifically with regards to sections 33 and 34. System development, updating existing policies, processes and procedures, training staff, updating reporting requirements, drafting and entering into updated service agreements with a Fund. ASISA members reiterate the comments on transitional periods related to Outsourcing and Administration Agreements set out above.	Noted. See response to item 113.
BASA	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)	None that members are aware of.	Noted.
PWC	Are any other transitional arrangements necessary to	This is dependent on further clarity being provided by the FSCA in terms of the commentary provided in this response document. Specifically as	Noted.

SECTION B - QUESTIONS RELATING TO THE ANTICIPATED IMPACT OF THE CONDUCT STANDARD			
Entity	**Question**	**Comment**	**FSCA Response**
	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)	it relates to replacement of current service level agreements as well as the reporting frameworks and format of reports agreed with the IRBA. Refer Part XIV Miscellaneous - Annexure I.	
RFS	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)	No.	Noted.
SAICA	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	For the capital adequacy, we propose consideration of a measurement metric, rather than applying a flat capital adequacy figure. The metric could be based on the size of fund, staff compliment, revenue generated annually etc.	Noted. Please see responses to items 289 and 290.

SECTION B - QUESTIONS RELATING TO THE ANTICIPATED IMPACT OF THE CONDUCT STANDARD			
Entity	**Question**	**Comment**	**FSCA Response**
	response and details on timeframes to comply with the relevant section)		

SECTION D - GENERAL COMMENTS			
Entity	**Question**	**Response**	**FSCA Response**
FORMAT OF THE CONDUCT STANDARD			
ASISA	Do you find the format of the draft Conduct Standard user friendly and simple to understand? If no, please provide suggestions for improvement.	It is difficult to distinguish between the Fund and the Administrator in the document. It creates the impression that the Administrator has been tasked with more responsibility than the Fund. Ultimately the service level to be entered into between the Fund and the Administrator should govern the relationship between the Fund and the Administrator although the fair treatment of customers should always be an overarching principle in the execution and implementation of service delivery.	Noted. Although your comment is not fully understood as all of the requirements in the draft Conduct Standard relate apply to benefit administrators only.
BASA	Do you find the format of the draft Conduct Standard user friendly and simple to understand? If no, please provide suggestions for improvement.	The comment template should be provided in Word please.	The comment template was published in Word format.
OPFA	Do you find the format of the draft Conduct Standard user friendly and simple to understand? If no, please	Yes.	Noted.

SECTION D - GENERAL COMMENTS			
Entity	**Question**	**Response**	**FSCA Response**
	provide suggestions for improvement.		
PWC	Do you find the format of the draft Conduct Standard user friendly and simple to understand? If no, please provide suggestions for improvement.	Apart from our comments noted above, we find that Draft Conduct Standard user-friendly and simple to understand.	Noted.
RFS	Do you find the format of the draft Conduct Standard user friendly and simple to understand? If no, please provide suggestions for improvement.	Yes.	Noted.
No	**Issue**	**Comment/Recommendation**	**FSCA Response**
ANY OTHER GENERAL COMMENTS			
1.	All policy documents	FSCA to publish templates for the policies required to assist benefit administrators without a legal team in their employ or make reasonable accommodation for SMMEs.	The Authority will not be publishing templates for policies as it is impossible to provide a "one size fits all" document.
2.	Transformation and financial inclusion	Whilst the Authority has listed "*An inclusive and transformed financial sector*" as one of its strategic priorities contained in its regulatory strategy published during 2018 in terms of section 70 of the Financial Sector Regulation Act, 2017, it has done nothing in the last 3 years to address this in any of the regulatory instruments issued by it in the retirement funds sector. It is disappointing to note that this draft Conduct Standard once again misses the opportunity to address this very important strategic priority.	Note that the FSCA does not currently have an explicit objective, function or mandate to support transformation. As such, we are not empowered to deal with issues pertaining to transformation in law/conduct standards. Our transformation strategy is clear on this aspect and highlights that establishing a transformation mandate for the FSCA is strongly dependent on the promulgation of the Conduct of Financial Institutions Bill. It is also for the aforementioned reasons that the transformation strategy proposed two phases, and the second phase, which is focussed on promoting transformation under a new legislative framework, can only be implemented once the COFI Bill has been promulgated.
3.	Fees for paid-up members and unclaimed benefits	In FSCA PFA Guidance Notice 8 of 2018, at paragraph 4.6(b), the FSCA recognised that benefit administration fees may erode benefits over time. This Conduct Standard should have provided a binding	PFA Guidance Notice 8 of 2018 already empowers the board to consider and come up with protective measures, in the development of administration

