



CONSULTATION REPORT

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

March 2024

1. Purpose

- 1.1 Section 104 of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017) (FSR Act) requires 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 of the FSR Act, a report on the consultation process undertaken in respect of the 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 (hereinafter referred to as the Amendments)

2. Summary of the public consultation process

- 2.1 On 08 May 2024 the FSCA published the proposed Amendments for public consultation. The following documents were published:
- (a) FSCA Communication 18 of 2024 (RF) - Amendments to FSRA Conduct Standard 1 of 2019 (PFA) – Conditions for amalgamations and transfers in terms of section 14 of the Pension Funds Act
 - (b) the Notice setting out the proposed amendments to FSRA Conduct Standard 1 of 2019 (PFA) – Conditions for amalgamations and transfers in terms of section 14 of the Pension Funds Act;
 - (c) a Statement of need, expected impact, and intended operation of the draft Amendments;
 - (d) a marked-up version of the Conduct Standard showing proposed amendments in track (as supporting document); and
 - (e) a comments template for use by commentators.
- 2.2 Section 98(2) of the FSR Act requires that the comment period must be at least six weeks, and comments were, therefore, due on or before with comments due on 19 June 2024. The FSCA received a total of 7 comments on the proposed Amendments from a total of 3 commentators.

3. General account of issues raised in the submissions made during the consultation

- 3.1 No significant concerns were raised necessitating any substantial changes to the draft Amendments. The commentators were generally in support of the amendment and supported the need for the change. A few minor changes were suggested with one commentator flagging the need to consult on the proposed changes to the forms timeously, which forms were published for public consultation subsequent to the comment being received. The need to accommodate transfers both before and after the change to the so-called “Two-Pot” system was also highlighted. Responses to each comment received are set out in the table below.

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4.1 SECTION A - List of Commentators

No	Name of Organisation	Acronym
1	Association for Savings and Investment South Africa	ASISA
2	Batseta Council of Retirement Funds for South Africa	BATSETA
3	Institute of Retirement Funds Africa	IRFA

4.2 SECTION B - Public comments received on the draft Amendments and responses from the FSCA

	Commentator	Paragraph number / Definition	Issue / Comment / Recommendation	FSCA Response
1. INTERPRETATION				
			No comments received	
2. AMENDMENTS TO SECTION 14 CONDUCT STANDARD				
1.	ASISA	2(5)	The references to “pensions” in 2(5)(a) and 2(5)(b) should be replaced with references to “pensioners”.	Agreed. Amended to reflect “pensioners”
2.	ASISA	2(7)	Where a fund registered in a foreign jurisdiction (not by the Authority) transfers assets to a South African fund, Forms A or C were used, with the necessary changes. If the reference to necessary changes is deleted, either specific forms must be determined for these types of transfers or the forms that will replace Forms A or C must specifically	Agreed and alternative drafting accepted.

	Commentator	Paragraph number / Definition	Issue / Comment / Recommendation	FSCA Response
			indicate that the necessary changes may be made for transfers from foreign funds to South African funds. Alternatively, the paragraph could be amended as follows: When considering transfers to or from an entity not registered by the Authority, [Forms A or C in the Appendices in this Conduct Standard, with the necessary changes, must also be used] <u>a pension fund must submit the relevant forms, with the necessary changes, for such transfer as determined by the Authority</u>	
3.	ASISA	2(10)	In paragraph 3.4 of FSCA Communication 18 of 2024 (RF), the FSCA indicated that amendments to the revised section 14 application forms will be consulted on separately to the necessary legislative amendment and as a parallel process, to avoid any delays in consultation on the proposed legislative change. ASISA members appreciate the consultative approach and is looking forward to receiving the revised forms soon, considering the fast-approaching deadline of 1 September 2024. While we understand that the FSCA is not required by legislation to consult on the determination of forms, it is a more practical approach to provide an opportunity to assess the impact of any proposed changes. It is suggested that the FSCA consider including a consultation requirement in the proposed section 19A of the Conduct Standard.	Noted. We do however not think the suggested approach is necessary as the FSCA is bound by the obligations relating to fair administrative action as outlined in section 3 of the Promotion of Administrative Act, 2000 (Act No. 3 of 2000). The suggested approach is not feasible as legally the FSCA could not impose a consultation requirement (or any other requirement) on itself through a Conduct Standard. This would need to be done through primary legislation.
4.	BATSETA		No comment	
5.	IRFA		No comment	
3. SHORT TITLE AND COMMENCEMENT				

