



## DRAFT CONDUCT STANDARD

### CONDITIONS DETERMINED IN RESPECT OF PENSION FUND BENEFIT ADMINISTRATORS

#### Comments Template

##### PRIVACY STATEMENT

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The FSCA publishes all comments received and responses on its website with the names of persons that commented, and entities they represent. This is to ensure transparency and openness in the response to comment process. However, if a commentator wishes to remain anonymous and/or wishes that the content of his/her comments remain anonymous, the commentator must indicate same on the submission made.

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##### IMPORTANT INSTRUCTIONS

Please note the following instructions for completing the template:

- For referencing purposes please use the numbering as contained in the draft Conduct Standard.
- Commentators are requested to answer the questions relating to the expected impact of the draft Conduct Standard under Section C. If you wish to provide a qualitative response in this regard, please attach the response to the template as an Annexure.
- For any other general comments, please use Section D.
- Please send the completed template, in word format, to: [FSCA.RFDStandards@fsc.co.za](mailto:FSCA.RFDStandards@fsc.co.za) on or before **13 September 2021**.

Please note that no PDF or scanned documents or late submissions will be accepted unless agreed to in writing by the Authority.

**SECTION A - DETAILS OF COMMENTATOR**

<b>Name of organisation/individual:</b>	SAICA
<b>If the commentator is an organisation, provide the name and designation of the contact person:</b>	Kedibone Sono PD: MIB Technical
<b>Email address:</b>	<a href="mailto:kedibonep@saica.co.za">kedibonep@saica.co.za</a>
<b>Contact number:</b>	011 621 6959

**SECTION B - COMMENTS ON THE DRAFT CONDUCT STANDARD**

No	Section of the Conduct Standard	Comment
<b>PART I - INTERPRETATION AND APPLICATION OF CONDUCT STANDARD</b>		
1.	Definition of complainant	Complainant definition in paragraph (b) states “(b) has submitted a compliant...” , the word compliant should be complaint
2.	2(a)	The paragraph refers to Closed Corporation Act instead of Close Corporation Act
<b>PART II - BUSINESS PRINCIPLES, CULTURE AND GOVERNANCE</b>		
3.	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)
4.	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.
<b>PART III - NOTIFICATIONS REGARDING CHANGES IN INFORMATION</b>		

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No	Section of the Conduct Standard	Comment
5.	60	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?
<b>PART IV - RESPONSIBLE KEY PERSON</b>		
6.	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)?
7.	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.
<b>PART VIII – CONFLICT OF INTEREST</b>		
8.	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.
9.	17(4)	Definitions to be provided for friends and family
10.	17(4)	The Authority should provide guidance or format expected on the reporting requirements of conflict of interest incidents to ensure consistency
<b>PART IX – DISCLOSURES AND COMPLAINTS MANAGEMENT</b>		

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No	Section of the Conduct Standard	Comment
11.	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 or would the Regulator require separate policies per S13B administrator.
12.	27	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).
13.	28(2)	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.
<b>PART XI – FINANCIAL MATTERS</b>		
14.	30(1)(a)	We suggest that the section should be reworded as follows: “Audit its financial statements.”
15.	30(1)(b)	<p>This section appears to be superfluous as section 30(1)(a) already requires an audit of the business of the benefit administrator.</p> <p>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.</p> <p>We suggest that section 30(1)(b) should be deleted.</p>
16.	30(1)(c)	<p>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.</p> <p>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 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</p>

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		<p>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.</p> <p>The reference to “the relevant International Financial Reporting Standards (IFRS)” is problematic:</p> <ul style="list-style-type: none"> <li>• 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.</li> <li>• The reference to “the relevant” International Financial Reporting Standards is ambiguous – it could be understood to mean that an “IFRS-minus” financial reporting framework will be applied in the preparation of the annual financial statements.</li> <li>• 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.</li> </ul> <p>We suggest that section 30(1)(c) should be deleted.</p>
17.	30(1)(d)	<p>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.”</p> <p>This type of engagement is governed by the International Standards on Assurance Engagements (ISAEs).</p> <p>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).</p> <p>This section requires further discussion with the auditing profession, including the IRBA.</p>
18.	30(1)(e)	<p>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) – <i>Agreed-upon Procedures Engagements</i>.</p>