SECTION D - GENERAL COMMENTS			
Entity	**Question**	**Response**	**FSCA Response**
		requirement that protects benefits from such erosion eg. that administration fees should not exceed investment returns.	agreements, for those categories of members to ensure that the fees of the administrators are limited considering those factors as highlighted in the Notice. Notwithstanding, we will consider this further as part of future regulatory framework developments.
4.	Self-administered funds	The Conduct Standard should also apply in parts to self-administered funds. The Authority should indicate which parts of the Conduct Standard is applicable to self-administered funds.	This standard is made under section 13B of the Pension Funds Act, which is only applicable to third party benefit administrators. The Conduct Standard can therefore not apply to self-adminstered pension funds. Notwithstanding, we agree that there should be alignment in certain requirements applicable to adminsitration activities, regardless of whether the activity is done by the pension fund itself or a third party. This alignment will, however, only be given effect to once the Conduct of Financial Insituttions Bill is promulgated as the latter Bill will introduce self-administration as a specific licensing activity.
5.	Exemptions	Please clarify if the exemption process under sec 13B(4) will be applicable to the conditions set out in this Conduct Standard?	Yes. There is also, in addition to this, an exemption process available in terms of section 281 of the Financial Sector Regulation Act.
6.	Umbrella funds	In the current conditions in the Board Notice there is a definition for “umbrella scheme”. COFI also defines “umbrella fund” and specifically references the manner in which assets and liabilities are to be maintained separately per PE. The reason this was in the current conditions was so that the auditor could verify that the systems the administrator has in place are adequate to manage umbrella funds and retirement annuity funds. Should this not then still be included so as to align COFI with the requirements as set out in Part XII 37? Operational ability and Form B 2.13 as the auditor must certify that the administrator’s systems are adequate to manage the complexity of the business they administer such as being able to manage umbrella funds as required by COFI.	Agree. See amendment made to the standard.
7.	Transitional period	The 6 months’ transitional period will not be sufficient time to implement the Conduct Standard, e.g. system development, updating existing policies, processes and procedures, training staff, updating reporting and MI requirements, drafting and entering into updated service agreements with fund. For example, maintaining records for 5 years.	Noted. See response to item 113.

