



**STATEMENT SUPPORTING THE CONDUCT
STANDARD – REQUIREMENTS RELATED TO
THE PAYMENT OF PENSION FUND
CONTRIBUTIONS**

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FSCA

Financial Sector
Conduct Authority

1 PURPOSE OF THE STATEMENT

- 1.1 This Statement relates to the publication by the Financial Sector Conduct Authority (the Authority) of the Conduct Standard on requirements related to the payment of pension fund contributions (Conduct Standard). The Authority intends to make the draft Conduct Standard under section 106(1) of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017) (FSRA).
- 1.2 This Statement is published in accordance with Section 98(1)(a) of the FSRA and is intended to support and give context to the Conduct Standard. The Statement explains the need for, the expected impact of, and the intended operation of the draft Conduct Standard.

2 STATEMENT OF NEED - POLICY CONTEXT AND PROBLEM DEFINITION

- 2.1 Regulation 33 of the Regulations made under section 36 of the Pension Funds Act, 1956 (No. 24 of 1956)¹ (Regulation 33) sets requirements relating to the payment of contributions by employers to pension funds. Regulation 33 supports the requirements contained in section 13A of the Pension Funds Act, 1956 (No. 24 of 1956) (Act). In supervising compliance with Regulation 33, the Authority has identified:
 - a need to standardise the manner and format of reporting by principal officers and/or authorised persons, and boards of funds, insofar as it relates to various matters falling within the ambit of section 13A of the Act and Regulation 33;
 - undesirable practices and/or outcomes, where the board of a fund outsources its responsibility to recover outstanding contributions from an employer to an attorney or third party. Issues identified include the following:
 - In many instances, attorneys make use of their trust accounts and would therefore earn interest on the amounts they recovered from an employer on behalf of a fund, whilst the amounts recovered are in the possession of the attorney. Often the funds so recovered are not paid over to the fund in a timely manner, potentially with the objective of maximising interest earned on such funds.
 - Various instances were identified where a fund does not provide any instructions to the attorney regarding what action the attorney should take when dealing with employers that refuse to pay outstanding contributions. The lack of instruction and clear agreement on processes between the fund and attorney often results in delays in taking appropriate action to address outstanding contributions.
 - In some instances, actual or potential conflicts of interests and/or exorbitant fee arrangements exist where the recovery function is outsourced to an attorney; and
 - potential drafting improvements that can clarify various of the requirements contained in regulation 33.
- 2.2 The Authority believes the requirements contained in Regulation 33 should be revised to address the issues highlighted in paragraph 3.1 above.
- 2.3 However, it might be noted that the FSRA empowers the authority to, amongst other things, make conduct standards.² Section 106(2) of the FSRA set out the objectives at which a conduct standard must be aimed at, which includes ensuring that financial institutions treat

¹ As published in GN R98 in *Government Gazette* 162 of 26 January 1962 and amended from time to time.

² See section 106(1) of the FSRA.

financial customers fairly.³ The making of conduct standards will play a critical role in informing the future regulatory framework architecture that will be overseen by the Authority.

- 2.3 Considering the fact that the Authority is empowered to make conduct standards aimed at ensuring fair treatment of financial customers, the fact that in future the regulatory framework overseen by the Authority will place a large reliance on conduct standards, and the fact that the requirements contained in Regulation 33 are largely aimed at the fair treatment of members, the Authority is of the view that it would be practical to replace Regulation 33 with a conduct standard.
- 2.4 As a result, the Authority has engaged National Treasury to request that Regulation 33 be repealed, on the understanding that it will be replaced by a conduct standard to be made by the Authority under section 106(1) of the FSRA. National Treasury has, in principle, agreed to the mooted approach and for this reason the Authority is proceeding to make the conduct standard that is to replace Regulation 33.