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No	Section of the Conduct Standard	Comment
		<p>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.</p> <p>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 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.</p> <p>Section 30(1)(e) should be redrafted to reflect as much.</p>
19.	31(1)(a)	<p>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.</p> <p>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.</p> <p>The section should be redrafted to clarify the financial reporting framework to be applied in the preparation of the administrator’s financial statements.</p>
20.	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
21.	33(5)	“basis” appears to be missing at the end of the sentence
22.	34(2)	Change 72 hours to 3 business days
<b>PART XII – FINANCIAL SOUNDNESS AND OPERATIONAL ABILITY</b>		

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No	Section of the Conduct Standard	Comment
23.	36(1)	<p>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.</p> <p>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 applicable based on rational and proportional criteria, 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.</p> <p>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.</p>
<b>ANNEXURE 1</b>		
24.	Form A	<p>This is an outdated audit report which does not comply with the requirements of the currently effective ISAs. IRBA should be involved in the development of this report, if there is a need for it – this appears to be a standard audit report issued on a company. South African Auditing Practice Statement 3, <i>Illustrative Reports</i>, issued by the IRBA, contains a number of illustrative auditor's reports issued on companies.</p>
25.	Form B	<p><u>Reporting on the system of internal financial control</u>  This section of the report does not comply with the requirements of the ISAEs and should be redrafted in totality. Refer to our comments on section 30(1)(d).</p> <p><u>Compliance with the Conduct Standard</u>  This section of the report does not comply with the requirements of ISRS 4400 (Revised) and should be redrafted in totality. All the procedures and findings should be reconsidered for compliance with ISRS 4400(Revised). Without limiting the generality of this comment, we have raised comments on some of the suggested findings – see our comments in numbers 26 and 27 below. Our comments on section 30(1)(e) also have reference.</p> <p>These reports need to be agreed with IRBA.</p>

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26.	Form B item 2.6	Why is this procedure required? The audited AFS accompanies this report and it can therefore be verified. In addition, the audit is conducted in terms of materiality and there could be insignificant deviations from IFRS that is accepted in the audit. As this is an agreed upon procedures report and there is no materiality basis used, these immaterial deviations will need to be reported on and the two reports will not correlate.
27.	Form B item 2.13, 2.14 and 2.15	A sample size, and selection method need to be agreed on . In addition, the findings, as currently worded, require the auditor to conclude that the system is adequate for the size and complexity of the administration business, that the benefit administrator has conducted its business within the limitations imposed by the Act and the business administrator has conducted its business within the limits imposed by the Conduct Standard.An agreed upon procedures report does not allow for conclusions by the auditor.
28.	Form C	<p>It is not clear which section of the Draft Conduct Standard obliges the auditor to report on the capital adequacy as prescribed in paragraph 36. The report in Form C does not indicate the applicable auditing/assurance/related services Standard in terms of which this report has been issued.</p> <p>The obligation on the auditor should be clarified in the Conduct Standard.</p> <p>Further engagement with the auditing profession, including the IRBA is required on this report.</p>
<b>ANNEXURE 2</b>		
29.	Signatures	Both forms are required to be signed off by the “key person”, should this be the “responsible key person”?



**SECTION C - QUESTIONS RELATING TO THE ANTICIPATED IMPACT OF THE CONDUCT STANDARD**

No.	Question	Responses
1.	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.
2.	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.
3.	Will the Conduct Standard result in termination of existing arrangements? If yes, please be specific and make reference to specific aspects of the draft Conduct Standard that will lead to such a termination.	Yes. The small administrators might be forced to cease operations due to the capital adequacy requirement of R3 000 000.00. Part XII
4.	If the answer to question 3 is yes, how many arrangements will be impacted and what is the expected cost implication thereof?	
5.	Are any other transitional arrangements necessary to implement the Conduct Standard? If yes, what transitional arrangements do you propose and for which section of the Conduct Standard? (Please provide a justification for your response and details on timeframes to comply with the relevant section)	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.

**SECTION D - GENERAL COMMENTS**

No.	Question	Responses
<b>FORMAT OF THE CONDUCT STANDARD</b>		
1.	Do you find the format of the draft Conduct Standard user friendly and simple to understand? If no, please provide suggestions for improvement.	

No.	Issue	Comment/input
<b>ANY OTHER GENERAL COMMENTS</b>		
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.
2.		
3.		