

FSCA COMMUNICATION 5 OF 2019 (PFA)

EXTENSION OF PERIOD FOR COMPLIANCE BY CERTAIN FUNDS WITH REGULATION 38 OF THE REGULATIONS UNDER THE PENSION FUNDS ACT, 1956

1. PURPOSE

The purpose of this Communication is to inform stakeholders that the Financial Sector Conduct Authority (FSCA) has, in terms section 279(1) of the Financial Sector Regulation Act, 2017 (Act no. 9 of 2017) (FSR Act), extended the period for compliance by funds that have submitted applications for amendments to their rules in order to comply with Regulation 38 of the Pension Funds Act, 1956 (Act No. of 24 1956) (Act).

2. REASON FOR EXTENDING THE PERIOD FOR COMPLIANCE

- 2.1 On 25 August 2017, the Minister of Finance published amendments to the Regulations issued in terms of section 36 of the Act in Government Notice No. 836 of *Government Gazette* No. 41064 (default regulations). In terms of section 3 of the Government Notice, the effective date of the default regulations was 1 September 2017. However, section 3 also provided that default arrangements that were in place on the effective date must comply with the provisions of the amendments to the Regulations within eighteen (18) months of the effective date (i.e. 1 March 2019).
- 2.2 On 30 August 2017, the then Registrar of Pension Funds exempted all funds registered before 1 March 2018 from the provisions of regulations 37, 38 and 39 until 1 March 2019.
- 2.3 As a result of the aforesaid, certain funds applied for an amendment to their rules in order to comply with regulation 38 of the Act.
- 2.4 Whilst considering the above applications, it came to the attention of the FSCA that industry stakeholders interpret and apply section 37C of the Act inconsistently, and that ambiguities and uncertainty exist regarding how 37C should be interpreted and applied. In order to provide clarity, certainty and to ensure consistent interpretation and application of section 37C of the Act, the FSCA is in the process of issuing an Interpretation Ruling, in terms of section 142 of the FSR Act, on the interpretation and application of section 37C.
- 2.5 The Interpretation Ruling, once final, might necessitate further amendments to a fund's rules, specifically where a fund's interpretation of section 37C is not consistent with the Interpretation Ruling. In addition, the interpretation of section 37C also has an impact on how a fund's rules are worded or structured when ensuring compliance with regulation 38.
- 2.6 Because of the interconnectedness between the interpretation and application of section 37C and regulation 38, the FSCA deemed it prudent to await the finalisation of the Interpretation Ruling before approving the amendments that have been submitted by funds referred to above (amendments that were aimed at ensuring compliance with regulation 38).

- 2.7 This delay in approving these rule amendments, however, is resulting in funds being in contravention of regulation 38 even though they have already taken steps to ensure compliance with regulation 38.
- 2.8 In light of the above, the FSCA has taken a decision to, in terms of section 279(1) of the FSR Act, extend the period of compliance with regulation 38 until 29 February 2020. This extension is only granted to funds that have already submitted applications for an amendment to their rules in order to comply with regulation 38 and are awaiting a decision from the Authority pertaining to same.

3. ENQUIRIES

For further information regarding this Communication please contact the FSCA by emailing Roslynne Van Wyk at roslynne.vanwyk@fsc.co.za.