3 SUMMARY OF THE DRAFT CONDUCT STANDARD

- 3.1 The draft Conduct Standard is intended to replace Regulation 33 (with necessary drafting improvements) by providing for the following matters that are currently provided for in Regulation 33:
- The minimum information to be furnished to a fund by an employer, with regards to payments of contributions made by an employer in terms of section 13A of the Act;
 - Notification and reporting obligations on the board of a fund, principal officer or other authorised person, where there is a contravention of or non-compliance with sections 13A(2)(b) or 13A(3)(a) of the Act by an employer; and
 - the rate of interest payable on arrear contributions.
- 3.2 In addition, the draft Conduct Standard also proposes to:
- set a standard format in which a fund must inform a participating employer of its duties and obligations under section 13A of the Act;
 - set out the format in which a request by a fund to an employer, as referred to in section 13A(9) of the Act, must be made;
 - prescribe the manner and format of reporting by principal officers of pension funds or any other authorised persons as referred to in section 13A(6) of the Act to the board of a fund regarding compliance with, or non-compliance with, the provisions of sections 13A(2)(b) and 13A(3)(a) of the Act by an employer;
 - impose standard notification and reporting obligations on the board of a fund where there is a contravention of or non-compliance with sections 13A(2)(b) or 13A(3)(a) of the Act by an employer; and
 - set requirements for a board a fund, and participating employers, when the board of a fund outsources the collection of outstanding contributions to attorneys.

³ In addition, section 106(3) and 108 of the FSRA sets out a variety of matters that conduct standards can be made on.

4 STATEMENT OF IMPACT OF THE CONDUCT STANDARD

- 4.1 Commentators had differing views on whether the Conduct Standard will result in additional costs for the affected persons. Several commentators were of the view that the Conduct Standard will not result in additional compliance costs (ostensibly because a lot of the requirements are already in existence under regulation 33). Several commentators were, however, of the view that there will be increased compliance costs due to required system and process changes (including development costs), as well as additional administration costs. No commentators provided any quantitative data or estimations of the expected increase in costs.
- 4.2 The Authority remains of the view that the majority of the draft Conduct Standard will not have any significant impact on industry participants, as most of the requirements have been law for an extended period through Regulation 33.
- 4.3 The Authority, however, agrees that the Conduct Standard will in some instances result in increased costs, especially because of system and process changes that could potentially be necessary for some affected persons. It is expected that the implementation of standardised reporting formats will only have a minor operational impact on funds, principal officers and/or authorised persons, and boards of funds.
- 4.4 It appears as if most of the expected additional costs that might be incurred will not be recurring costs and there is also no indication that these additional costs will have significant adverse implications. The Authority is therefore of the view that the envisaged additional costs are justified, taking into account the expected positive outcomes that will be achieved through the implementation of the Conduct Standard.
- 4.5 In terms of implementation, the Authority believes that the proposed transitional period is sufficient to facilitate timeous implementation of any new requirements contained in the Conduct Standard, as most of the requirements are already provided for in Regulation 33 and where there are new requirements (e.g. additional information that must be submitted to funds) these requirements are not envisaged to require substantial system changes. Notwithstanding, certain measures have been provided for to deal with potential implementation issues:
- The implementation date of the Conduct Standard is 6 months after publication, *or a later date determined by the Authority*. If implementation becomes a widespread problem across the industry as a whole because the 6-month period is insufficient, the FSCA would therefore be able to extend the implementation period to a later date.
 - If implementation in the 6-month period is not a widespread issue, but limited to specific scenarios, these instances will be considered on a case-by-case basis and, if justified, individual dispensations will be granted via exemptions.

5 STATEMENT OF INTENDED OPERATION OF THE CONDUCT STANDARD

- 5.1 The draft Conduct Standard is consistent with the objective of the FSRA, and specifically the mandate of the Authority to protect the interests of members of funds and hold the boards of funds, authorised persons and contractors accountable.
- 5.2 The Conduct Standard is intended to come into operation 6 months after the date of publication of the final Conduct Standard. It is critical that the repeal of Regulation 33, to be given effect to by National Treasury, coincides with the effective date of the Conduct Standard and the Authority and National Treasury will work together in this regard to ensure alignment of processes.