SECTION D - GENERAL COMMENTS			
Entity	**Question**	**Response**	**FSCA Response**
		Systems development needed to flag the start and end of that 5 year period. Another example, update services agreements. These is typically a drawn out exercise, as trustees need to consider carefully and given they typically meet quarterly, it can take over a year to get a new services agreement in place. All of these tasks will involve significant time and effort	
8.	Cost implications	It is anticipated that the Conduct Standard will affect the operational cost of the business, (e.g having to open a separate bank account as a suspense account) and will result in increased audit fees for administrators, to name but a few. Unfortunately difficult to assess the expected costs, thus cannot be quantified at this stage but the new requirements will definitely significantly increase admin costs. All these increased costs could end up being funded by members. Also, new requirements would mean much more supervisory work for the FSCA which would mean increased FSCA levies and thus also in the end having to be funded by the members.	Note that the auditing requirements have been relaxed substantially. In actual fact, it might even be the case that the new requirements will reduce auditor cost when compared to the current requirements. We do not foresee a substantial cost implication as a result of the required bank and suspense account. We also do not foresee a substantial cost implication from the FSCA's perspective as a result of this conduct standard, our resources will not have to be increased, it might simply be a case of changing our supervisory focus areas.
9.	Aligning requirements to complexity of business	It is proposed that the requirements be aligned more closely with the complexity of an administrators' business and the type of funds administered. It is recognized that fundamental controls and procedures are required in terms of risk management, but the complexity of business does impact on differing levels of risk exposure.	Noted – proportionality will be taken into account in supervising and enforcing the requirements of the Standard.
10.	Capital adequacy requirements	The capital adequacy requirements could make it very difficult for new, smaller and independent administrators to enter the industry. In line with this one has to consider the impact transformation and entrepreneurial growth in the pension fund administration industry	Note that the minimal capital requirement has been deleted.
11.	Fit and proper requirements	• Is it the intention of the regulator to introduce regulatory exams for the pension fund administrators? • Will the regulator later provide further guidelines in relations to the Fit and Proper requirements for Pension Fund Administrators?	• No. • No. The fit and proper requirements are sufficiently set out in the draft Conduct Standard.
12.	Outsourcing	• The use of the word any of its function is too wide can the regulator consider being specific in this regard. • Confirm if collection of agreements includes collection of premiums	See amendment made to the Standard to refer to "administration functions". This comment is unclear and cannot be confirmed.

SECTION D - GENERAL COMMENTS			
Entity	**Question**	**Response**	**FSCA Response**
13.	Retail funds	The draft should consider the differences in retail and employer funds and how benefit administrators operate in the retail market. The draft should specifically take this into account where an administrative FSP performs the function of a benefit administrator on behalf of a retail retirement annuity or preservation fund. In these cases, the premiums, retirement and death benefits are paid directly from the account in the name of the Fund.	Noted. However one should bear in mind that a single administrator can administer both retail and employer funds and section 13B licences are not always restricted to the "type of funds" an administrator can administer. It is also not clear what the purpose of such a distinction would be, are you proposing that different requirements should apply depending on the adminsitrators clients/types of funds? If so, how should the requirements differ? In our view the requirements are positioned at a high level which makes it appropriate to apply in any context.

ANNEXURE B

PUBLIC COMMENTS AND RESPONSES:
INFORMAL CONSULTATION ON DRAFT CONDUCT STANDARD – CONDITIONS PRESCRIBED IN RESPECT OF PENSION FUND BENEFIT ADMINISTRATORS

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SECTION A - COMMENTATORS		
No	**Commentator**	**Acronym**
1.	Association for Savings and Investment South Africa	ASISA

2.	Institute of Retirement Funds Africa	IRFA
3.	RFS Administrators	RFS

SECTION B - COMMENTS ON THE DRAFT CONDUCT STANDARD				
Item	**Commentator**	**Section**	**Issue/Comment/Recommendation**	**FSCA Response**
PART I - INTERPRETATION AND APPLICATION OF CONDUCT STANDARD				
1.	**ASISA**	**"complaint"** means an expression of dissatisfaction by a person to a benefit administrator relating to the administration services performed by that benefit administrator which indicates or alleges, regardless of whether such an expression of dissatisfaction is submitted together with or in relation to a customer query, that the - (a) benefit administrator has contravened or failed to comply with an agreement, a law, a rule, a code of conduct or a conduct standard which is binding on the benefit administrator or to which it subscribes; (b) benefit administrator's maladministration or wilful or negligent action or failure to act, has caused the person harm, prejudice, distress or substantial inconvenience; or (c) the benefit administrator has treated the person unfairly	ASISA members refer to the previous submissions and note the responses of the FSCA. In line with the FSCA's responses, it is submitted that the proposed addition of the word "administration" before the word "services" would provide more clarity in this regard.	Agreed. Change made.
2.	**ASISA**	**"outsourcing contract"** means a documented contract between a benefit administrator and a service provider that gives effect to an outsourcing arrangement.	The FSCA response indicated that this definition has been deleted. In the updated Conduct Standard, we however still see the definition. This appears to be an oversight. Please delete the definition as indicated.	Agree. Change made.
PART IV - KEY PERSONS				