	Commentator	Paragraph number / Definition	Issue / Comment / Recommendation	FSCA Response
6.	ASISA	3	Practically, the amendments should not become effective before 1 September 2024, because the forms currently included in the Conduct Standard must be used until 31 August 2024. Please also refer to the General comment below on Transitional Arrangements.	Please note that given that the Amendment will need to be tabled with Parliament for 30 days while Parliament is sitting in accordance with section 103 of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017), the amendments will likely not take effect before 1 September 2024. Please also see response to general comment below on Transitional Arrangements.
7.	BATSETA		No comment	
8.	IRFA		No comment	

4.3 SECTION C- General Comments

No	Commentator	Issue	Comment/Recommendation	FSCA Response
1.	ASISA	Transitional arrangements	Please refer to comment 3.1 above on the Short title and commencement of the proposed amendments. ASISA members believe section 20 of the Conduct Standard should also be amended to provide for transfers prior to and after 1 September 2024. ASISA understands that the Institute of Retirement Funds Africa is engaging with the FSCA on a revised Form G and a standard template for the transfer of membership data for section 14(1) transfers. In respect of section 14(8) transfers, the revised forms will, from 1 September 2024, make provision for the	It will not be necessary to make provision for transfers prior to 1 September 2024 as the statutory consultation process on the proposed amendments will likely not have concluded by 1 September 2024. Accordingly transfers prior to 1 September 2024 will still be considered in terms of the current forms. Please see FSCA Communication 21 of 2024 published on 25 June 2024 providing clarification on the treatment of section 14 transfers with the implementation of the Two-Pot system, in particular in relation to transfers underway when the Two pot system takes effect. The communication is available on the FSCA website ¹ (www.fsca.co.za) under <i>Home</i> >

¹ FSCA Communication 21 of 2024 is available on the following link:

[https://www.fsca.co.za/Regulatory%20Frameworks/Documents%20for%20Consultation/Section%2014%20transfers%20Public%20consultation%20on%20draft%20forms%20to%20be%20determined%20to%20CS%201%20of%202019\(PFA\).zip](https://www.fsca.co.za/Regulatory%20Frameworks/Documents%20for%20Consultation/Section%2014%20transfers%20Public%20consultation%20on%20draft%20forms%20to%20be%20determined%20to%20CS%201%20of%202019(PFA).zip)

No	Commentator	Issue	Comment/Recommendation	FSCA Response
			information required for the different components. These transfers can also take time to finalise and it is similarly possible that a section 14(8) transfer can result in a transfer of assets (as instructed before 31 August 2024) occurring on or after 31 August and this could add complexities to the receiving fund because they would need to receive seeding values as at 31 August 2024. The FSCA is therefore respectfully requested to consider communicating to funds and their administrators on the practicalities of all types of transfers that straddle the implementation date of 1 September 2024, so that transferring funds and their administrators are aware that they would need to provide seeding values to a receiving fund if a transfer that started before 1 September 2024 is only effected after 1 September 2024. This will limit the delay for fund members in receiving seed capital and exercising their savings withdrawal benefit.	<i>Regulatory Framework > Industry Communication > Retirement Funds > FSCA Communication.</i> Regarding the need for the forms that must make provision for the different components, please see the draft forms published for consultation on 25 June 2024 available on the FSCA website² Noted. Please see FSCA Communication 21 of 2024 published on 25 June 2024 dealing with the following matters relating to Section 14 transfers: • Public consultation on the Draft Forms to be determined in terms of FSRA Conduct Standard 1 of 2019 (PFA); and • Clarification on the treatment of section 14 transfers with the implementation of the Two-Pot system. The communication and related documents are available on the FSCA website per footnote 1.
2.	BATSETA		Batseta agrees that the amendments of the section 14 application forms is administrative in nature. Therefore, Batseta supports the view that the amendments to the section 14 application forms should be done by way of a determination as envisaged in section 108 of the FSR Act for the purpose of the standard.	Noted.
3.	IRFA		We thank you for the opportunity to comment on the Conduct Standard. We would like to advise that the Institute of Retirement Funds Africa supports the proposed amendments to the Conduct Standard.	Noted.

² Draft forms are available on the following link:

[https://www.fsca.co.za/Regulatory%20Frameworks/Documents%20for%20Consultation/Section%2014%20transfers%20Public%20consultation%20on%20draft%20forms%20to%20be%20determined%20to%20CS%201%20of%202019\(PFA\).zip](https://www.fsca.co.za/Regulatory%20Frameworks/Documents%20for%20Consultation/Section%2014%20transfers%20Public%20consultation%20on%20draft%20forms%20to%20be%20determined%20to%20CS%201%20of%202019(PFA).zip)