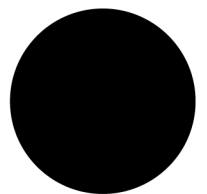




**STATEMENT SUPPORTING DRAFT
AMENDMENTS TO FSRA CONDUCT STANDARD
1 OF 2019 (PFA) - CONDITIONS FOR
AMALGAMATIONS AND TRANSFERS IN TERMS
OF SECTION 14 OF THE PENSION FUNDS ACT**

DATE OF ISSUE: 7 MAY 2024



FSCA

Financial Sector
Conduct Authority

1 PURPOSE OF THE STATEMENT

- 1.1 This Statement relates to the publication by the Financial Sector Conduct Authority (“FSCA”) of the Notice of Amendment of FSRA Conduct Standard 1 of 2019 (PFA) - Conditions for amalgamations and transfers in terms of section 14 of the Pension Funds Act (“draft amendments”).
- 1.2 The FSCA intends to make the Amendment Notice in terms of section 106 of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017). (“FSR Act”).
- 1.3 This Statement is published in accordance with section 98(1)(a) of the FSR Act and is intended to support and give context to the Amendment Notice. The Statement explains the need for, the expected impact of, and the intended operation of the Amendment Notice.

2 STATEMENT OF NEED - POLICY CONTEXT AND PROBLEM DEFINITION

- 2.1 On 5 August 2019, the FSCA published FSRA Conduct Standard 1 of 2018 (PFA) - Conditions for amalgamations and transfers in terms of section 14 of the Pension Funds Act (“S14 Conduct Standard”).
- 2.2 The S14 Conduct Standard prescribes conditions for amalgamations and transfers in terms of section 14 of the Pension Funds Act, 1956 (Act No. 24 of 1956) (“PFA”). Amongst other things, the Conduct Standard prescribes the various forms that pension funds has to complete when submitting an application under section 14 of the PFA (“section 14 application forms”).
- 2.3 The Minister of Finance is in the process of finalising amendments to the Regulations under the PFA to give effect to the so-called Two-Pot system (“Two Pot Regulations”). The aforementioned amendments will result in misalignment between the current prescribed section 14 application forms and the Two Pot Regulations, as the current section 14 application forms do not provide allowance for the transfer value in relation to the two-pot system. The section 14 application forms only allow for a single transfer value, whereas the implementation of the Two Pot Regulations will require the transfer value to be differentiated in two parts in the forms. As such the section 14 application forms will have to be revised.
- 2.4 However, because the prescribed section 14 application forms are contained in the S14 Conduct Standard itself, changing the forms will have to be subject to the process reflected in Chapter 7 of the FSR Act, which is onerous and time-consuming process.
- 2.5 If the section 14 application forms are not amended by the time that the Two Pot Regulations take effect, it will mean that any transfer taking place as from 1 September 2024 will still have to be based on the current prescribed forms which, as explained above, is misaligned to the Two Pot Regulations. It is therefore important that, to the extent possible, amendments to the section 14 application forms be given effect before the end of 2024.
- 2.6 The FSCA is further of the view that the current approach, where amendments to the section 14 application forms are subject to the FSR Act Chapter 7 process, is overly burdensome and counterproductive, especially given the fact that the format of section 14 application forms is largely administrative in nature.
- 2.7 It might be noted that section 108 of the FSR Act, which provides for additional matters for making standards, states that a standard may provide for the FSCA to make determinations for the purposes of the standard (see section 108(2)(a)). Typically the FSCA would provide for

such determinations in a Conduct Standard where it relates to determining the content and format of applications, notifications and the like- i.e. matters of an administrative nature. In the FSCA's opinion, section 14 application forms are well suited to being subject to determination as opposed to formal legislative amendments.

- 2.8 Therefore a need has arisen to streamline the process pertaining to amending section 14 application forms in line with the empowering provisions provided for in the FSR Act. As such, the FSCA is proposing amendments to the S14 Conduct Standard.

3 SUMMARY OF THE DRAFT AMENDMENTS

- 3.1 The draft amendments focus on the following:

- *Removal of the application forms from the S14 Conduct Standard:*
The draft amendments propose to remove the section 14 application forms from the Conduct Standard itself. Going forward the application forms will be determined separately by way of empowering provisions.
- *Enabling the determination of application forms:*
The draft amendments propose to insert provisions that enable the FSCA to determine the manner of submission, content and format of the section 14 application forms (in line with section 108(2) of the FSR Act). As such, all references to the previous forms that were contained in the S14 Conduct Standard have also been removed.

- 3.2 The section 14 application forms that will be determined under the S14 Conduct Standard will be published as soon as possible after the amendments take effect.

4 STATEMENT OF IMPACT OF THE DRAFT AMENDMENTS

- 4.1 The draft amendments will provide more flexibility to the FSCA when making changes to section 14 application forms as it will negate the need for legislative amendments when changing such forms. This flexibility is also in the interest of pension funds as changes to section 14 application forms necessitated by external developments, such as changes to the Regulations under the PFA, can be given effect to more expeditiously which means that pension funds will obtain legal certainty quicker.
- 4.2 It is envisaged that the draft amendments will have no cost implication for funds as no new requirements are being introduced.

5 STATEMENT OF INTENDED OPERATION OF THE DRAFT AMENDMENTS

- 5.1 The Amendment Notice is intended to become effective on the date of publication.
- 5.1 Following the implementation of the Amendment Notice, the Authority will determine the relevant section 14 application forms, taking into account the recent amendments to the Regulations under the PFA.