SECTION B - COMMENTS ON THE DRAFT CONDUCT STANDARD				
Item	**Commentator**	**Section**	**Issue/Comment/Recommendation**	**FSCA Response**
3.	**ASISA**	6(2) The Authority may at any time, by notice to the benefit administrator, object to the appointment of a key person, contemplated in paragraph 6(1), and instruct the benefit administrator to terminate the appointment of such key person, if satisfied, on the basis of available facts and information, that the –	• This Conduct Standard applies to certain key persons of the benefit administrator and does not apply to all the key persons. • This concern has been addressed in Paragraph 6(1) as the words "(where applicable)" were included there. • It is therefore proposed that where key persons are referenced, that it be linked back to paragraph 6(1) as recommended in red.	Agree. Change made.
PART V - FIT AND PROPER REQUIREMENTS				
4.	**ASISA**	**7. Fit and proper requirements** A benefit administrator and its key persons, contemplated in paragraph 6(1), must at all times comply with the fit and proper requirements prescribed	• Same comment as above under 6.2.	Agree. Change made.
5.	**ASISA**	**9. Competence requirements** Key persons, contemplated in paragraph 6(1), of a benefit administrator must at all times have - (a) adequate, appropriate and relevant skills, knowledge and expertise in respect of the function that, that person performs; and (b) relevant educational qualifications and experience in respect of the function that, that person performs.	• Same comment as above	Agree. Change made.
6.	**ASISA**	**10. Non-compliance by key persons** Where a key person, contemplated in	• Same comment as above	Agree. Change made.

SECTION B - COMMENTS ON THE DRAFT CONDUCT STANDARD				
Item	**Commentator**	**Section**	**Issue/Comment/Recommendation**	**FSCA Response**
		paragraph 6(1), of a benefit administrator does not comply with this Part, the Authority may direct the benefit administrator to make arrangements, to the satisfaction of the Authority, to address the non-compliance, which arrangements may include, as relevant - (a) providing the relevant education or training that is required to that key person over a certain period of time; (b) utilising external resources to support that key person; (c) outsourcing the functions and duties of that key person; or (d) suspending such key person from the appointment as a key person; (e) terminating the appointment of such key person in accordance with paragraph 6(2).		
PART VI - AGREEMENTS IN RESPECT OF ADMINISTRATION				
7.	**IRFA**	**11. Administration and service level agreement** (2) An administration agreement referred to in subparagraph (1) must at least provide for the following: (i) specify that a party to the agreement may only terminate the agreement if written notice of the intended termination has been provided to the other party 90 days before the termination of the agreement;	• We propose that this section should be amended to provide that the parties should be permitted to agree, for example on a shorter than 90-day notice period, or that the fund may provide a shorter that 90-day notice period. So, the termination notice period should be contractually agreed upon between the parties subject to the termination notice not being more than 90 days. The Conduct Standard should not require the parties to stick to 90 days; • It should be specified that this termination notice requirement should only relate to termination for convenience and not also to termination for breach in terms of paragraph(g).	Agree. The clause has been amended as follows "….., provided that the agreement may make provision for earlier termination in the case of a contracting party breaching the agreement;"

SECTION B - COMMENTS ON THE DRAFT CONDUCT STANDARD				
Item	**Commentator**	**Section**	**Issue/Comment/Recommendation**	**FSCA Response**
8.	**RFS**	**11(2)(i)**	Longer termination periods should be allowed up to a maximum of 6 months or 180 calendar days. In your response matrix provided (Annexure C item 134), you agreed with our reasoning for longer termination periods. Per the marked-up version (Annexure B) of the conduct standard we could see that it was amended to 3 calendar months just to be changed back later to 90 days again per the draft conduct standard (Annexure A). From where the about turn seeing that you agreed with us? No further reasoning is indicated from the Authority on the about turn. Or is it just a mistake that the 90 days krept back into the final draft.	In the response matrix we clarified that we will not refer to calendar months because the term could be interpreted to have different meanings, hence the reason why we refer to 90 days. Notwithstanding, we agree that a longer termination period should be provided for. To give effect to this, the words "at least" 90 days have been added. We do not believe that a maximum period for termination should be stipulated, our concern is more around short termination period. Not including this change earlier was an oversight.
9.	**IRFA**	**12. Termination of administration agreement** (2) The information, records and data referred to in subparagraph (1)(b) must be provided in – (a) an electronic format, as agreed to with the fund and/or the newly appointed benefit administrator, that can be assimilated into the fund's or the newly appointed benefit administrator's system; or	The requirement should just be "that can be assimilated electronically" and not "can be assimilated into the fund's or the newly appointed benefit administrator's system". The new administrator and the terminated administrator may have very different systems and the old administrator should not be forced to provide information in a way that can assimilate into the new administrator's system. The terminated administrator may not even be aware of the requirements necessary for this to happen.	The intention was not to require integration between the systems. The point is that the information must be in a, electronic format that will ensure the information can be easily transferred to the fund or new administrator. However, to deal with your concern that this might imply integration, we have revised the wording and it now reads as follows: "…, that will support efficient and effective transfer of the information, records and data from the administrator to administration system of the fund or newly appointed administrator;"
PART VII - OUTSOURCING				
10.	**IRFA**	**13. Outsourcing of administration functions** (1) A benefit administrator may only enter into an arrangement for the outsourcing of any of its	Typo in sec 1(b) i.e. "…the duties, responsibilities and record keeping outsourced to any ~~the~~ other benefit administrator;".	Agree. Change made.

SECTION B - COMMENTS ON THE DRAFT CONDUCT STANDARD				
Item	**Commentator**	**Section**	**Issue/Comment/Recommendation**	**FSCA Response**
		administrative services to another benefit administrator if the administration agreement between the benefit administrator and the fund as referred to in paragraph 11(1) - (b) confirms that the benefit administrator shall remain accountable for any of the duties, responsibilities and record keeping outsourced to any the other benefit administrator.		
PART VIII – CONFLICTS OF INTEREST				
1	ASISA	15. (3) A benefit administrator must – (a) ensure that its employees and, where appropriate, associates are aware of the contents of its conflict of interest management policy and provide for appropriate training and educational material in this regard; (b) continuously monitor compliance with its conflict of interest management policy and annually conduct a review of the policy; and (c) provide a copy of its conflicts of interest policy to its customers.	• ASISA members propose that the previous wording in paragraph 15(3)(c) as follows, should remain, for the reasons provided below: *"…publish its conflict of interest management policy in appropriate media and ensure that it is easily accessible for public inspection at all reasonable times".* • It is unclear why the reference to "appropriate media" was removed. The new wording can create confusion as the words under 15(3)(c) refers to providing a "copy", which may cause people to think that it should be a hard copy (paper) instead of electronic, website, etc. • The previous (initial) wording aligns with the FAIS General Code of Conduct - in line with the harmonisation work by the FSCA it is recommended that there be alignment and not different requirements for different types of Financial Institutions, nor different requirements for the same thing (COI Policy). • It also becomes confusing where different requirements in respect of how the Conflict of Interest Policy must be published applies to the same Financial Institution (legal	Note that we reconsidered the issue of publishing a conflict or interest policy. The reason why it is appropriate in the FAIS context is because FSPs deal with a broad scope of retail customers, it therefore makes sense that the policy should be publicly available. However, in the pension fund benefit administrator space, the "customers" are essentially retirement funds and their members, not the general public/ retail customers. As such, publication on a website is perhaps not the best approach in this context. What is important is that pension funds (and their members) are aware of the conflicts of interest policy, hence the reason for the revised wording. Notwithstanding, we take your point about "providing a copy" and have changed the wording to "provide access to".

SECTION B - COMMENTS ON THE DRAFT CONDUCT STANDARD				
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			entity) holding both a FSP license and that of a benefit administrator.	
12.	**IRFA**	15.(3)A benefit administrator must – (d) ensure that its employees and, where appropriate, associates are aware of the contents of its conflict of interest management policy and provide for appropriate training and educational material in this regard; (e) continuously monitor compliance with its conflict of interest management policy and annually conduct a review of the policy; and (f) provide a copy of its conflicts of interest policy to its customers.	We propose that the requirement in paragraph 15(3)(c), namely "provide a copy of its conflicts of interest policy to its customers" be replaced with "make its conflicts of interest policy available to its customers". In this way, for example, a link to a website can be provided. Otherwise, it could be interpreted that hard copies must be provided which could mean that the whole policy may have to be included in customer agreements and the like.	Agree in principle. Wording has been changed to refer to "provide access to its conflicts of interest policy".
PART IX – COMMUNICATION, DISCLOSURES AND COMPLAINTS MANAGEMENT				
13.	**IRFA**	**18. Requirements for complaints management framework** (1) A complaints management framework must at least provide for - …. (f) meeting requirements for reporting to the Authority and public reporting in accordance with this Part;	There is no provision in Part IX for reporting to the FSCA and/or any other public reporting, only for reporting to governance body/sub-committee/senior management under paragraph 22(5) - please advise what is meant with the reporting requirements "in accordance with this Part" under paragraph 18(1)(f).	Retaining this provision was an oversight. In a previous internal version we included certain aspects relating to reporting, but these were removed. Therefore, agree with the comment and the provision has been removed.
PART XI – FINANCIAL MATTERS				
14.	**IRFA**	**31. Trust Account** Where a benefit administrator utilises any form of a trust account whereby money is received on behalf of or utilised to facilitate payments on behalf of any fund, the following requirements must be complied with:	Some administrators may have cut off times in the day for receipt of money, i.e. if contributions are received after that time in the day, then they will only be allocated the following day, meaning it will then only be allocated the **second** business day. We therefore submit that reference to "one business day" should be changed to "two business days" or the "the next business day".	Agree in principle with all proposals. Changes made.

SECTION B - COMMENTS ON THE DRAFT CONDUCT STANDARD				
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		(c) contributions and other amounts received and identified belonging to a specific fund must be allocated to the relevant fund or sub fund within one business day; (d) where contributions have been received and the benefit administrator is unable to identify and allocate such contributions to a specific fund, such amounts must be investigated within 2 business days and any amounts not allocated within 30 days from receipt thereof must be reported to an appropriate senior manager; (g) in the case where a benefit payable to a beneficiary is made through the administrator's trust account, such benefit must be transferred or paid within one working day from when the deposit was made to the trust account (h) where a payment to a beneficiary is rejected by a bank or a payment is returned unpaid to the trust account, such amount must be transferred or paid back to the relevant fund within one business day of the rejection or returned payment;	This should be reported to *the specific fund* as well, see proposed wording hereunder. *(d) where contributions have been received and the benefit administrator is unable to identify and allocate such contributions to a specific fund, such amounts must be investigated within 2 business days and any amounts not allocated within 30 days from receipt thereof must be reported to an appropriate senior manager* ***and to the specific fund*** Some administrators may have cut off times in the day for receipt of deposits, i.e. if deposit is received after that time in the day, then they will only be paid the following day, meaning it will then only be paid the **second** business day. We therefore submit that reference to "one business day" should be changed to "two business days" or the "the next business day". Some administrators may have cut off times in the day for receipt of rejected payments, ie if rejected payment is received after that time in the day, then they will only be paid back the following day, meaning it will then only be paid back the **second** business day. We therefore submit that reference to "one business day" should be changed to "two business days" or the "the next business day".	